CHAPTER 301

MINNESOTA BUSINESS CORPORATIONS

301.01 CITATION. Sections 301.01 to 301.61 may be cited as the Minnesota business corporation act.

301.02 DEFINITIONS. Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of sections 301.01 to 301.61, shall be given the meanings subjoined to them.

Subd. 2. **Corporation.** "Corporation" means a corporation formed under sections 301.01 to 301.61, or one which has accepted and come under those sections.

Subd. 3. **Articles of incorporation and articles.** "Articles of incorporation" and "articles" include the original articles of incorporation or amended articles of incorporation, all articles of amendment, all certificates made pursuant to section 301.14, subdivision 5, and section 301.33, subdivision 2, agreements of consolidation or merger, and charters granted by special act or acts of the legislature of the state or territory of Minnesota.

Subd. 4. **Incorporator.** An "incorporator" is one of the signers of the original or amended articles of incorporation.

Subd. 5. **Subscriber.** A "subscriber" is one who subscribes for shares in a corporation whether before or after incorporation.

Subd. 6. **Shares.** "Shares" are the units into which shareholders' rights are divided.

Subd. 7. **Shareholder.** A "shareholder" is one who owns one or more fully paid shares or one who is the assignee for value of a certificate purporting to represent fully paid shares without knowledge or notice that the shares so represented had not been fully paid for.

Subd. 8. **Certificate of shares.** A "certificate of shares" is a written instrument signed by the proper corporate officers, as required by sections 301.01 to 301.61, and evidencing the fact that the person therein named is the registered owner of the share or shares therein described.

Subd. 9. **Allotment.** "Allotment" means the apportioning of a certain number of shares to a purchaser, or to a subscriber in response to the application contained in his subscription, or to a shareholder pursuant to the declaration of a share dividend.

Subd. 10. **Stated capital.** The "stated capital" of a corporation at any time is:

(1) the sum of:

(a) the aggregate par value of all shares having par value theretofore allotted, whether then outstanding or not,

(b) the aggregate amount of consideration received for all its shares without par value theretofore allotted, whether then outstanding or not, except such portion thereof as shall have been designated a paid-in surplus pursuant to section 301.21,

(c) such amounts as may have been transferred from surplus to stated capital upon declaration of a share dividend,

(d) such amounts as may have been transferred from surplus to stated capital by action of the directors of shareholders;

(2) less such amount, if any, as may have become paid-in surplus by reason of a reduction or reductions of stated capital pursuant to section 301.39.

Subd. 11. **Registered office.** The term "registered office" means that office maintained by the corporation in this state, the address of which is kept on file in the office of the secretary of state in the manner required by the provisions of sections 301.01 to 301.61.

Subd. 12. **Acknowledged.** "Acknowledged" means acknowledged before any officer authorized by the laws of this state to take acknowledgments of deeds within or without the state.

[1933 c. 300 s. 1; 1935 c. 117 s. 1] (7492-1)

301.03 PURPOSE OF INCORPORATION AND QUALIFICATION OF INCORPORATORS. Three or more natural persons of full age may form a corporation under sections 301.01 to 301.61 for any lawful business purposes; provided that banks, savings banks, trust companies, building, loan, and savings associations, and insurance companies shall not be formed under the provisions of these sections; and, provided that where other statutes prescribe a special procedure for the incorporation of designated classes of corporations, such corporations shall be formed under such statutes and not under these sections.

[1933 c. 300 s. 2] (7492-2)

301.04 ARTICLES OF INCORPORATION. Articles of incorporation shall be signed by each of the incorporators and acknowledged by at least three of them; and, in addition to stating the name of the corporation, shall state in the English language:

(1) Its purpose;

(2) Its duration, which may be limited or perpetual;

(3) The location and post-office address of its registered office in this state;

(4) The total authorized number of par value shares and the par value of each share; and, if any of its shares are without par value, the authorized number of such shares;

(5) A description of the classes of shares, if the shares are to be classified, and a statement of the number of shares in each class, and the relative rights, voting power, preference, and restrictions granted to or imposed upon the shares of each class; provided, the articles of incorporation may authorize the board of directors, within the limitations and restrictions stated therein, if any, to fix or alter, from time to time, the dividend rate, or the redemption or liquidation price of shares of any class, or of any series of any class, or the number of shares constituting any series of any class, in respect of shares then unallotted;

(6) The amount of stated capital with which the corporation will begin business, which shall be not less than $1,000;

(7) The names, post-office addresses, and terms of office of the first directors;

(8) The name and post-office address of each of the incorporators;

(9) Such provisions as may be desired, if any, limiting or denying to the shareholders, or to any class or classes thereof, the preemptive right to subscribe for any or all shares of any or all classes or series.

Articles of incorporation may contain any other provisions, consistent with the laws of this state, for regulating the corporation's business or the conduct of its affairs.

[1933 c. 300 s. 3] (7492-3)

301.05 CORPORATE NAME. Subdivision 1. **What to contain.** The corporate name shall end with the word "corporation," or the word "incorporated," or the abbreviation "Inc." or shall contain the word "company," or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&." The provisions of this subdivision shall not affect the right of any corporation, existing at the time sections 301.01 to 301.61 take effect, to continue the use of its name.

Subd. 2. **Use of similar name forbidden.** The corporate name shall not be the same as, nor deceptively similar to, the name of any other domestic corporation or of any foreign corporation authorized to do business in this state unless—

(1) such domestic or foreign corporation is about to change its name, or to cease to do business, or is being wound up, or such foreign corporation is about to withdraw from doing business in this state, and

(2) the written consent of such other domestic or foreign corporation to the adoption of its name or a deceptively similar name has been given and is filed with the articles of incorporation.

Subd. 3. **Not similar to trade name.** The corporate name shall not be the same as, nor deceptively similar to, the trade name of any person or unincorporated association doing business under such trade name in this state or elsewhere, if such person or unincorporated association has, within the last preceding 12 months, signified an intention to procure incorporation in this state under such name by filing notice of such intention with the secretary of state, unless the written consent to the adoption of such name or deceptively similar name has been given by such person or unincorporated association, and is filed with the articles of incorporation.

Subd. 4. **Not same as name of foreign corporation.** The corporate name shall not be the same as, nor deceptively similar to, the name of any foreign corporation doing business elsewhere than in this state if such foreign corporation has, within the last preceding 12 months, signified an intention to procure incorporation in this state under such name, or to do business as a foreign corporation in this state under such name, by filing notice of such intention with the secretary of state, unless the written consent to the adoption of such name or a deceptively similar name has been given by such foreign corporation, and is filed with the articles of incorporation.

Subd. 5. **Trade names not affected.** Nothing in this section shall abrogate or limit the law as to unfair competition or unfair practices, nor derogate from the common law the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect trade names.

Subd. 6. **In English letters.** A corporation formed under sections 301.01 to 301.61 may have a corporate name in any language, but the same must be in English letters or characters.

Subd. 7. **Forbidden.** No corporation formed under sections 301.01 to 301.61 shall include in its corporate name any of the following words or phrases: bank, trust, insurance, building and loan, savings, or cooperative.

Subd. 8. **Effect of wrongful use.** The use of a name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this state having equity jurisdiction may, upon the application of the state, or of any person, unincorporated association, or corporation interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section,

although its articles of incorporation may have been approved and a certificate of incorporation issued.

[1933 c. 300 s. 4] (7492-4)

301.06 FILING ARTICLES OF INCORPORATION. Subdivision 1. **With secretary of state.** The articles of incorporation shall be filed for record with the secretary of state. If the articles conform to law, he shall, when all fees and charges have been paid, as required by law, record the same and issue and record a certificate of incorporation, which shall state the name of the corporation and the fact and date of incorporation.

Subd. 2. **Corporate existence, beginning.** Upon the issuance of the certificate of incorporation, the corporate existence shall begin.

Subd. 3. **Publication of notice.** Within 14 days after the issuance of the certificate of incorporation, the corporation shall cause to be published once, in a qualified newspaper in the county wherein it has its registered office, a notice stating the name of the corporation, the date of its incorporation, the general nature of the business being, or about to be, conducted by it, the address of its registered office, and the names and addresses of the incorporators and of the first board of directors. Proof of the publication of such notice shall be filed with the secretary of state within ten days after its publication. If a corporation shall fail to comply with the provisions of this subdivision it shall forfeit to the state $50.00.

[1933 c. 300 s. 5] (7492-5)

301.07 FILING CERTAIN PAPERS WITH REGISTER OF DEEDS. The secretary of state, after recording in his office any instrument in sections 301.01 to 301.61 provided to be filed for record in his office, shall file the same, or a copy thereof, certified by him, for record in the office of the register of deeds of the county in which the registered office of the corporation is situated, for which service there shall be paid to the secretary of state a fee of $1.00 for each instrument, in addition to all his other fees provided by law. There shall also be paid to the secretary of state, for transmission by him to the register of deeds, a sum sufficient under existing laws to pay the proper fees of the register of deeds for recording the instruments.

[1933 c. 300 s. 6] (7492-6)

301.08 VALIDITY AND EFFECT OF CERTIFICATE OF INCORPORATION. The certificate of incorporation issued by the secretary of state in accordance with the provisions of section 301.06 shall be conclusive evidence of the fact of incorporation. Nothing in this section shall limit the existing rules of law as to corporations de facto, nor as to corporations by estoppel.

[1933 c. 300 s. 7] (7492-7)

301.09 POWERS COMMON TO CORPORATIONS. Every corporation shall have power:

(1) To continue as a corporation for the time limited in its articles of incorporation, or, if no such time limit is specified, then perpetually;

(2) To sue and be sued;

(3) To adopt, use, and, at will, alter a corporate seal, but failure to affix the corporate seal, if any, shall not affect the validity of any instrument;

(4) To acquire, hold, lease, encumber, convey, or otherwise dispose of real and personal property within or without the state, and to take real and personal property by will or gift, subject to any limitation prescribed by law or the articles of incorporation;

(5) To conduct business in this state and elsewhere; and

(6) To enter into obligations or contracts and to do any acts incidental to the transaction of its business or expedient for the attainment of the purposes stated in its articles.

[1933 c. 300 s. 8] (7492-8)

301.10 HOLDING SHARES AND SECURITIES OF OTHER CORPORATIONS. When so provided in its articles of incorporation a corporation may acquire, hold, mortgage, pledge, or dispose of the shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation; and, without such authority in its articles, may guarantee, acquire, hold, mortgage, pledge, or dispose of the

shares, bonds, securities, and other evidences of indebtedness of any domestic or foreign corporation when reasonably necessary or incidental to accomplish the purposes stated in its articles.

[*1933 c. 300 s. 9*] *(7492-9)*

301.11 CONSTRUCTIVE NOTICE OF RECORDED ARTICLES AND CERTIFICATES NOT TO BE IMPLIED. The filing for record of articles and certificates pursuant to sections 301.01 to 301.61 is for the purpose of affording means of acquiring knowledge of the contents thereof, but shall not constitute constructive notice of such contents.

[*1933 c. 300 s. 10*] *(7492-10)*

301.12 ULTRA VIRES ACTS. Every corporation shall confine its acts to those authorized by the statement of purposes in the articles of incorporation and within the limitations and restrictions contained therein, but shall have the capacity possessed by natural persons to perform all acts within or without this state.

No claim of lack of authority based on the articles shall be asserted or be of effect except by or on behalf of the corporation (a) against a person having actual knowledge of such lack of authority, or (b) against a director or officer.

The provisions of this section shall not affect;

(1) the right of shareholders or the state to enjoin the doing or continuing of unauthorized acts by the corporation; but in such case the court shall protect or make compensation for rights which may have been acquired by third parties by reason of the doing of any unauthorized act by the corporation; or

(2) the right of a corporation to recover against its directors or officers for violation of their authority.

[*1933 c. 300 s. 11*] *(7492-11)*

307.13 CONDITIONS PRECEDENT TO BEGINNING BUSINESS; LIABILITY. A corporation shall not begin business nor incur any debts, except such as are incidental to its organization or to the obtaining of subscriptions to or the payment for its shares, until consideration for its shares, equal to the amount of stated capital with which it will begin business, as set forth in the articles of incorporation, has been fully paid in.

If a corporation has incurred any debts or transacted any business in violation of this section, the officers who participated therein, and the directors who authorized or ratified the same, shall be jointly and severally liable for the debts or liabilities of the corporation arising therefrom to an amount not exceeding the unpaid portion of such stated capital, to be paid to the corporation for the benefit of such creditors.

[*1933 c. 300 s. 12*] *(7492-12)*

301.14 SHARES; FILING CERTAIN RESOLUTIONS; OPTIONS AND CONVERSION RIGHTS. Subdivision 1. **Classes of shares.** The shares of a corporation may be divided into classes, and the classes may be divided into series, with such rights, voting power, preferences and restrictions as may be provided in the articles of incorporation, or by resolution of the board of directors, if authorized by the articles under section 301.04, clause (5).

Subd. 2. **Par value.** Any or all of the shares may have a par value or be without par value as provided in the articles of incorporation.

Subd. 3. **Equality of shares:** Except as otherwise provided by the articles of incorporation, or by the board of directors pursuant to the provisions of subdivision 1 hereof, each share shall be in all respects equal to every other share.

Subd. 4. **Equality of shares of class or of series.** All shares of a class which is not divided into series shall be equal in all respects, and all shares of a series shall be equal in all respects.

Subd. 5. **Certificate fixing equality.** Before the corporation shall allot any shares of any class, or of any series of any class, of which the dividend rate, the redemption price, the liquidation price, or the number of shares constituting any series is not set forth in its articles of incorporation but is fixed in a resolution adopted by the board of directors pursuant to authority given by the articles, a certificate setting forth a copy of such resolution, made by the president or a vice-president of the corporation and by its secretary or an assistant secretary and acknowledged by such officers, shall be filed for record in the office of the secretary of state.

Subd. 6. **Rights or options granted to shareholders.** Within the limitations and restrictions, if any, stated in its articles, a corporation may grant (a) rights to convert any of its securities into shares of any class or classes, or (b) options to purchase or subscribe for shares of any class or classes, but such grants shall be made only in connection with the allotment of shares or issuance of other securities; provided, that nothing herein contained shall limit the right of a corporation to grant to its shareholders, or any class or classes thereof, options to subscribe for unallotted shares of the corporation ratably in proportion to the number of shares held. The corporation may issue share purchase or subscription warrants or other evidences of such option rights, setting forth the terms, provisions, and conditions thereof, and such options may be transferable or non-transferable and separable or inseparable from other shares or securities of the corporation.

Subd. 7. **Terms of rights or options.** The terms and provisions of such rights or options shall be set forth in the articles or determined by the shareholders; provided, that the articles or the shareholders may authorize the board of directors by resolution to grant such rights or options.

Subd. 8. **Contract of right or option to state all terms.** The contract certificate, warrant or other instrument evidencing such conversion rights or options shall set forth in full, summarize or incorporate by reference all the terms and provisions thereof. The corporation shall at all times reserve sufficient shares to meet the exercise of all conversion rights or options at the time outstanding.

[1933 c. 300 s. 13] (7492-13)

301.15 SHARES; ALLOTMENT AND CONSIDERATION; LIABILITY FOR IMPROPER VALUATION. Subdivision 1. **Consideration.** No shares shall be allotted except in consideration of cash, or other property, tangible or intangible, received or to be received by the corporation, or services rendered or to be rendered to the corporation, or of an amount transferred from surplus to stated capital upon a share dividend.

Subd. 2. **Resolution stating value.** At the time of each allotment of shares the shareholders or directors making such allotment shall state by resolution their determination of the fair value to the corporation in monetary terms of any consideration other than cash for which shares with or without par value are allotted.

Subd. 3. **Limitation of consideration.** The amount of consideration to be received, in cash or otherwise, shall not be less than the par value of shares so allotted, nor less than the stated capital to be represented by shares without par value so allotted. The provisions of this subdivision shall not apply to shares of its own stock acquired by the corporation, nor to shares of the corporation having par value allotted in consideration of the cancelation of an indebtedness of such corporation the amount of which is at least equal to the par value of the shares so allotted, unless the consideration received by such corporation upon the creation of such indebtedness was less than 85 per cent of the amount of such indebtedness.

Subd. 4. **Shares wrongfully allotted.** If shares are allotted in violation of the provisions of subdivision 3 of this section, the person to whom such shares are allotted and his assignees with notice, and shareholders and directors voting in favor of such allotment, shall be liable to the corporation for the benefit of all persons thereafter becoming creditors who did not assent thereto and are damaged thereby, to the extent of their damages, not exceeding the difference between the par value of shares having a par value so allotted, or the stated capital to be represented by shares without par value so allotted, and the fair value to the corporation of the consideration therefor; provided, that the person to whom such shares were allotted, or his assignees, shall not be liable under the provisions of this subdivision if he received such shares in good faith and without actual knowledge of the violation of subdivision 3 of this section; and, provided, further, that directors and shareholders shall be liable only if they wilfully or without reasonable investigation voted in favor of such allotment.

Subd. 5. **Actions, when commenced.** No action shall be maintained under the provisions of this section unless commenced within three years from the date on which such allotment was made. In any such action creditors shall not be presumed to have extended credit to the corporation relying upon the compliance by the corporation with the provisions of this section relating to allotment of shares and the consideration to be received therefor.

[1933 c. 300 s. 14; 1935 c. 117 s. 2] (7492-14)

301.16 SHARES; ALLOTMENT AND CONSIDERATION. Subdivision 1. **Unfair allotment.** Shares with or without par value shall not be allotted for a cash consideration which is unfair to the then shareholders nor for a consideration other than cash upon a valuation thereof which is unfair to such shareholders.

Subd. 2. **Liability for unfair allotments.** Directors or shareholders who, wilfully without reasonable investigation, either make an allotment of shares for a cash consideration which is unfair to the then shareholders or so overvalue property or services received or to be received by the corporation as consideration for shares allotted, shall be jointly and severally liable to the corporation for the benefit of the then shareholders who did not assent to and are damaged by such action, to the extent of their damages; provided, that if shares or securities convertible into shares or securities in connection with which options are granted to purchase or subscribe for shares, shall, before allotment or offer of such shares or securities is made to others, be offered in substantially ratable amounts to the then shareholders who, in the absence of waiver of such rights, would be entitled to preemptive rights, at not more than the same considerations and terms as such shares or securities are allotted or offered to others, the portion of such shares or securities not subscribed for within the offering period by such shareholders may, at any time within four months after the expiration of the offering period, be allotted or sold to others at not less than the same considerations and terms, and any such allotment or sale shall, except in case of deliberate fraud, be conclusively presumed to have been fair. Such prior offer to shareholders shall be made by not less than 60 days' notice mailed to them at their addresses as shown by the records of the secretary of the corporation. Directors or shareholders who are present and entitled to vote but fail to vote against such allotment or valuation shall be considered, for the purposes of this section, as participating in such allotment or valuation.

Subd. 3. **Contribution.** Any director or shareholder against whom a claim is asserted pursuant to this section, except in case of participation in a deliberate fraud, shall be entitled to contribution on an equitable basis from other directors or shareholders who are liable.

Subd. 4. **Action, when commenced.** No action shall be maintained against a director or shareholder under the provisions of this section unless commenced within three years from the date on which such allotment was made.

[1933 c. 300 s. 15; 1935 c. 117 ss. 3, 4, 5] (7492-15)

301.17 SUBSCRIPTION FOR SHARES, ACCEPTANCE THEREOF; CALLS; ENFORCEMENT. Subdivision 1. **In writing.** All subscriptions for shares of a corporation shall be in writing.

Subd. 2. **Irrevocability.** Unless otherwise provided in the writing, subscriptions for shares of a corporation to be formed shall be:

(1) Irrevocable until 60 days after the issuance of the certificate of incorporation, but void unless accepted within that period; and

(2) Irrevocable for a period of one year after the first subscription for shares of such corporation if no certificate of incorporation shall be issued within such period of one year, but void upon the expiration of such year.

Subd. 3. **Avoidance.** Notwithstanding the foregoing provisions, a subscription for shares may be avoided at any time by either party upon such grounds as exist at law or in equity for the avoidance of any contract.

Subd. 4. **Acceptance an allotment.** Acceptance of a subscription, or the making of a contract by the corporation to sell shares, shall constitute an allotment of the shares subscribed for or agreed to be purchased.

Subd. 5. **Acceptance or rejection.** Acceptance or rejection of subscriptions for shares made before incorporation shall be by the board of directors. Acceptance or rejection of subscriptions for shares made after incorporation shall be by the shareholders at any annual meeting or at any special meeting duly called and held for that purpose, or by the board of directors acting under authority conferred by the shareholders or the articles of incorporation.

Subd. 6. **Payment.** When no provision as to the time of payment is made in the subscription therefor, shares shall be paid for on the call of the board of directors. Notice of each call shall be mailed to each subscriber at his address as shown by the records of the secretary of the corporation. Such notice shall state the due date of the payment required by such call, which due date shall not be less than

20 days from the date of mailing such notice unless the subscription expressly provides for a shorter period of notice.

Subd. 7. **Lien.** If a subscriber be indebted to the corporation on account of a subscription for shares, it shall have a lien upon such shares for such indebtedness; but no corporation shall have any such lien upon any shares evidenced by any certificate of shares by it issued and delivered.

Subd. 8. **Number of shares.** A subscriber shall be treated for all purposes as if he were a holder of a number of shares equal to that proportion of the total number of shares subscribed for by him which the portion of the subscription price paid bears to the total subscription price, unless the subscription agreement expressly restricts or negatives such rights. Unless otherwise provided in the subscription agreement, no certificate of shares shall be issued for any of the shares so ratably paid for while any part of such subscription remains unpaid.

Subd. 9. **Rights of corporation when payment not made when due.** If any payment for shares subscribed and allotted is not made on the due date, the corporation may:

(1) Invoke its remedies at law or in equity; or

(2) Foreclose its lien by advertised sale.

Subd. 10. **Foreclosure sale.** In case of foreclosure of the lien by advertised sale:

(1) The sale shall be at public auction, at the registered office of the corporation, between nine o'clock in the morning and five o'clock in the afternoon;

(2) Two weeks' published notice of such sale shall be given;

(3) At least two weeks before the appointed time of sale a copy of the notice of sale may be served upon the subscriber in like manner as a summons may be personally served in a civil action in the district court, and if not so served such notice shall be mailed, by registered mail, to such subscriber at least ten days before the appointed time of sale at his address appearing upon the books of the secretary of the corporation, and if no address shall there appear, then to such address as shall be known to the secretary; in case neither the place of residence nor the post-office address of such subscriber is known to or appears upon the records of the secretary, the published notice herein provided shall be sufficient to authorize such sale;

(4) Such notice shall state the time and place of sale, the amount which will be due on the date of sale, exclusive of the expense of sale, and the number and description of the shares to be sold;

(5) Under the power of sale hereby given only enough shares shall be sold to pay the expenses of sale and to satisfy the amount due;

(6) The proceeds of such sale shall be applied first to the payment of the expense of sale, then to the satisfaction of the amount due on such subscription, and the remainder, if any, shall be deposited with the corporation and be paid upon demand of such subscriber or other person entitled thereto;

(7) The corporation or its assigns may fairly and in good faith purchase any shares sold under the provisions of this subdivision, provided the sale is conducted by the sheriff, his deputy, or constable; shares so acquired by the corporation shall have the status of unallotted and unsubscribed shares; and

(8) Notwithstanding any such sale, the lien shall continue unimpaired upon all shares not sold, to secure payment of any indebtedness thereafter becoming due on such subscription.

Subd. 11. **Enforcement contracts.** Enforcement contracts to purchase shares from the corporation shall for all purposes have the same status as accepted subscriptions.

[1933 c. 300 s. 16] (7492-16)

301.18 PAYMENT FOR SHARES; ISSUE OF CERTIFICATE. Subdivision 1. **Certificate, when issued.** Each shareholder shall be entitled to a certificate of shares but no certificate of shares shall be issued until the shares represented thereby have been fully paid for.

Subd. 2. **Fully paid shares.** Shares allotted as share dividends, and shares for which the agreed consideration has been paid, delivered or rendered to the corporation shall be fully paid shares.

Subd. 3. **Note or check payment.** When a corporation has received a note or check as consideration for shares, such shares shall not be considered fully paid until such note or check has been paid.

Subd. 4. **Signatures on certificates.** Every certificate of shares shall be signed by the president and the secretary, or by such officers as the articles of incorporation or by-laws may provide, but when a certificate is signed by a transfer agent or registrar the signature of any such corporate officer and the corporate seal, if any, upon such certificate may be facsimiles, engraved, or printed.

Subd. 5. **Contents of certificates.** Every certificate of shares shall state:

(1) The name of the corporation, and a statement that it is organized under the laws of Minnesota;

(2) The name of the registered holder of the shares represented thereby;

(3) The number of shares, and, if the corporation is authorized to issue shares of more than one class, the class, or series and class, of the shares represented thereby;

(4) The par value of each share represented, or a statement that such shares are without par value; and,

(5) If the corporation is authorized to issue shares of more than one class, the rights, preferences, and restrictions granted to or imposed upon the shares of all classes or series, or a summary thereof with a reference to the articles, and the authority, if any, vested by the articles in the board of directors under section 301.04, clause (5), to fix the rights of series of shares then unallotted.

Subd. 6. **Prima facie evidence.** Such certificate shall be prima facie evidence of the ownership of the shares therein referred to.

Subd. 7. **Par value not stated in certificate, when.** A certificate of shares without par value shall not state any par value, nor any value thereof in money, nor any rate of dividend to which such shares shall be entitled in terms of a percentage of any par or other value.

[1933 c. 300 s. 17] (7492-17)

301.19 LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS. Except as provided in section 301.15, subdivision 4, and except in case of actual fraud, a subscriber to or holder of shares of a corporation shall be under no liability to the corporation, whether for the benefit of its shareholders or creditors, with respect to such shares, other than the obligation to comply with the terms of the subscription or contract therefor.

One who becomes a shareholder by transfer and in good faith, and without knowledge or notice that the shares acquired have not been fully paid for, shall not be liable to the corporation or to its creditors with respect to such shares.

[1933 c. 300 s. 18] (7492-18)

301.20 VALIDITY OF SHARES. The fact that shares are allotted in violation of, or without full compliance with, the provisions of sections 301.01 to 301.61 shall not make the shares so allotted invalid.

[1933 c. 300 s. 19] (7492-19)

301.21 STATED CAPITAL AND SURPLUS. Subdivision 1. **Shares without par value are stated capital.** In the case of shares without par value, unless a part of the total consideration for such shares is designated as paid-in surplus in the manner set forth in subdivision 3 of this section, the entire amount thereof shall be stated capital.

Subd. 2. **Consideration in excess of par value is stated capital.** In the case of shares having par value, the consideration received therefor in excess of such par value shall constitute paid-in surplus.

Subd. 3. **Stated capital and surplus to be so specified in monetary terms.** If upon the allotment of shares without par value any part of the consideration received therefor is to constitute paid-in surplus, the shareholders or directors, as the case may be, who fix the amount of cash or determine the value of other consideration for such shares, shall at the time of allotment specify in monetary terms the amount thereof that is to be stated capital and the amount thereof that is to be paid-in surplus; provided, that in the case of shares having a preference upon liquidation, unless the subscription or contract for purchase thereof expressly otherwise provides, only that part, if any, of the value of the consideration received

therefor, which is in excess of the amount to which such shares upon involuntary liquidation are entitled in preference to shares of another class or classes, may constitute paid-in surplus.

Subd. 4. **Reduction of stated capital becomes paid-in surplus.** Upon a reduction of the stated capital of a corporation, pursuant to section 301.39, the amount of such reduction shall constitute paid-in surplus.

Subd. 5. **Upon merger, amount of stated capital less aggregate of constituent corporations is paid-in surplus.** If upon a consolidation or merger the stated capital of the consolidated or surviving corporation shall be less than the aggregate of the stated capital of the constituent corporations, the amount of such difference shall constitute paid-in surplus.

Subd. 6. **Contributions by shareholders.** All contributions by shareholders to a corporation shall constitute paid-in surplus.

Subd. 7. **Transfers.** The shareholders or directors may at any time by resolution transfer amounts from paid-in or earned surplus to stated capital.

Subd. 8. **Earned surplus of acquired corporation.** When a corporation acquires all or substantially all of the assets of another corporation in consideration of the allotment of shares of the acquiring corporation, with or without other consideration, the earned surplus of the acquired corporation shall become earned surplus of the acquiring corporation, but only to the extent that the aggregate of the stated capital, paid-in surplus and earned surplus of the acquired corporation exceeds the aggregate of the following amounts:

(1) The value of the consideration given therefor, other than shares of the acquiring corporation and other than the assumption by the acquiring corporation of liabilities of the acquired corporation;

(2) The par value of all shares of the acquiring corporation having par value, given as consideration, and

(3) The stated capital represented by all shares of the acquiring corporation without par value, given as consideration.

Subd. 9. **Earned surpluses of merged corporations.** When two or more corporations shall hereafter be consolidated or merged, the earned surpluses of the constituent or merged corporation or corporations may, to the extent that they are not capitalized upon such consolidation or merger, be treated as earned surplus by the consolidated or surviving corporation.

Subd. 10. **Subject to section 301.22.** The provisions of this section with reference to paid-in surplus and earned surplus are, for the purposes set forth in section 301.22, subject further to all the terms and provisions thereof.

[1933 c. 300 s. 20] (7492-20)

301.22 DIVIDENDS AND PURCHASE OF OWN SHARES. Subdivision 1. **Fair value of assets.** In determining the fair value of the assets of a corporation to ascertain whether it may pay a dividend or may purchase its own shares, unrealized appreciation of assets shall not be included; provided, that securities having a readily ascertainable market value, other than securities issued by the corporation, may be valued at not more than market value. Proper deduction shall be made for depreciation and depletion and for losses of every character whether or not realized. The excess of such value, if any, above the aggregate of the liabilities and stated capital of the corporation shall constitute the aggregate of its paid-in and earned surplus, and the balance remaining, if any, after deducting therefrom the earned surplus of the corporation, shall constitute its paid-in surplus. If the payment of a dividend or the purchase by a corporation of its shares is otherwise lawful, it shall not be unlawful because of failure to determine the fair value of all its assets.

Subd. 2. **Dividends in cash or property.** A corporation may declare dividends in cash or property only as follows:

(1) Out of earned surplus;

(2) Out of paid-in surplus; provided, that if there are outstanding shares entitled to preferential dividends, then dividends may be declared out of paid-in surplus only upon such shares; when dividends are paid from paid-in surplus, notice of such fact shall be given to the shareholders receiving the same concurrently with the payment thereof;

(3) Out of its net earnings for its current or for the preceding fiscal year, whether or not it then has a paid-in or earned surplus; provided, that if there are outstanding shares entitled to a preference upon liquidation, such dividends shall not be paid upon any other shares except to the extent that the fair value of its assets, determined as set forth in subdivision 1 of this section, exceeds the aggregate of its liabilities and its stated capital represented by all shares entitled to a preference upon liquidation; provided, further, that no such dividend shall be declared if the fair value of the assets of the corporation is less than the aggregate of its liabilities, including such proposed dividend as a liability.

Subd. 3. **Dividends in shares of corporation.** A corporation may declare dividends payable in shares of the corporation only as follows:

(1) Out of earned surplus;

(2) Out of paid-in surplus, provided, that notice of such fact shall be given to the shareholders receiving such dividends concurrently with the payment thereof;

(3) Upon declaration of a dividend payable in shares, the amount of surplus from which such dividend is declared shall be capitalized; if a dividend is declared in shares having a par value, the amount of surplus so to be capitalized shall equal the aggregate par value of such shares; if a dividend is declared in shares without par value, then if such shares are preferred shares they shall be capitalized at the amount to which such shares, upon involuntary liquidation, are entitled in preference to shares of another class or classes; or, if such shares are common shares they shall be capitalized on the basis of the estimated fair value of such shares upon allotment as determined by the board of directors;

(4) No dividend payable in shares of any class shall be paid to shareholders of any other class unless the articles so provided or such payment is authorized by the vote or written consent of the holders of two-thirds of the shares of the class in which the payment is to be made.

Subd. 4. **Split or subdivision of shares not limited.** Nothing in subdivision 3 of this section shall be construed to forbid or limit the power of a corporation to split up or subdivide its shares into a larger number of shares without increasing its stated capital.

Subd. 5. **Certain corporations, rights of distribution of assets.** A corporation engaged principally in the exploitation of mines, quarries, oil wells, gas wells, patents, or other wasting assets, or organized principally to liquidate specific assets, may distribute the net income derived from the exploitation of such wasting assets or the net proceeds derived from such liquidation without making any deduction or allowance for the depletion of such assets incidental to the lapse of time, consumption, liquidation, or exploitation; provided, that it make adequate provision for meeting liabilities and fixed preferences of outstanding shares as to assets on liquidation and shall give notice to shareholders concurrently with the payment of each distribution that no deduction or allowance has been made for depletion.

Subd. 6. **Purchase or redemption of shares of own stock.** A corporation may purchase or redeem shares of its own stock, whether pursuant to contract previously made or otherwise, only as follows:

(1) Out of earned surplus;

(2) Out of paid-in surplus; provided, that, if the corporation has outstanding shares entitled to preferential dividends or to a preference upon liquidation, then only such shares may be purchased or redeemed out of paid-in surplus.

Subd. 7. **Exchange of shares of stock.** Subject to any provisions of the articles of incorporation or by-laws, a board of directors may fix a time not exceeding 40 days preceding the date fixed for the payment of any dividends or distribution, or the date for the allotment of rights or, subject to contract rights with respect thereto, the date when any change or conversion or exchange of shares shall be made or go into effect, as a record date for the determination of the shareholders entitled to receive payments of any such dividend, distribution or allotment or rights, or to exercise rights in respect to any such change, conversion or exchange of shares, and in such case only shareholders of record on the date so fixed shall be entitled to receive payment of such dividend, distribution or allotment of rights or to exercise such rights of change, conversion or exchange of shares, as the case may be, nothwithstanding any transfer of any shares on the books of the corporation after any record date fixed as aforesaid. The board of directors may close the

books of the corporation against the transfer of shares during the whole or any part of such period.

[*1933 c. 300 s. 21*] *(7492-21)*

301.23 LIABILITY OF SHAREHOLDERS AND DIRECTORS FOR DIVIDENDS UNLAWFULLY PAID, OR FOR CORPORATE ASSETS OTHERWISE UNLAWFULLY DISTRIBUTED. If any dividend be paid in violation of section 301.22, or if any other unlawful distribution be made to shareholders:

(1) Every shareholder who received any such dividend or any such distribution shall be individually liable to the corporation in an amount equal to the amount so received by him; any number of shareholders may be sued in the same action;

(2) The directors who wilfully or negligently voted in favor thereof shall be jointly and severally liable to the corporation in an amount equal to the dividend so paid and the distribution so made; a director shall not be held to have been negligent within the meaning of this section if he exercised that diligence and care which an ordinarily prudent man would exercise under similar circumstances, nor if he relied and acted in good faith upon a profit and loss statement of the corporation represented to him to be correct by the president or other officer of the corporation having charge of or supervision of its accounts or certified to be correct by a public accountant or firm of public accountants selected with reasonable care; any director against whom a claim is asserted pursuant thereto, except in case of participation in a deliberate fraud, shall be entitled to contribution from other directors who are liable, pro rata according to the number of such directors.

A corporation shall not be entitled to recover under the provisions hereof an amount greater than the aggregate of the dividends unlawfully paid and other unlawful distributions.

No action shall be maintained against a director or a shareholder under the provisions of this section unless commenced within three years from the date on which such dividend payment or other distribution was made.

[*1933 c. 300 s. 22*] *(7492-22)*

301.24 BY-LAWS. The shareholders may make and alter by-laws, not inconsistent with law or the articles of incorporation, for the government of the corporation, the conduct of its affairs, the management of its property and business, and the transfer of its shares.

Authority to make and alter by-laws may be vested by the articles of incorporation in the board of directors subject to the power of the shareholders to change or repeal such by-laws; provided, the board shall not make or alter any by-law fixing their number, qualifications, classifications, or term of office; provided, further, that the first board of directors, without such authority in the articles, shall adopt by-laws which shall remain effective until and except as legally amended.

[*1933 c. 300 s. 23*] *(7492-23)*

301.25 SHAREHOLDERS' MEETING. Subdivision 1. **Where held.** Meetings of the shareholders may be held at the registered office of the corporation or at any place within or without the state designated in the by-laws or by the board of directors pursuant to authority in the by-laws, or by written consent of all the shareholders entitled to vote thereat.

Subd. 2. **Annual.** Shareholders shall hold a meeting each calendar year, known as the annual meeting, at which they shall elect directors, and may transact any other business; provided, that no business with respect to which special notice is required shall be transacted unless such notice shall have been given. When the annual meeting is not held, or the directors are not elected thereat, directors may be elected at a special meeting held for that purpose, and it shall be the duty of the president, vice-president, or secretary, upon demand of any shareholder entitled to vote, to call such special meeting.

Subd. 3. **Special.** Special meetings of the shareholders may be called for any purpose, at any time, by the president, by the board of directors, or any two or more members thereof, or by such other officers or persons as the by-laws may authorize, or in the manner hereinafter provided, by one or more shareholders holding not less than one-tenth of the voting power of the shareholders. Upon request, in writing, by registered mail or delivered in person to the president, vice-president, or secretary, by any person or persons entitled to call a meeting of share-

holders, it shall be the duty of such officer forthwith to cause notice to be given to the shareholders entitled to vote, of a meeting to be held at such time as such officer may fix, not less than ten, nor more than 60, days after the receipt of such request. If such notice shall not be given within seven days after delivery or the date of mailing of such request, the person or persons requesting the meeting may fix the time of meeting and give notice in the manner provided by law or the by-laws.

Subd. 4. **Adjournment.** If any meeting of the shareholders be adjourned to another time or place, no notice as to such adjourned meeting need be given other than by announcement at the meeting at which such adjournment is taken, unless otherwise provided in the by-laws.

Subd. 5. **Notice.** Written notice of each meeting of shareholders, stating the time and place, and, in case of special meeting, the purpose, shall be given in the manner provided in the by-laws, by the secretary or other person charged with that duty, to each shareholder entitled to vote at such meeting.

Subd. 6. **Waiver of notice.** Notice of the time, place and purpose of any meeting of shareholders, whether required by sections 301.01 to 301.61, the articles, or the by-laws, may be waived, in writing, by any shareholder. Such waiver may be given before or after the meeting, and shall be filed with the secretary or entered upon the records of the meeting.

Subd. 7. **Quorum.** Unless otherwise provided in the articles of incorporation, the presence, in person or by proxy, of the holders of a majority of the shares entitled to vote at the meeting shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting may be adjourned from time to time. The shareholders present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

[1933 c. 300 s. 24] (7492-24)

301.26 VOTING RIGHTS. Subdivision 1. **Who may vote.** Unless the articles otherwise provided, every shareholder of record, or his legal representatives, at the date fixed for the determination of the persons entitled to vote at a meeting of shareholders, or, if no date has been fixed, then at the date of the meeting, shall be entitled at such meeting to one vote for each share standing in his name on the books of the corporation.

Subdivision 2. **Record date for determination.** Subject to any provisions of the articles or by-laws, the board of directors may fix a time, not exceeding 40 days preceding the date of any meeting of shareholders, as a record date for the determination of the shareholders entitled to notice of and to vote at such meeting, and in such case only shareholders of record on the date so fixed, or their legal representatives, shall be entitled to notice of and to vote at such meeting, notwithstanding any transfer of any shares on the books of the corporation after any record date so fixed. The board of directors may close the books of the corporation against transfers of shares during the whole or any part of such period.

Subdivision 3. **Cumulative voting.** If notice, in writing, is given by any shareholder to the president or secretary of the corporation not less than 24 hours before the time fixed for holding a meeting for the election of directors that he intends to cumulate his votes in such election, each shareholder shall have the right to multiply the number of votes to which he may be entitled by the number of directors to be elected, and he may cast all such votes for one candidate or distribute them among any two or more candidates. In such case it shall be the duty of the presiding officer upon the convening of the meeting to announce that such notice has been given. If the articles of incorporation expressly provide that there shall be no cumulative voting, the provisions of this subdivision shall be inapplicable to such corporation.

Subdivision 4. **Casting of vote.** A shareholder may cast his vote in person or through proxy. The appointment of a proxy shall be in writing filed with the secretary at or before the meeting. The authority of a proxy, if not coupled with an interest, may be terminated at will. Unless otherwise provided in the appointment, the proxy's authority shall cease 11 months after the appointment. A termination of a proxy's authority by act of the shareholder shall be ineffective until written notice of the termination has been given to the secretary. Unless other-

wise provided therein, the appointment filed with the secretary shall have the effect of revoking all appointments of prior date.

Subdivision 5. **Two or more proxies.** If a shareholder shall appoint two or more persons to act as proxies, and if the instrument shall not otherwise provide, then a majority of such persons present at the meeting, or if only one shall be present then that one, shall have and may exercise all of the powers conferred by such instrument upon all of the persons so appointed; and if such proxies be equally divided as to the right and manner of voting in any particular case, the vote shall be divided equally among the proxies.

Subdivision 6. **Fiduciaries.** A person or persons holding shares in a representative or fiduciary capacity may vote the same in person or by proxy. General or discretionary power may be conferred on such proxy. Where shares are held jointly by three or more representatives or fiduciaries, the will of the majority shall control the manner of voting or the giving of a proxy, unless the instrument or order appointing them otherwise directs. Where in any case the representatives or fiduciaries are equally divided upon the manner of voting the shares jointly held by them, any court of competent jurisdiction may, upon petition filed by any of them or by any beneficiary, appoint an additional person to act with them in determining the manner in which such shares shall be voted upon the particular questions as to which they are divided.

Subdivision 7. **Authority of proxy.** A proxy's authority shall not be revoked by the death or incapacity of the maker unless, before the vote is cast or the authority is exercised, written notice of such death or incapacity is given to the corporation.

Subdivision 8. **Transferee of pledged shares.** A transferee of pledged shares shall be regarded by the corporation as the owner thereof unless the instrument of transfer discloses the pledge. A person whose shares are transferred on the books of the corporation as a disclosed pledge shall be entitled to vote unless in the instrument of transfer the pledgor shall have expressly empowered the pledgee to vote thereon, in which case only the pledgee or his proxy may represent such shares and vote thereon.

Subdivision 9. **Corporation owner of shares.** A corporation owning shares in another corporation, whether domestic or foreign, may vote the same by its president or by proxy appointed by him unless some other person, by resolution of its board of directors, shall be appointed to vote such shares, in which case such person shall be entitled to vote upon the production of a certified copy of such resolution.

Subdivision 10. **Corporation owner of own shares.** A corporation shall not vote any shares of its own issue belonging to it, nor shall any such shares be counted in calculating the total voting power of all shareholders of such corporation at any given time.

Subdivision 11. **Authorization without meeting.** Any action which, under any provisions of sections 301.01 to 301.61 or the articles of incorporation, may be taken at a meeting of the shareholders, may be taken without a meeting if authorized by a writing signed by all of the holders of shares who would be entitled to a notice of a meeting for such purpose. Whenever a certificate in respect of any such action is required by sections 301.01 to 301.61 to be filed in the office of the secretary of state, the officers signing the same shall state therein that the action was effected in the manner aforesaid.

Subdivision 12. **Creditors' right to vote.** The articles of incorporation may confer upon the creditors of the corporation, or upon a class or classes thereof, the right to vote to the extent and subject to the limitations stated therein.

[1933 c. 300 s. 25] (7492-25)

301.27 VOTING TRUSTS. Subdivision 1. **Transfer of stock to trustee.** Shares of stock in any corporation may be transferred to a trustee or trustees, pursuant to written agreement, for the purpose of conferring on such trustee or trustees the right to vote and otherwise represent such shares for a period not exceeding 15 years, except that in case such agreement is made in connection with an indebtedness of the corporation such voting trust may extend throughout the period of such indebtedness, all in the manner and upon the conditions in such agreement stated. Unless otherwise specified therein, such voting trust may be terminated at any time by the holders of a majority in interest of the beneficial interests thereunder.

Subdivision 2. **Duplicate agreement.** A duplicate of the voting trust agreement shall be filed in the registered office of the corporation and shall there be open to inspection by any shareholder, and by any holder of any beneficial interest under such agreement, and by the agents of either, in like manner and upon such conditions as the books of the corporation are open to inspection by a shareholder.

Subdivision 3. **Manner of voting by trustee.** Unless otherwise provided in such agreement: (1) the trustee may vote in person or by proxy; (2) if there are two or more trustees, the manner of voting shall be determined as provided in section 301.26, subdivision 6; (3) vacancies among the trustees shall be filled by the remaining trustees; and (4) a trustee shall incur no personal liability except for his own neglect or malfeasance.

[1933 c. 300 s. 26] (7492-26)

301.28 DIRECTORS. Subdivision 1. **Board of directors.** The business of a corporation shall be managed by a board of at least three directors, who need not be shareholders unless the articles of incorporation or by-laws so require. A director shall hold office for the term for which he was named or elected and until his successor is elected and has qualified, unless removed as provided in section 301.29.

Subdivision 2. **Election.** Except as otherwise provided in the articles and in subdivision 4, clause (2) of this section, directors, other than those constituting the first board, shall be elected by the shareholders.

Subdivision 3. **Prescribed in articles or by-laws.** The number, qualifications, term of office, manner of election, time and place of meeting, and the powers and duties of the directors may, subject to the provisions of sections 301.01 to 301.61, be prescribed by the articles or by-laws, provided, that the term of a director shall not be longer than five years.

Subdivision 4. **General provisions.** Except as otherwise prescribed in the articles or by-laws:

(1) A director shall be elected for a term of one year;

(2) Vacancies in the board of directors shall be filled by the remaining members of the board, though less than a quorum, and each person so elected shall be a director until his successor is elected by the shareholders who may make such election at their next annual meeting or at any special meeting duly called for that purpose;

(3) Meetings of the board of directors may be held at such place, whether in this state or elsewhere, as a majority of the members of the board may from time to time appoint;

(4) Notice shall be given to each director of the time and place of each meeting of the board, but any director may, in writing, either before or after the meeting, waive notice thereof; and, without notice, any director, by his attendance at and participation in the action taken at any meeting, shall be deemed to have waived notice;

(5) Until provision has been made by by-law for calling meetings of the board, meetings may be called by any member thereof by giving to each of the other members written notice of the time and place of meeting, mailed at least ten days before the time of meeting;

(6) A majority of the board of directors shall be necessary to constitute a quorum for the transaction of business, unless the by-laws provide that a different number shall constitute a quorum, which in no case shall be less than one-third of the entire number of directors, nor less than two; and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors;

(7) Any action which might be taken at a meeting of the board of directors may be taken without a meeting if done in writing signed by all of the directors;

(8) The board of directors may, by unanimous affirmative action of the entire board, designate two or more of their number to constitute an executive committee, which, to the extent determined by unanimous affirmative action of the entire board, shall have and exercise the authority of the board in the management of the business of the corporation. Any such executive committee shall act only in the interval between meetings of the board, and shall be subject at all times to the control and direction of the board.

[1933 c. 300 s. 27] (7492-27)

301.29 REMOVAL OF DIRECTORS. The entire board of directors or any individual director may be removed from office, with or without cause, by a vote of shareholders holding a majority of the shares entitled to vote at an election of directors; provided, in the case of a corporation having cumulative voting, unless the entire board be removed, no individual director shall be removed in case the votes of a sufficient number of shares are cast against his removal, which if then cumulatively voted at an election of the full board would be sufficient to elect him.

In case the board or any one or more directors be so removed, new directors may be elected at the same meeting. In the case of a corporation having cumulative voting, if such election is held at the same meeting, the notice of intention to cumulate votes provided for in section 301.26, subdivision 3, may be given at any time prior to the voting at such election, and in such case announcement of the giving of such notice shall be made prior to such voting and such cumulative voting provisions shall be applicable.

[1933 c. 300 s. 28] (7492-28)

301.30 OFFICERS AND AGENTS. Subdivision 1. **Election, appointment.** The board of directors shall elect a president, a secretary, and a treasurer, and may appoint such other officers and agents as they may deem necessary, for such terms, if any, as may be prescribed in the by-laws. The president shall be a director, but shall hold office until his successor is elected, notwithstanding an earlier termination of his office as director. No one of the other officers need be a director. A vice-president who is not a director shall not succeed to the office of president. Any two of the offices, except those of president and vice-president, may be held by the same person.

Subdivision 2. **Authority.** All officers shall, respectively, have such authority and perform such duties in the management of the business of the corporation as may be prescribed in the by-laws, or, in the absence of controlling provisions in the by-laws, as may be determined by the board of directors.

Subdivision 3. **Removal.** Any officer may be removed by the board of directors with or without cause. Such removal, however, shall be without prejudice to the contract rights of the person so removed.

[1933 c. 300 s. 29] (7492-29)

301.31 RELATION OF DIRECTORS AND OFFICERS TO CORPORATION. Officers and directors shall discharge the duties of their respective positions in good faith, and with that diligence and care which ordinarily prudent men would exercise under similar circumstances in like positions.

[1933 c. 300 s. 30] (7492-30)

301.32 LOANS TO OFFICERS, DIRECTORS AND SHAREHOLDERS. No corporation shall lend any of its assets to any officer or director of the corporation, nor shall any corporation lend any of its assets to a shareholder on the security of its shares. If any such loan be made, the officers and directors who make such loan, or assent thereto, shall be jointly and severally liable for repayment or return thereof. No corporation shall take as security for any debt a lien upon its shares unless such lien shall be taken to secure a debt previously contracted.

[1933 c. 300 s. 31] (7492-31)

301.33 REGISTERED OFFICE; CHANGES; PENALTY. Subdivision 1. **Where located.** Every corporation shall maintain an office in this state to be known as its registered office.

Subdivision 2. **Change of location.** After incorporation, a change of the location of the registered office from that designated in the articles of incorporation may be made from time to time by the board of directors, without amending the articles; provided, that, on or before the day that such change is to become effective a certificate of such change and of the location and post-office address of the new registered office shall be filed with the secretary of state.

Subdivision 3. **Filing of articles.** If the effect of any change shall be to designate a place in a county other than that in which the registered office has theretofore been located: (1) the articles of incorporation, or a certified copy thereof, shall be filed by the secretary of state for record in the office of the register of deeds of the county in which the new registered office is located; and (2) such certificate of change of location shall be recorded by the secretary of state and by him be filed for record in the offices of the registers of deeds of the counties from and to which such change of location of the registered office is effected. For such purposes the

corporation shall pay to the secretary of state like fees for himself and the registers of deeds, as provided in section 301.07.

Subdivision 4. **Penalty, forfeiture.** If a corporation carries on business without complying with the requirements of subdivisions 1 and 3 of this section, it shall forfeit to the state $25.00 for each day during which it so carries on business, not exceeding, however, an aggregate forfeiture of $500.

[1933 c. 300 s. 32] (7492-32)

301.34 CORPORATE BOOKS AND RECORDS; RIGHT OF INSPECTION; PENALTIES. Subdivision 1. **Share register.** Every corporation shall keep at its registered office, or at such other place or places within the United States as the board of directors may determine, a share register, giving the names and addresses of the shareholders, the number and classes of shares held by each, and the dates on which the certificates therefor were issued.

Subdivision 2. **Records kept at registered office.** Every corporation shall keep at its registered office originals or copies of:

(1) Records of all proceedings of shareholders and directors;

(2) Its by-laws and all amendments thereto; and

(3) Reports made to shareholders or any of them within the next preceding three years.

Subdivision 3. **Names and addresses of officers.** Every corporation shall keep open to public inspection at its registered office a statement of the names and post-office addresses of its principal officers; provided, that the presence in such office during usual business hours of any one of such officers shall excuse compliance with this subdivision.

Subdivision 4. **Books of account.** Every corporation shall keep appropriate and complete books of account.

Subdivision 5. **Examinations by shareholders.** Every shareholder and every holder of a voting trust certificate shall have a right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, and at the place or places where usually kept or at such other place as the court may order, the share register, books of account and records of the proceedings of the shareholders and directors, and to make extracts therefrom.

Subdivision 6. **Forfeitures.** A corporation shall forfeit to the state $50.00 for each day it neglects to keep any or all of the books or records as required by subdivisions 1, 2, 3, and 4 of this section, not exceeding an aggregate forfeiture of $500.

[1933 c. 300 s. 33] (7492-33)

301.35 INFORMATION TO SHAREHOLDERS AND CREDITORS. Subdivision 1. **Statements of profit and loss to shareholders.** Upon request by a shareholder, a corporation shall furnish to him a statement of profit and loss for its last annual accounting period, setting forth separately the amount of all dividends paid from paid-in surplus during such year, and a balance sheet containing a summary of the assets and liabilities as of the closing date of such year, the originals of which, to be retained by the corporation, shall be certified by the president or a vice-president and the treasurer or an assistant treasurer or a public accountant or a firm of public accountants.

Subdivision 2. **Statements of dividends and prices for shares to creditors.** Upon written demand of any creditor, the corporation shall, within 30 days, furnish to him a statement of all dividends paid, and the number and purchase price of its shares bought by it, within three years preceding such demand.

Subdivision 3. **Certain statements furnished upon demand.** Upon written demand therefor by any shareholder or creditor, the corporation shall, within 30 days, furnish to him a brief description of all property or services received or agreed to be received by the corporation as consideration for shares allotted within three years prior to such demand, together with the valuation of such property or services as stated under the provisions of section 301.15.

Subdivision 4. **Penalty for wilful failure to furnish statements.** Upon wilful failure to comply, in reasonable detail, with any such demand by a creditor, the indebtedness of the corporation to such creditor shall, at his election, become immediately due and payable.

Subdivision 5. **Computation of period of limitation for commencement of action.** With respect to any shareholder or creditor making demand under subdi-

vision 2 or 3 of this section, the time from such demand and until compliance therewith by the corporation shall not be computed as a part of the period of limitation for the commencement of an action under sections 301.15, 301.16, 301.22, or 301.23. Any statement furnished by a corporation which is false in any substantial matter, or which does not give in reasonable detail the information demanded, shall not constitute compliance with such demand. With respect to any shareholder or creditor who has relied upon any such false statement furnished by a corporation to him or to another, the period of limitation shall not commence until he has learned or ought to have learned of the falsity of the statement.

[1933 c. 300 s. 34] (7492-34)

301.36 VOLUNTARY TRANSFER OF CORPORATE ASSETS. A corporation may, by action taken at any meeting of its board of directors, sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and assets, including its good will, upon such terms and conditions and for such considerations, which may be money, shares, bonds, or other instruments for the payment of money or other property, as its board of directors deems expedient, when and as authorized by the vote of holders of shares entitling them to exercise at least two-thirds of the voting power on such proposal or the vote of such other proportion, not less than a majority, or vote by classes, as the articles may require, at a shareholders' meeting called for that purpose, or when authorized upon the written consent of the holders of such shares. Notice of any such meetings shall be given to all shareholders of record, whether or not they shall be entitled to vote thereat.

[1933 c. 300 s. 35] (7492-35)

301.37 AMENDMENTS OF ARTICLES OF INCORPORATION. Subdivision 1. **Extent.** A corporation may amend its articles of incorporation in the manner herein provided, so as to include or omit any provision which it would be lawful to include in or omit from original articles at the time the amendment is made, or so as to extend its duration for a further definite time or perpetually.

Subdivision 2. **Supersede original articles.** Prior to the allotment of any shares, amended articles to supersede the original articles may be executed and acknowledged by all the incorporators and filed and recorded as provided in sections 301.06 and 301.07 with respect to original articles.

Subdivision 3. **When and how made after allotment of shares.** After allotment of any shares:

(1) Amendment of the articles may be made at any meeting of the shareholders, provided notice of proposal to amend, stating the nature of such proposal, shall have been mailed to each shareholder entitled to vote thereon, at least ten days prior to such meeting, or by written consent of such shareholders given as provided by section 301.26, subdivision 11;

(2) Except as hereinafter in this section provided, an amendment may be adopted only if it receives either:

(a) The affirmative vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote, or such larger or smaller vote, not less than a majority, as the articles may require; or

(b) If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the voting power of all shareholders entitled under the articles to vote and does not receive the negative vote of the holders of more than one-fourth of the voting power of all shareholders entitled to vote;

(3) If an amendment would adversely affect the rights of the holders of shares of any class, then, in addition to the vote required by subdivision 3, clause (2), of this section, the holders of each class of shares so affected by the amendment shall be entitled to vote as a class upon such amendment, whether or not by the terms of the articles such class is entitled to vote; and such amendment shall be adopted only if it receives, as to each class so affected by the amendment, either:

(a) The affirmative vote of the holders of two-thirds of the shares of such class, or such larger or smaller vote thereof, not less than a majority, as the articles may require; or

(b) If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the shares of such class and does not receive the negative vote of the holders of more than one-fourth of the shares of such class;

(4) If an amendment would make any substantial change in the purpose or purposes for which the corporation was organized, then the holders of each class of

the shares shall be entitled to vote as a class upon such amendment, whether by the terms of the articles such class is entitled to vote or not; and such amendment shall be adopted only if it receives as to each class either:

(a) The affirmative vote of the holders of two-thirds of the shares of such class, or such larger vote as the articles may require; or

(b) If not otherwise provided by the articles, the affirmative vote of the holders of a majority of the shares of such class and does not receive the negative vote of the holders of more than one-fourth of the shares of such class.

Subdivision 4. **When effective.** After an amendment has been adopted by the shareholders, articles of amendment setting forth the amendment and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, and filed for record with the secretary of state. If they conform to law, he shall, when all fees and charges therefor have been paid as required by law, record the same, and thereupon the amendment shall be effective.

[1933 c. 300 s. 36; 1935 c. 117 ss. 6, 7, 8] (7492-36)

301.38 PROVISIONS RELATING TO CERTAIN AMENDMENTS. Subdivision 1. **Increasing or decreasing number of shares.** If the total authorized number of shares is increased or decreased, the articles of amendment shall also state:

(1) The total number of shares, including those previously authorized, which the corporation will thenceforth be authorized to have;

(2) The number of shares having a par value and the par value thereof, and the number of shares without par value, and, if the shares are divided into more than one class, a statement of the number of shares in each class.

Subdivision 2. **Change of par value shares to shares without par value.** If shares having a par value are changed into an equal or different number of shares without par value, the amount of stated capital represented by shares without par value allotted to replace outstanding shares having a par value shall be the amount of the aggregate par value of such outstanding shares.

Subdivision 3. **Change of shares without par value to par value shares.** If shares without par value are changed into an equal or different number of shares having a par value, the shares having a par value allotted to replace outstanding shares without par value shall be fully paid for, and the stated capital of the corporation shall not thereby be decreased and shall be increased by the difference, if any, between the par value of the shares so allotted and the stated capital represented by the shares without par value so to be replaced.

Subdivision 4. **Change of shares without par value to other classes or series without par value.** If shares without par value are changed into a different number of the same class or of any other class or classes of shares without par value, the stated capital of the corporation shall not thereby be affected.

[1933 c. 300 s. 37] (7492-37)

301.39 REDUCTION OF STATED CAPITAL. Subdivision 1. **Resolution.** The stated capital of a corporation may be reduced to an amount not less than the par value of its shares having par value then outstanding by a resolution adopted by the vote of the holders of a majority in interest of the shares entitled to vote thereon, at a meeting of the shareholders called for such purpose, or by such greater vote as the articles of incorporation may require; provided, that, without the prior affirmative vote of a majority in interest of each class of stock entitled to a preference upon liquidation, in addition to the vote above required, the stated capital shall not be reduced below an amount equal to the sum of the par value of all outstanding shares having a par value and the aggregate amount to which outstanding shares without par value are entitled upon involuntary liquidation in preference to shares of another class or classes, but in no event shall the stated capital be reduced to an amount less than the par value of all outstanding shares having a par value.

Subdivision 2. **Filing articles of reduction.** Following the adoption of a resolution reducing the state capital, articles of reduction of stated capital shall be executed and filed for record in the form and manner required by section 301.37 for the execution and filing of articles of amendment, and, subject to the provisions of subdivision 4 hereof, upon the recording thereof by the secretary of state, the reduction of stated capital shall become effective.

Subdivision 3. **When surplus not to be distributed.** No part of the surplus created by such reduction shall be distributed to the shareholders in any form unless the fair value of the assets of the corporation remaining after such distribution shall be at least equal to the aggregate of its liabilities and of its stated capital as so reduced. If any distribution is made in violation hereof, the directors and shareholders shall be liable to the corporation to the extent, in the manner, and subject to the conditions and limitations stated in section 301.23.

Subdivision 4. **Adoption of resolution.** A resolution reducing the stated capital of a corporation may be adopted at a meeting at which an amendment of its articles is adopted, and such reduction may be conditioned upon such amendment becoming effective; and in such event such reduction shall not become effective until articles of amendment shall have been duly filed for record, as provided in section 301.37, and then only upon the filing for record of articles of reduction with the secretary of state, as provided in subdivision 2 of this section.

Subdivision 5. **Minimum amount of stated capital.** The stated capital of a corporation shall never be reduced to an amount less than $1,000.

[1933 c. 300 s. 38] (7492-38)

301.40 RIGHTS OF SHAREHOLDERS NOT ASSENTING TO CERTAIN CORPORATE ACTION. Subdivision 1. **Objection to proposed amendment of articles.** If a corporation has given notice to shareholders of a proposal to amend the articles of incorporation, which proposed amendment would substantially change the corporate purposes or would extend the duration of the corporation, a shareholder may, at any time prior to the date of the meeting at which such proposed amendment is to be voted upon, file a written objection to such amendment in the office of the secretary or president of the corporation and demand payment for his shares; provided, that such demand shall be of no force and effect if such shareholder votes in favor of the amendment, or at any time consents thereto in writing, or if the proposed amendment be not in fact effected.

Subdivision 2. **Appraisers.** If, after such a demand by a shareholder, the corporation and the shareholder cannot agree upon the fair cash value of the shares at the time such amendment was authorized, such value shall be determined by three disinterested appraisers, one of whom shall be named by the shareholder, another by the corporation, and the third by the two thus chosen. The determination of a majority of the appraisers in good faith made shall be final, and if the amount so determined is not paid by the corporation within 30 days after it is made, such amount may be recovered in an action by the shareholder against the corporation. The corporation shall not be required to make payment of such amount except upon transfer to it of the shares for which such payment was demanded and upon surrender of the certificate or certificates evidencing the same.

Subdivision 3. **Payment, when not made.** A shareholder shall not be entitled to payment for his shares under the provisions of this section unless the value of the corporate assets which would remain after such payment would be at least equal to the aggregate amount of its debts and liabilities exclusive of stated capital.

[1933 c. 300 s. 39; 1935 c. 212 s. 1] (7492-39)

301.41 CONSOLIDATION AND MERGER AUTHORIZED. Subdivision 1. **Manner.** Two or more corporations, except corporations formed for the purpose of carrying on the business of a railroad, may merge into one of the constituent corporations or consolidate into a new corporation, in accordance with the provisions of sections 301.42 to 301.45. The consolidation of corporations formed for the purpose of carrying on the business of a railroad shall continue to be governed by the provisions of sections 222.06 to 222.12.

Subdivision 2. **Merger or consolidation of certain corporations.** One or more domestic corporations formed under sections 301.01 to 301.61, or which have accepted and come under those sections, except corporations formed for the purpose of carrying on the business of a railroad, and one or more foreign corporations with authority to carry on any business for the conduct of which a corporation might be organized under those sections may be:

(1) Merged into one of such domestic corporations; or

(2) Consolidated into a new corporation to be formed under sections 301.01 to 301.61; provided, such foreign corporations are authorized by the laws of the

respective states or countries under which they were formed to effect such merger or consolidation. Any such merger or consolidation shall be effected as to such domestic corporations in accordance with and subject to the provisions of sections 301.42 to 301.45. The consolidated or surviving corporation shall in all respects be subject to the provisions of sections 301.43 to 301.45, and shall have only such powers and authority as a corporation formed under said sections may have. Any such merger or consolidation shall be effected as to such foreign corporations in accordance with the applicable laws of the respective states or countries under which they were formed and in accordance with the provisions of section 301.42, subdivisions 1, 3, 4, and 5. The consolidated or surviving corporation shall be subject, as to the rights of dissenting shareholders of the constituent foreign corporations, to the applicable laws of the respective states or countries under which such foreign corporations were formed.

[1933 c. 300 s. 40; 1935 c. 117 s. 9; 1937 c. 150 s. 1] (7492-40)

301.42 PROCEDURE OF CONSOLIDATION OR MERGER. Subdivision 1. **Agreement, contents.** The directors, or a majority of them, of each of the corporations to be consolidated or merged shall enter into an agreement signed by them, prescribing the terms and conditions of the consolidation or merger, the mode of carrying the same into effect, and stating such other facts as are applicable among those required or permitted by section 301.04 to be stated in articles of incorporation, and the manner and basis of converting the shares of each of the constituent corporations into the shares of the consolidated or surviving corporation (whether into the same or a different number of shares of the consolidated or surviving corporation and whether with or without par value), with such other details and provisions as are deemed necessary or desirable. The agreement shall further state the amount of stated capital with which the consolidated or surviving corporation will begin business.

Subdivision 2. **Submission of agreement.** The agreement shall be submitted for consideration to the shareholders of record of each corporation at a meeting, notice of the time, place and object of which shall be mailed at least two weeks before the meeting to each shareholder of record, whether entitled to vote or not, at his last post-office address, as shown by the records of the secretary of the corporation. At such meeting, or an adjournment thereof, the agreement shall be considered and a vote by ballot taken for the adoption or rejection of the same. If the votes of shareholders of each corporation holding stock in such corporation entitling them to exercise at least two-thirds of the voting power thereof, or such other proportion of the voting power, not less than one-half, as may be prescribed by the articles of incorporation, shall be for the adoption of the agreement, then that fact shall be certified on the agreement by the secretary or assistant secretary of each corporation.

Subdivision 3. **Signatures.** The agreement so adopted and certified shall be signed by the president or vice-president and secretary or assistant secretary of each corporation and acknowledged on behalf of the corporation by such officers.

Subdivision 4. **Filing.** The agreement so adopted, certified and acknowledged shall be filed for record with the secretary of state. If the same conforms to law, he shall, when the fees and charges provided in subdivision 5 of this section have been paid, record the same, and issue a certificate of incorporation or merger, as the case may be. Upon the issuance of such certificate of incorporation the corporate existence of the consolidated corporation shall begin, and upon the issuance of such certificate of merger the merger shall be effective. The certificate of incorporation, or the certificate of merger, and the agreement bearing the endorsement of the fact and time of delivery thereof to the secretary of state, or a copy of such agreement certified by him, shall be filed by the secretary of state for record in the offices of the registers of deeds of the counties in which the corporate parties to the agreement have their registered offices, for which service and purpose there shall be paid to the secretary of state like fees for himself and the registers of deeds, as provided in section 301.07.

Subdivision 5. **Fees.** Before the secretary of state shall record any agreement of consolidation or merger, there shall be paid to the state treasurer the same fees as are required on incorporation, less the aggregate amount of fees theretofore

paid to the state treasurer in respect of the authorized shares of the constituent corporations.

[1933 c. 300 s. 41] (7492-41)

301.43 EFFECT OF CONSOLIDATION OR MERGER. Upon the issuance of the certificate of incorporation or merger, as provided by section 301.42:

(1) The separate existence of the constituent corporations, or of all except the one into which the constituent corporations have merged, as the case may be, shall cease, unless the agreement of consolidation or merger expressly provides for the continuance of the corporate existence and identity of one or more of the constituent corporations, in which case the corporate existence and identity thereof shall continue in the consolidated or surviving corporation, as the case may be;

(2) All the property, assets, rights, privileges, powers, franchises and immunities of each of the constituent corporations so consolidated or merged shall vest in the consolidated or surviving corporation, as the case may be;

(3) All debts, liabilities and obligations of the constituent corporations shall become the debts, liabilities and obligations of the consolidated or surviving corporation, as the case may be.

[1933 c. 300 s. 42] (7492-42)

301.44 RIGHTS OF DISSENTING SHAREHOLDERS. Subdivision 1. **Demand of dissenting shareholder for payment.** When a corporation has become a party to a consolidation or merger agreement, as hereinbefore provided, any shareholder of such corporation who has not assented thereto in writing, and who did not vote in favor of such consolidation or merger, or who did not have the right to vote thereon, may, at any time within 20 days after such authorization was given, object thereto in writing and demand payment for his shares and have the fair cash value thereof determined as provided in section 301.40, the relevant provisions of which section shall be in all respects applicable. The liability of such corporation to such dissenting shareholder for the fair cash value of the shares so agreed upon or awarded shall also be a liability of the consolidated or surviving corporation, as the case may be.

Subdivision 2. **Failure to object deemed assent.** Those shareholders of the constituent corporations who do not object in writing and demand payment for their shares pursuant to the provisions of subdivision 1 of this section shall be deemed to have assented to the consolidation or merger, as the case may be, on the terms specified in the agreement of the consolidation or merger.

[1933 c. 300 s. 43] (7492-43)

301.45 ADDITIONAL PROVISIONS RELATING TO CONSOLIDATION OR MERGER. Subdivision 1. **Liabilities not affected.** The liabilities of the constituent corporations or of their shareholders, directors, or officers, shall not be affected nor shall the rights of creditors or of any persons dealing with such corporations be impaired by the consolidation or merger, and any claim existing or action or proceeding pending by or against any of such constituent corporations may be prosecuted to judgment as if such consolidation or merger had not taken place, or the consolidated or surviving corporation may be proceeded against or substituted in its place.

Subdivision 2. **Stated capital, amount.** The stated capital of a consolidated or surviving corporation at the time it begins business shall be at least equal to the aggregate par value of the shares having par value to be distributed pursuant to the agreement of consolidation or merger, plus the amount of the stated capital designated by such agreement in respect of shares without par value to be so distributed. If any shares without par value to be so distributed shall be entitled to a preference upon liquidation, the amount of stated capital in respect of such shares shall not be less than the aggregate amount to which such shares would be entitled upon involuntary liquidation in preference to shares of another class or classes, without the prior affirmative vote or written consent of a majority in interest of all persons to whom such shares are to be distributed.

Subdivision 3. **Surplus, when not distributed.** If, in connection with a consolidation or merger, there be a reduction of the aggregate stated capital of the constituent corporations, no part of any surplus thereby created shall be distributed to the shareholders of the consolidated or surviving corporation unless the fair

value of the assets of the consolidated or surviving corporation remaining after such distribution at least equals the aggregate of its liabilities and its stated capital.

Subdivision 4. **Shares of stock distributed.** No distribution other than of shares of stock of the consolidated or surviving corporation shall be made to the shareholders of the constituent corporations, or any of them, unless after such distribution the fair value of the assets of such consolidated or surviving corporation shall at least equal the sum of its liabilities and its stated capital.

Subdivision 5. **Liability.** If any distribution is made in violation of subdivisions 3 or 4 of this section, the directors and shareholders shall be liable to the corporation to the extent, in the manner, and subject to the conditions and limitations stated in section 301.23.

Subdivision 6. **Continuance of authority.** When a conveyance, assignment, transfer, or any act, deed, or instrument is necessary or appropriate to evidence the vesting of property or rights in the consolidated or surviving corporation, the officers of the respective constituent corporations shall execute, acknowledge, and deliver such deeds or instruments and do such acts as may be necessary or appropriate in the premises. For such purposes the existence, capacity, and authority of the constituent corporations and their respective officers and directors shall be deemed to be continued, notwithstanding such consolidation or merger.

[1933 c. 300 s. 44] (7492-44)

301.46 PROCEEDINGS FOR DISSOLUTION. A corporation may be wound up and dissolved either voluntarily or involuntarily. If the proceedings are voluntary, they may be conducted either out of court or subject to the supervision of the court. If involuntary, they shall be subject to the supervision of the court.

[1933 c. 300 s. 45] (7492-45)

301.47 VOLUNTARY PROCEEDINGS FOR DISSOLUTION. Subdivision 1. **Institution.** Voluntary proceedings for dissolution may be instituted whenever a resolution therefor is adopted by the holders of at least two-thirds of the voting power of all shareholders at a shareholders' meeting duly called for that purpose.

Subdivision 2. **Resolution.** The resolution may provide that the affairs of the corporation shall be wound up out of court, in which case the resolution shall designate a trustee or trustees to conduct the winding up, and may provide a method for filling vacancies in the office of the trustee; but such appointment shall not be operative until a certificate, setting forth the resolution and the manner of adoption thereof, signed and acknowledged by the president or vice-president and by the secretary or assistant secretary, shall be filed for record with the secretary of state.

Subdivision 3. **Vacancy in office of trustee.** If a vacancy occurs in the office of trustee, it may be filled by resolution adopted by the holders of a majority of the voting power represented at a meeting of shareholders. Such meeting may be called by the remaining trustee or trustees, if any, and if none, then in the manner provided in section 301.25, subdivision 3.

Subdivision 4. **Removal of trustee.** Unless the resolution to dissolve otherwise provides, the trustee or trustees may be removed, with or without cause, by the holders of a majority of the voting power of the shareholders at a meeting called for that purpose.

Subdivision 5. **Petition to court.** The resolution to dissolve may provide that the affairs of the corporation shall be wound up under the supervision of the court, in which case the resolution shall authorize certain directors or shareholders to sign and present a petition to the court praying that the corporation be wound up and dissolved under the supervision of the court.

Subdivision 6. **Application for receiver.** Where a corporation is being wound up and dissolved out of court, the trustee, or if there be more than one, then a majority of the trustees, may by petition apply to the court for a receiver and to have the proceedings continued under the supervision of the court, and thereafter the proceedings shall continue as if originally instituted subject to the supervision of the court.

[1933 c. 300 s. 46] (7492-46)

301.48 WINDING UP OUT OF COURT. Subdivision 1. **Duties of trustee.** Except as otherwise provided in the resolution for dissolution, the trustee or trustees appointed by the shareholders to conduct a winding up out of court shall, as speedily as practicable after his or their appointment has become operative, as provided in section 301.47, proceed:

(1) To collect all sums due or owing to the corporation;

(2) To sell and convert into cash all corporate assets;

(3) To collect any amounts remaining unpaid on subscriptions to shares; and

(4) To pay all debts and liabilities of the corporation according to their respective priorities.

Subdivision 2. **Property distributed.** Any property remaining after discharging the debts and liabilities of the corporation shall be distributed by the trustee or trustees to the shareholders according to their respective rights and preferences.

Subdivision 3. **Reorganization permitted.** Nothing in this section shall interfere with a reorganization pursuant to the provisions of section 301.55.

[1933 c. 300 s. 47] (7492-47)

301.49 GROUNDS FOR INVOLUNTARY DISSOLUTION. A corporation may be dissolved by involuntary proceedings in the discretion of the court when it is made to appear:

(1) That the corporate assets are insufficient to pay when due all just demands for which the corporation is liable; or

(2) That the objects of the corporation have wholly failed or are entirely abandoned or their accomplishment is impracticable; or

(3) That the directors or those in control of the corporation have been guilty of fraud or mismanagement, or of abuse of authority, or of persistent unfairness toward minority shareholders; or

(4) That there is internal dissention and that two or more factions of the shareholders in the corporation are so deadlocked that its business cannot longer be conducted with advantage to its shareholders; or

(5) That the period for which the corporation was formed has terminated without extension.

[1933 c. 300 s. 48] (7492-48)

301.50 WHO MAY INSTITUTE INVOLUNTARY PROCEEDINGS. A petition for involuntary dissolution of a corporation may be filed by:

(1) A shareholder; or

(2) A judgment creditor after return unsatisfied of an execution on his judgment.

The commencement of a proceeding for dissolution out of court shall not affect the right of any qualified person to petition for involuntary proceedings for dissolution.

[1933 c. 300 s. 49] (7492-49)

301.51 APPOINTMENT OF RECEIVERS. Upon the filing of a petition by a corporation for voluntary liquidation, or by the trustee or trustees, as authorized in section 301.47, subdivision 6, the court may appoint a liquidating receiver or receivers.

Upon the filing of a petition for involuntary dissolution, the court shall fix a time and place for hearing thereon and order such notice thereof to be given as it may deem proper. At the time and place so fixed the court shall hear the evidence of all parties interested and, if any ground specified in the complaint is sustained, may, in its discretion, appoint a liquidating receiver or receivers.

Upon the filing of any such petition, the court shall have the ordinary powers of a court of equity to appoint a temporary receiver or receivers.

[1933 c. 300 s. 50] (7492-50)

301.52 DUTIES AND POWERS OF TRUSTEES AND RECEIVERS. The receiver or receivers appointed as provided in section 301.51 shall, after giving such bond as the court may require for the faithful performance of his or their duties, proceed with the liquidation of the affairs of the corporation in such manner as the court shall direct.

Trustees or receivers in dissolution proceedings shall have full authority to enforce, within or without the state, any and all causes of action which the creditors or shareholders or any class thereof may have against officers, directors, share-

holders, or any one else, and to enforce, defend, compromise, compound, and settle claims in favor of or against the corporation upon such terms as they shall deem best; but if the proceeding is subject to the supervision of the court, no such compromise, composition, or settlement shall be valid unless approved by the court.

Such trustees or receivers may call meetings of the shareholders in the manner the directors might have done, or, if the proceeding is subject to the supervision of the court, in such manner as the court may direct.

[1933 c. 300 s. 51] (7492-51)

301.53 EFFECT OF DISSOLUTION PROCEEDINGS. Upon the adoption of a resolution for dissolution, or upon a finding by the court of the existence of grounds for involuntary dissolution, the authority and duties of the directors and officers of the corporation shall cease, except in so far as may be necessary to preserve the corporate assets, or in so far as they may be continued by the trustee or receiver, or as may be necessary for the calling of meetings of the shareholders.

[1933 c. 300 s. 52] (7492-52)

301.54 CLAIMS AGAINST CORPORATIONS IN DISSOLUTION SUBJECT TO COURT SUPERVISION. Subdivision 1. **Order limiting time for filing claim.** In a proceeding for dissolution subject to court supervision, the court shall make an order limiting the time for creditors to present claims against the corporation, and fixing the time and place of hearing thereon.

Subdivision 2. **Allowance of claim.** The time so limited shall not be more than one year, nor less than six months, unless it shall appear by affidavit that there are no claims, in which case the limitation may be three months. For cause shown, and upon notice to the receiver or receivers, the court in its discretion may receive, hear and allow a claim filed within 18 months after the day on which the order to present claims was entered if an order of dissolution shall not have been entered before such claim is filed.

Subdivision 3. **Publication of notice.** Three weeks' published notice of such order to present claims shall be given, and a copy thereof shall be mailed to each creditor shown by the books of the corporation or known to the receiver, at the address of such creditor appearing on such books or known to the receiver.

Subdivision 4. **Failure to present claims.** All claims, whether due, not due, or contingent, which are not presented within the time fixed by the court, shall be forever barred from participation in any assets of such corporation at any time in the possession or under the control of the receiver or receivers, whether or not distributed to creditors or shareholders; provided, that contingent claims which do not become absolute and capable of liquidation before the order of dissolution, need not be so presented or allowed.

Subdivision 5. **Claims itemized.** Claims presented shall be itemized and show the security, if any, held therefor, and be verified by an affidavit of the claimant or his agent or attorney showing the balance due, that no payments have been made thereon that are not credited, and that there are no offsets thereto known to the affiant.

Subdivision 6. **Counterclaims.** Any claim may be pleaded as an offset or counterclaim in any action brought against the claimant by the receiver or receivers, except in an action for the balance due upon a subscription for or contract to purchase shares.

Subdivision 7. **Contingent claims.** If a claim presented be contingent or not due, the particulars thereof shall be stated. If contingent claims are presented, the court may require such provision to be made as it may deem adequate for payment thereof, if and when due, and no distribution to shareholders shall be made until such order shall have been made and complied with.

[1933 c. 300 s. 53] (7492-53)

301.55 COMPROMISE ARRANGEMENTS; REORGANIZATION; APPROVAL AND EFFECT. Subdivision 1. **Meetings.** When a compromise or arrangement is proposed between a corporation and its creditors or any class of them, or between the corporation and its shareholders or any class of them, or between the corporation and both creditors and shareholders or any class or classes of them, the court may, upon the application of the corporation or of a liquidating trustee or receiver thereof, order a meeting of the creditors or class of creditors, or of the shareholders or class of shareholders, as the case may be, to be called in such manner as the court may direct.

Subdivision 2. **Approval.** If the majority in number representing three-fourths in value of the creditors or class of creditors, or if the shareholders or class of shareholders holding three-fourths of the voting power of all shareholders or of the class of shareholders, as the case may be, agree to any compromise or arrangement or to a reorganization of the corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court, be binding on all the creditors or class of creditors, and on all the shareholders or class of shareholders, as the case may be, and also on the corporation and its liquidating trustee or receiver, if any.

Subdivision 3. **Exemption.** If the articles of incorporation so provide, the corporation shall not be subject to the provisions of this section.

[*1933 c. 300 s. 54*] *(7492-54)*

301.56 ORDER OR CERTIFICATE OF DISSOLUTION; FILING; OMITTED ASSETS. When a corporation has been completely wound up, the court, if the proceeding is subject to the supervision of the court, shall make an order adjudging the corporation to be dissolved; and if the proceeding is out of court, the trustee or trustees shall sign and acknowledge a certificate stating that the corporation has been completely wound up and is dissolved.

The order or certificate of dissolution shall be filed for record with the secretary of state and thereupon the corporate existence shall terminate.

The title to any assets omitted from the winding up shall vest in the trustee or trustees, or receiver or receivers, for the benefit of the persons entitled thereto and shall be administered and distributed accordingly.

[*1933 c. 300 s. 55*] *(7492-55)*

301.563 VOLUNTARY DISSOLUTION OF CERTAIN CORPORATIONS. Any corporation organized under Mason's Minnesota Statutes of 1927, Sections 7920-7926, both inclusive, relating to corporations for the establishment and maintenance of homes for dependent children and to corporations for maintaining homes for aged men and women, may be dissolved by complying with the provisions of Laws 1933, Chapter 300, Sections 45 to 55, inclusive. Such corporations having no shareholders, the directors thereof shall act in the place and stead of shareholders for all purposes of such dissolution.

[*1943 c. 209 s. 1*]

301.57 ACTION TO TERMINATE CORPORATE EXISTENCE. Subdivision 1. **Grounds.** When the public interest may require, the attorney general may bring an action against a corporation to terminate its corporate existence, upon the ground that:

(1) The corporate franchise was procured through fraud practiced upon the state; or

(2) The corporation should not have been formed under sections 301.01 to 301.61; or

(3) The corporation was formed without a substantial compliance with the conditions prescribed by sections 301.01 to 301.61 as precedent or essential to incorporation; or

(4) The corporation has offended against any provision of the statutes regulating corporations or has abused or usurped corporate privileges or powers; or

(5) The corporation has knowingly and persistently violated any provision of law; or

(6) The corporation has done or omitted any act which amounts to a surrender of its corporate franchise, has failed to exercise or has discontinued its corporate privileges, or has abandoned the corporate enterprise.

Subdivision 2. **Correction.** If the ground for the action is an act which the corporation has done or omitted to do, and correction can be made by amendment to its articles, or otherwise, then such action shall not be instituted unless the attorney general shall give the corporation written notice of the act done or omitted to be done, and the corporation shall fail to institute proceedings to correct the same within 30 days thereafter.

Subdivision 3. **Receiver.** If the court adjudges that the existence of the corporation be terminated, it may appoint a receiver of the corporation's property and make distribution thereof among its creditors and shareholders. The attorney general shall cause a copy of the judgment terminating the corporate existence

to be filed for record with the secretary of state and in the office of the register of deeds of the county in which the registered office of the corporation was located.

[1933 c. 300 s. 56] (7492-56)

301.58 MONOPOLIES AND RESTRAINT OF TRADE. Nothing in sections 301.01 to 301.61 shall be construed to authorize a corporation to do any act in violation of the common law or the statutes of this state or of the United States with respect to monopolies and illegal restraint of trade.

[1933 c. 300 s. 57] (7492-57)

301.59 RESERVATION OF RIGHT TO ALTER, AMEND OR REPEAL. The state hereby fully reserves the right to alter, amend or repeal the several provisions of sections 301.01 to 301.61 and all corporations formed or coming under these sections are subject to such reserved right.

[1933 c. 300 s. 60] (7492-60)

301.60 APPLICATION TO EXISTING CORPORATIONS; ELECTION NOT UNDER PROVISIONS; ACCEPTANCE WITHOUT ELECTION. Subdivision 1. **Application.** Sections 301.01 to 301.61 shall not apply to corporations in existence at the time these sections take effect; but every such corporation formed under the laws of Minnesota, if formed for a purpose or purposes for which a corporation might be formed under these sections, may accept and come thereunder, and every such corporation shall be conclusively presumed to have accepted and come thereunder unless, within the year after these sections take effect, the corporation shall signify its election not to accept or be bound by the provisions thereof.

Subdivision 2. **Election not to accept provisions.** Such election shall be effective only if made by resolution of the stockholders adopted by a majority vote of all stockholders then entitled to vote and voting at an annual meeting or at a special meeting duly called for that purpose, and, if a copy of the resolution, certified by the president or vice-president, and the secretary or assistant secretary, shall be filed with the secretary of state and if a copy thereof, duly certified by the secretary of state, shall be filed for record in the office of the register of deeds of the county in which the corporation's principal place of business is located, together with the payment of $5.00 to the secretary of state as a filing fee and of the lawful recording fee to the register of deeds; all within the one-year period in subdivision 1 of this section provided.

Subdivision 3. **Resolution.** Whether or not a corporation eligible to accept the provisions of sections 301.01 to 301.61 has elected not to accept, under subdivision 2 of this section, it may, at any time, accept and come under the provisions of these sections by resolution adopted, certified, and filed, with the payment of fees, in the same manner as in subdivision 2 of this section provided for election not to accept.

Subdivision 4. **Filing of resolution.** The secretary of state, upon the payment of the $5.00 as a filing fee, shall record each resolution of acceptance whenever filed, if the same conforms to the requirements of this section.

Subdivision 5. **Acceptance.** Upon acceptance of the provisions of sections 301.01 to 301.61, whether by resolution as in subdivision 3 of this section provided, or by failure within the one-year period to elect not to accept, all provisions of these sections shall apply to all accepting corporations as fully as though such corporations had been formed hereunder, except as hereinafter in this section otherwise provided.

Subdivision 6. **Principal place of business.** The principal place of business of the accepting corporation shall become its registered office. If its certificate of incorporation or any amendment thereof does not contain a statement of the location and post-office address of such principal place of business, the accepting corporation shall, upon coming under sections 301.01 to 301.61, file for record with the secretary of state a certificate stating the location and post-office address of its registered office.

Subdivision 7. **Stated capital.** The stated capital of the accepting corporation shall be a sum equal to the aggregate of the following amounts:

(1) The aggregate par value of all shares having par value outstanding at the time it comes under sections 301.01 to 301.61;

(2) The aggregate consideration received by the corporation for all shares without par value issued by it prior to the time it comes under said sections, less such part of such consideration as has been received as paid-in surplus, and less

the aggregate purchase price of all its shares without par value repurchased by the corporation prior to the time said sections become effective.

Subdivision 8. **Surplus.** The surplus of the accepting corporation, at the time it comes under sections 301.01 to 301.61, shall be determined as provided by section 301.22, subdivision 1, but the whole of such surplus shall be deemed earned surplus.

Subdivision 9. **Duration.** The duration of the accepting corporation shall not be in any wise altered by its coming under sections 301.01 to 301.61. Any extension of its duration for a further definite time or perpetually shall be by amendment of its articles of incorporation made at any meeting of the shareholders, provided notice of proposal to amend, stating the nature of such proposal, shall have been mailed to all shareholders, whether entitled to vote thereon or not, at least ten days prior to such meeting, if such proposal be adopted by the vote of the holders of two-thirds of the voting power of all shareholders entitled under the articles to vote. A shareholder who did not vote in favor of, or consent in writing to, such amendment, whether entitled to vote thereon or not, shall have the rights and remedies provided by section 301.40. The provisions of section 301.37, subdivision 4, shall apply to amendments under this subdivision.

Subdivision 10. **What provisions of articles remain in force.** All provisions of the certificate of incorporation of an accepting corporation which might lawfully be included in articles of incorporation under the provisions of sections 301.01 to 301.61 shall remain in full force, notwithstanding such provisions would not be required by those sections to be included in articles of incorporation. Any provision of the certificate of incorporation which might not lawfully be included in articles of incorporation under those sections shall, when the corporation comes thereunder, cease to be effective for any purpose.

[*1933 c. 300 s. 61; 1935 c. 117 ss. 10, 11; Ex. 1936 c. 53*] *(7492-61)*

301.61 LAWS NOT TO APPLY TO CORPORATIONS FORMED OR COMING UNDER SECTIONS 301.01 TO 301.61. The provisions of sections 300.12, 300.14 to 300.24, 300.26 to 300.35, 300.37 to 300.45, 300.52 to 300.55, 300.57, 300.58, 300.60, 300.62, 300.64, 300.65, 222.19, 222.22, 316.07 to 316.09, 316.11, and 316.14 to 316.23 shall not apply to corporations formed under sections 301.01 to 301.61; nor shall they apply to any existing corporation after it comes under these sections in accordance with the provisions of section 301.60.

[*1933 c. 300 s. 62; 1935 c. 117 s. 12*] *(7492-62)*

301.62 CORPORATIONS TO BE BOUND. Every corporation formed for business purposes prior to the passage of sections 301.01 to 301.61, which did not file an acceptance of the terms of these sections nor a refusal to accept or be bound by the provisions thereof prior to one year after the passage thereof and which shall not since April 18, 1934, have amended its articles of incorporation so as to extend the period of its duration, may file a refusal to accept or be bound by the provisions of these sections at any time prior to May 1, 1935, with the same effect as if the refusal had been filed prior to one year after the passage of these sections; provided, that any such corporation which shall not file its refusal to accept or be bound by the provisions of these sections on or prior to May 1, 1935, shall be conclusively presumed to be and to have been bound by the provisions of these sections at all times after one year from the passage of these sections, and all acts and proceedings of any such corporation taken or had under the provisions of these sections from and after the period of one year after the passage thereof shall be and the same are hereby declared legal and valid.

[*1935 c. 44 s. 1*] *(7492-61a)*

301.63 WHO MAY COME UNDER SECTIONS 301.01 TO 301.61. Any corporation organized under or possessing a charter granted by a special act or acts of the legislature of the state or territory of Minnesota, which accepts and comes under sections 301.01 to 301.61, shall be and remain subject to and shall not thereafter by amendment become divested of the duties, obligations, and liabilities to the state or public imposed by such special act or acts or by the charter so possessed which would not be imposed on it if organized under these sections, but such corporation by accepting and coming under these sections shall thereby forfeit and surrender all rights, privileges, immunities, and franchises which it may have by reason of such special act or acts or by the charter so possessed, to the extent that such rights, privileges, immunities, and franchises could not be possessed by a corporation

organized under these sections; provided, that nothing contained in this section shall be construed so as to deny to a corporation organized under or possessing a charter granted by such special act or acts which accepts and comes under these sections any right, privilege, or power possessed by a corporation organized under these sections.

[*1935 c. 117 s. 13*] *(7492-65)*

301.64 REORGANIZATION OF DISSOLVED CORPORATIONS. The creditors, stockholders, or both, of any Minnesota corporation organized and existing in this state prior to the passage of sections 301.01 to 301.61, which corporations were ordered dissolved by any district court of this state prior to the passage of these sections, and were in the hands of a receiver at the time of the passage thereof, are hereby authorized to reorganize under and pursuant to section 301.55.

[*Ex. 1936 c. 84 s. 1*] *(7492-69g)*

301.65 LIMITATION OF ACTION TO QUESTION VALIDITY OF REORGANIZATION. Any corporations which have complied with section 301.64 shall be deemed to have met the requirements of section 301.55, and no action shall be maintained against any such corporations upon the claim of a failure to comply therewith unless such action be brought within 30 days after the time for appeal from the order of reorganization has expired.

[*Ex. 1936 c. 84 s. 3*] *(7492-69i)*

301.66 RENEWAL OF CORPORATIONS HAVING WORD "TRUST" IN NAME. Any corporation heretofore organized under Revised Laws 1905, Chapter 58, and amendments thereto, whose corporate name, at the time of incorporation, included the word "trust" in combination with other words, and which has continued to do business in this state under such corporate name for a period of at least 25 years since its incorporation, and whose period of duration has not expired at the time of the passage of sections 301.66 and 301.67, and which has accepted and come under, or shall hereafter accept and come under, the provisions of sections 301.01 to 301.61, may renew its corporate existence with the same corporate name from the date of the expiration of its period of duration for an additional period not exceeding 30 years from and after the time of its expired period of duration, by taking the same proceedings and by paying into the state treasury the same incorporation fees as now provided by law for the renewal of the corporate existence of such corporations in cases where such renewal is made before the end of its period of duration.

[*Ex. 1936 c. 97 s. 1*] *(7492-69l)*

301.67 CORPORATIONS WHOSE CHARTERS HAVE BEEN FORFEITED. Section 301.66 shall not apply to any corporation the charter of which has been declared forfeited by the final judgment of any court of competent jurisdiction of this state, nor to any corporation as to which there is pending any action or proceeding in any of the courts of this state for the forfeiture of its charter, nor shall section 301.66 affect any action or proceeding now pending in any of the courts of this state in relation to any corporation described in section 301.66.

[*Ex. 1936 c. 97 s. 2*] *(7492-69m)*