

CHAPTER 302A

BUSINESS CORPORATIONS

MINNESOTA BUSINESS CORPORATION ACT

- 302A.001 Citation.
- DEFINITIONS
- 302A.011 Definitions.
- APPLICATION
- 302A.021 Application and election.
- 302A.031 Transition.
- 302A.041 Reservation of right.
- INCORPORATION; ARTICLES
- 302A.101 Purposes.
- 302A.105 Incorporators.
- 302A.111 Articles.
- 302A.115 Corporate name.
- 302A.117 Reserved name.
- 302A.121 Registered office; registered agent.
- 302A.123 Change of registered office or registered agent; change of name of registered agent.
- 302A.131 Amendment of articles.
- 302A.133 Procedure for amendment before issuance of shares.
- 302A.135 Procedure for amendment after issuance of shares.
- 302A.137 Class or series voting on amendments.
- 302A.139 Articles of amendment.
- 302A.141 Effect of amendment.
- 302A.151 Filing articles.
- 302A.153 Effective date of articles.
- 302A.155 Presumption; certificate of incorporation.
- POWERS
- 302A.161 Powers.
- 302A.163 Corporate seal.
- 302A.165 Effect of lack of power; ultra vires.
- ORGANIZATION; BYLAWS
- 302A.171 Organization.
- 302A.181 Bylaws.
- BOARD
- 302A.201 Board.
- 302A.203 Number.
- 302A.205 Qualifications; election.
- 302A.207 Terms.
- 302A.209 Acts not void or voidable.
- 302A.211 Compensation.
- 302A.213 Classification of directors.
- 302A.215 Cumulative voting for directors.
- 302A.221 Resignation.
- 302A.223 Removal of directors.
- 302A.225 Vacancies.
- 302A.231 Board meetings.
- 302A.233 Absent directors.
- 302A.235 Quorum.
- 302A.237 Act of the board.
- 302A.239 Action without meeting.
- 302A.241 Committees.
- 302A.243 Committee of disinterested persons.
- 302A.251 Standard of conduct.
- 302A.255 Director conflicts of interest.
- OFFICERS
- 302A.301 Officers required.
- 302A.305 Duties of required officers.
- 302A.311 Other officers.
- 302A.315 Multiple offices.
- 302A.321 Officers deemed elected.
- 302A.331 Contract rights.
- 302A.341 Resignation; removal; vacancies.
- 302A.351 Delegation.
- 302A.361 Standard of conduct.
- SHARES; SHAREHOLDERS
- 302A.401 Authorized shares.
- 302A.403 Subscriptions for shares.
- 302A.405 Consideration for shares; value and payment; liability.
- 302A.409 Rights to purchase.
- 302A.413 Preemptive rights.
- 302A.417 Share certificates; issuance and contents; uncertificated shares.
- 302A.419 Lost share certificates; replacement.
- 302A.423 Fractional shares.
- 302A.425 Liability of subscribers and shareholders with respect to shares.
- 302A.429 Restriction on transfer or registration of securities.
- 302A.431 Regular meetings of shareholders.
- 302A.433 Special meetings of shareholders.
- 302A.435 Notice.
- 302A.437 Act of the shareholders.
- 302A.441 Action without a meeting.
- 302A.443 Quorum.
- 302A.445 Voting rights.
- 302A.447 Voting of shares by organizations and legal representatives.
- 302A.449 Proxies.
- 302A.453 Voting trusts.
- 302A.455 Shareholder voting agreements.
- 302A.457 Shareholder control agreements.
- 302A.461 Books and records; inspection.
- 302A.463 Financial statements.
- 302A.467 Equitable remedies.
- 302A.471 Rights of dissenting shareholders.
- 302A.473 Procedures for asserting dissenters' rights.
- LOANS; OBLIGATIONS; DISTRIBUTIONS
- 302A.501 Loans; guarantees; suretyship.
- 302A.505 Advances.
- 302A.521 Indemnification.
- 302A.551 Distributions.
- 302A.553 Power to acquire shares.
- 302A.557 Liability of shareholders for illegal distributions.
- 302A.559 Liability of directors for illegal distributions.
- MERGER, EXCHANGE, TRANSFER
- 302A.601 Merger, exchange, transfer.
- 302A.611 Plan of merger or exchange.
- 302A.613 Plan approval.
- 302A.615 Articles of merger; certificate.
- 302A.621 Merger of subsidiary into parent.
- 302A.631 Abandonment.
- 302A.641 Effective date of merger or exchange; effect.
- 302A.651 Merger or exchange with foreign corporation.
- 302A.661 Transfer of assets; when permitted.
- DISSOLUTION
- 302A.701 Methods of dissolution.
- 302A.711 Voluntary dissolution by incorporators.
- 302A.721 Voluntary dissolution by shareholders.
- 302A.723 Filing notice of intent to dissolve; effect.
- 302A.725 Procedure in dissolution.
- 302A.727 Notice to creditors and claimants.
- 302A.729 Claims in dissolution.
- 302A.731 Revocation of dissolution proceedings.
- 302A.733 Articles of dissolution; certificate of dissolution; effect.
- 302A.741 Supervised voluntary dissolution.
- 302A.751 Involuntary dissolution.
- 302A.753 Procedure in involuntary or supervised voluntary dissolution.
- 302A.755 Qualifications of receivers; powers.
- 302A.757 Action by attorney general.
- 302A.759 Filing claims in proceedings to dissolve.
- 302A.761 Discontinuance of dissolution proceedings.
- 302A.763 Decree of dissolution.
- 302A.765 Filing decree.
- 302A.771 Deposit with state treasurer of amount due certain shareholders.
- 302A.781 Claims barred; exceptions.
- 302A.783 Right to sue or defend after dissolution.
- 302A.791 Omitted assets.
- EXTENSION
- 302A.801 Extension after duration expired.
- 302A.805 Effect of extension.
- CORPORATE REGISTRATION
- 302A.821 Minnesota corporate registration.
- ACTIONS AGAINST CORPORATIONS
- 302A.901 Service of process on corporation.
- 302A.917 State interested; proceedings.

MINNESOTA BUSINESS CORPORATION ACT

302A.001 CITATION.

This chapter may be cited as the "Minnesota Business Corporation Act."

History: 1981 c 270 s 125

NOTE: This section is effective January 1, 1984. See Laws 1981, Chapter 270, Section 144.

DEFINITIONS

302A.011 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in this section have the meanings given them.

Subd. 2. **Acquiring corporation.** "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.

Subd. 3. **Address.** "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which shall not be a post office box.

Subd. 4. **Articles.** "Articles" means, in the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

Subd. 5. **Board.** "Board" means the board of directors of a corporation.

Subd. 6. **Class.** "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

Subd. 7. **Constituent corporation.** "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.

Subd. 8. **Corporation.** "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

Subd. 9. **Director.** "Director" means a member of the board.

Subd. 10. **Distribution.** "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

Subd. 11. **Filed with the secretary of state.** "Filed with the secretary of state" means that an original of a document meeting the applicable requirements of this chapter, signed, and acknowledged or verified in the manner provided in chapter 358, and accompanied by a filing fee of \$15, has been delivered to the secretary of state of this state. The secretary of state shall endorse on the original the word "Filed" and the month, day, year, and time of filing, record the document in the office of the secretary of state, and return the document to the person who delivered it for filing.

Subd. 12. **Foreign corporation.** "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.

Subd. 13. **Good faith.** "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

Subd. 14. **Intentionally.** "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

Subd. 15. **Know; knowledge.** A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

Subd. 16. **Legal representative.** "Legal representative" means a person empowered to act for another person, including, but not limited to, an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.

Subd. 17. **Notice.** "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, "notice" is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when communicated to the person orally, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.

Subd. 18. **Officer.** "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 302A.321.

Subd. 19. **Organization.** "Organization" means a domestic or foreign corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

Subd. 20. **Outstanding shares.** "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

Subd. 21. **Parent.** "Parent" of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than 50 percent of the voting power of the shares entitled to vote for directors of the specified corporation.

Subd. 22. **Person.** "Person" includes a natural person and an organization.

Subd. 23. **Principal executive office.** "Principal executive office" means an office where the elected or appointed chief executive officer of a corporation has an office. If the corporation has no elected or appointed chief executive officer, "principal executive office" means the registered office of the corporation.

MINNESOTA STATUTES 1982

Subd. 24. **Registered office.** "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.

Subd. 25. **Related corporation.** "Related corporation" of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.

Subd. 26. **Security.** "Security" has the meaning given it in section 80A.14, paragraph (q).

Subd. 27. **Series.** "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

Subd. 28. **Share.** "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

Subd. 29. **Shareholder.** "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.

Subd. 30. **Signed.** (a) "Signed" means that the signature of a person has been written on a document, as provided in section 645.44, subdivision 14, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote.

(b) A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

Subd. 31. **Subsidiary.** "Subsidiary" of a specified corporation means a corporation having more than 50 percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.

Subd. 32. **Surviving corporation.** "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

Subd. 33. **Transaction statement.** "Transaction statement" means an "initial transaction statement" as defined in section 336.8-408(4).

Subd. 34. **Vote.** "Vote" includes authorization by written action.

Subd. 35. [Repealed, 1982 c 497 s 73]

Subd. 36. **Written action.** "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

History: 1981 c 270 s 1; 1981 c 356 s 343; 1982 c 497 s 2-9

APPLICATION

302A.021 APPLICATION AND ELECTION.

Subdivision 1. **Election by chapter 300 corporations.** A corporation incorporated under chapter 300 that has not subsequently become governed by chapter

301 and that was incorporated for a purpose or purposes for which a corporation may be incorporated under this chapter may elect to become governed by this chapter.

Subd. 2. Election by business and professional corporations. A corporation incorporated under sections 301.01 to 301.67 may elect, on or after July 1, 1981 and before January 1, 1984, to become governed by this chapter. A corporation incorporated under sections 301.01 to 301.67 and 319A.01 to 319A.22 may elect, on or after July 1, 1981 and before January 1, 1984, to become governed by this chapter and sections 319A.01 to 319A.22.

Subd. 3. Conforming articles of electing corporations. If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.

Subd. 4. Method of election. An election by a corporation to become governed by this chapter shall be made by resolution approved by the affirmative vote of the holders of the same proportion or number of the voting power of the shares entitled to vote that is required for amendment of the articles of the corporation prior to the election. The resolution, and articles of amendment if required, shall be filed with the secretary of state and is effective upon filing. If no amendment of the articles is required, the resolution shall state that the articles of the corporation conform to the requirements of this chapter.

Subd. 5. Effect of election upon bylaws. Upon filing an election pursuant to subdivision 4, all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.

Subd. 6. Choice of incorporation until January 1, 1984. From July 1, 1981 to December 31, 1983, inclusive, a corporation incorporated for a purpose or purposes for which a corporation may be incorporated under this chapter may be incorporated either under this chapter or under sections 301.01 to 301.67, or, if applicable, sections 301.01 to 301.67 and 319A.01 to 319A.22.

Subd. 7. Non-electing business corporations subject to law as of January 1, 1984. A corporation in existence on January 1, 1984 and incorporated under another statute of this state for a purpose or purposes for which a corporation may be incorporated under this chapter or, if applicable, this chapter and chapter 319A, other than a corporation incorporated under chapter 300 that has not subsequently become governed by chapter 301, that has not elected before January 1, 1984 to become subject to this chapter, becomes governed by this chapter or, if applicable, this chapter and chapter 319A, on January 1, 1984 as fully as though the corporation had been incorporated under this chapter or, if applicable, this chapter and chapter 319A. All provisions of the articles and bylaws of the corporation that may be included in the articles or bylaws under this chapter remain in effect. All provisions of the articles and bylaws of the corporation that are inconsistent with this chapter cease to be effective on January 1, 1984. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

Subd. 8. Retention of two-thirds majority. (a) If the articles of a corporation described in subdivision 1 or 2 and electing to become governed by this chapter or, if applicable, this chapter and chapter 319A, or described in subdivision 7, do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the

voting power of all the shares entitled to vote for any or all of the above mentioned actions may, by signed written demand filed with the secretary of state, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above mentioned actions for which no required majority was specified, notwithstanding any provisions of sections 302A.135, 302A.613 or 302A.661 to the contrary. Notice that the demand has been filed shall be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

(b) A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in subdivision 1 or 2 and electing to become governed by this chapter or, if applicable, this chapter and chapter 319A, or described in subdivision 7, may, by signed written demand filed with the secretary of state, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 302A.721. Notice that the demand has been filed shall be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.

(c) A signed written demand by the shareholders of a corporation pursuant to paragraph (a) or (b) is valid only if filed with the secretary of state before January 1, 1984 or, in the case of a corporation described in subdivision 7, before April 1, 1984.

Subd. 9. **Incorporation after January 1, 1984.** Effective January 1, 1984, a corporation incorporated for a purpose or purposes for which a corporation may be incorporated under this chapter shall be incorporated only under this chapter.

Subd. 10. **Laws not to apply.** Sections 222.19, 222.23, 300.01, 300.02, 300.06 to 300.09, 300.12 to 300.68, and chapters 301, 316, and 556 do not apply to a corporation incorporated under or governed by this chapter.

History: 1981 c 270 s 2; 1982 c 497 s 10-13

302A.031 TRANSITION.

The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, shall, if otherwise lawful before the corporation became governed by this chapter, remain valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

History: 1981 c 270 s 3

302A.041 RESERVATION OF RIGHT.

The state reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

History: 1981 c 270 s 4

INCORPORATION; ARTICLES

302A.101 PURPOSES.

A corporation may be incorporated under this chapter for any business purpose or purposes, unless some other statute of this state requires incorporation

for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

History: 1981 c 270 s 5

302A.105 INCORPORATORS.

One or more natural persons of full age may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

History: 1981 c 270 s 6

302A.111 ARTICLES.

Subdivision 1. **Required provisions.** The articles of incorporation shall contain:

- (a) The name of the corporation;
- (b) The address of the registered office of the corporation and the name of its registered agent, if any, at that address;
- (c) The aggregate number of shares that the corporation has authority to issue; and
- (d) The name and address of each incorporator.

Subd. 2. **Statutory provisions that may be modified only in articles.** The following provisions govern a corporation unless modified in the articles:

- (a) A corporation has general business purposes (section 302A.101);
- (b) A corporation has perpetual existence and certain powers (section 302A.161);
- (c) The power to adopt, amend, or repeal the bylaws is vested in the board (section 302A.181);
- (d) A corporation must allow cumulative voting for directors (section 302A.215);
- (e) The affirmative vote of a majority of directors present is required for an action of the board (section 302A.237);
- (f) A written action by the board taken without a meeting must be signed by all directors (section 302A.239);
- (g) The board may authorize the issuance of securities and rights to purchase securities (section 302A.401, subdivision 1);
- (h) All shares are common shares entitled to vote and are of one class and one series (section 302A.401, subdivision 2, clauses (a) and (b));
- (i) All shares have equal rights and preferences in all matters not otherwise provided for by the board (section 302A.401, subdivision 2, clause (b));
- (j) The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes (section 302A.401, subdivision 2, clause (c));
- (k) The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration (section 302A.405, subdivision 1);
- (l) Shares of a class or series must not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued (section 302A.405, subdivision 1);
- (m) A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board (section 302A.409);

(n) A shareholder has certain preemptive rights, unless otherwise provided by the board (section 302A.413);

(o) The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote (section 302A.437, subdivision 1);

(p) Shares of a corporation acquired by the corporation may be reissued (section 302A.553, subdivision 1);

(q) An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than 20 percent immediately after the exchange (section 302A.613, subdivision 3, clause (c)); and

(r) An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than 20 percent immediately after the exchange (section 302A.613, subdivision 3, clause (d)).

Subd. 3. Statutory provisions that may be modified either in articles or in bylaws. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

(a) Directors serve for an indefinite term that expires at the next regular meeting of shareholders (section 302A.207);

(b) The compensation of directors is fixed by the board (section 302A.211);

(c) A certain method must be used for removal of directors (section 302A.223);

(d) A certain method must be used for filling board vacancies (section 302A.225);

(e) If the board fails to select a place for a board meeting, it must be held at the principal executive office (section 302A.231, subdivision 1);

(f) A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting (section 302A.231, subdivision 3);

(g) A majority of the board is a quorum for a board meeting (section 302A.235);

(h) A committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present (section 302A.241, subdivision 2);

(i) A majority of a committee is a quorum for a committee meeting, unless otherwise provided by a resolution of the board (section 302A.241, subdivision 3);

(j) The board may establish a committee of disinterested persons (section 302A.243);

(k) The chief executive officer and chief financial officer have specified duties, until the board determines otherwise (section 302A.305);

(l) Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so (section 302A.351);

(m) The board may establish uncertificated shares (section 302A.417, subdivision 7);

(n) Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions (section 302A.431);

(o) Not less than 10-days nor more than 60-days notice is required for a meeting of shareholders (section 302A.435, subdivision 2);

(p) The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting (section 302A.443);

(q) The board may fix a date up to 60 days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting (section 302A.445, subdivision 1);

(r) Each share has one vote unless otherwise provided in the terms of the share (section 302A.445, subdivision 3); and

(s) Indemnification of certain persons is required (section 302A.521); and

(t) The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement (section 302A.551, subdivision 1).

Subd. 4. Optional provisions; specific subjects. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board, fixing a greater than majority director or shareholder vote, or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, in the bylaws:

(a) The members of the first board may be named in the articles (section 302A.201, subdivision 1);

(b) A manner for increasing or decreasing the number of directors may be provided (section 302A.203);

(c) Additional qualifications for directors may be imposed (section 302A.205);

(d) Directors may be classified (section 302A.213);

(e) The day or date, time, and place of board meetings may be fixed (section 302A.231, subdivision 1);

(f) Absent directors may be permitted to give written consent or opposition to a proposal (section 302A.233);

(g) A larger than majority vote may be required for board action (section 302A.237);

(h) Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the chief executive officer (section 302A.305, subdivision 2);

(i) Additional officers may be designated (section 302A.311);

(j) Additional powers, rights, duties, and responsibilities may be given to officers (section 302A.315);

(k) A method for filling vacant offices may be specified (section 302A.341, subdivision 3);

(l) A certain officer or agent may be authorized to sign share certificates (section 302A.417, subdivision 2);

(m) The transfer or registration of transfer of securities may be restricted (section 302A.429);

(n) The day or date, time, and place of regular shareholder meetings may be fixed (section 302A.431, subdivision 3);

(o) Certain persons may be authorized to call special meetings of shareholders (section 302A.433, subdivision 1);

(p) Notices of shareholder meetings may be required to contain certain information (section 302A.435, subdivision 3);

(q) A larger than majority vote may be required for shareholder action (section 302A.437);

(r) Voting rights may be granted in or pursuant to the articles to persons who are not shareholders (section 302A.445, subdivision 4);

(s) Corporate actions giving rise to dissenter rights may be designated (section 302A.471, subdivision 1, clause (e)); and

(t) The rights and priorities of persons to receive distributions may be established (section 302A.551).

Subd. 5. **Optional provisions: generally.** The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.

Subd. 6. **Powers need not be stated.** It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

History: 1981 c 270 s 7; 1982 c 497 s 14-16

302A.115 CORPORATE NAME.

Subdivision 1. **Requirements; prohibitions.** The corporate name:

(a) Shall be in the English language or in any other language expressed in English letters or characters;

(b) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." if that word or abbreviation is not immediately preceded by the word "and" or the character "&"

(c) Shall not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than one or more business purposes for which a corporation may be incorporated under this chapter;

(d) Shall not be the same as, or deceptively similar to, the name of a domestic corporation or a foreign corporation authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 302A.117 or in sections 333.001 to 333.54, unless there is filed with the articles one of the following:

(1) The written consent of the domestic corporation or foreign corporation authorized to do business in this state having the same or a deceptively similar name or the holder of a reserved name to use the same or deceptively similar name;

(2) A certified copy of a final decree of a court in this state establishing the prior right of the applicant to the use of the name in this state; or

(3) The applicant's affidavit that the corporation with the same or deceptively similar name has been incorporated in this state for at least three years, if it is a domestic corporation, or has been authorized to do business in this state for at least three years, if it is a foreign corporation, or that the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 filed or registered that name at least three years prior to the affidavit, and has not during the three year period filed any document with the secretary of state; that the applicant has mailed written notice to the corporation or the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 by certified mail, return receipt requested, properly addressed to the registered office of the corporation, or the address of the holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54, shown in the records of the secretary of state, that the applicant intends to use the same or deceptively similar name and the notice has been returned to the applicant as undeliverable to the addressee corporation or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54; that the applicant, after diligent inquiry, has been unable to find any telephone listing for the corporation with the same or deceptively similar name in the county in which is located the registered office of the corporation shown in the records of the secretary of state or has been unable to find any telephone listing for the holder of a name filed or registered with the

secretary of state under sections 333.001 to 333.54 in the county in which is located the address of the holder shown in the records of the secretary of state; and that the applicant has no knowledge that the corporation or holder of a name filed or registered with the secretary of state under sections 333.001 to 333.54 is currently engaged in business in this state.

Subd. 2. **Names continued.** Subdivision 1, clause (d) does not affect the right of a domestic corporation existing on January 1, 1984, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

Subd. 3. **Determination.** The secretary of state shall determine whether a name is "deceptively similar" to another name for purposes of this section and section 301A.117.

Subd. 4. **Other laws affecting use of names.** This section and section 302A.117 do not abrogate or limit the law of unfair competition or unfair practices, nor sections 333.001 to 333.54, nor the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

Subd. 5. **Use of name by successor corporation.** A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to transact business in, this state.

Subd. 6. **Injunction.** The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of a person interested or affected, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

History: 1981 c 270 s 8; 1982 c 497 s 17

302A.117 RESERVED NAME.

Subdivision 1. **Who may reserve.** The exclusive right to the use of a corporate name otherwise permitted by section 302A.115 may be reserved by:

(a) A person doing business in this state under that name or a name deceptively similar to that name;

(b) A person intending to incorporate under this chapter;

(c) A domestic corporation intending to change its name;

(d) A foreign corporation intending to make application for a certificate of authority to transact business in this state;

(e) A foreign corporation authorized to transact business in this state and intending to change its name;

(f) A person intending to incorporate a foreign corporation and intending to have the foreign corporation make application for a certificate of authority to transact business in this state; or

(g) A foreign corporation doing business under that name or a name deceptively similar to that name in one or more states other than this state and not described in clauses (d), (e), or (f).

Subd. 2. **Method of reservation.** The reservation shall be made by filing with the secretary of state a request that the name be reserved. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of 12 months. The reservation may be renewed for successive 12 month periods.

Subd. 3. **Transfer of reservation.** The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee.

History: 1981 c 270 s 9

302A.121 REGISTERED OFFICE; REGISTERED AGENT.

Subdivision 1. **Registered office.** A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

Subd. 2. **Registered agent.** A corporation may designate in its articles a registered agent. The registered agent may be a natural person residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office.

History: 1981 c 270 s 10

302A.123 CHANGE OF REGISTERED OFFICE OR REGISTERED AGENT; CHANGE OF NAME OF REGISTERED AGENT.

Subdivision 1. **Statement.** A corporation may change its registered office, designate or change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state a statement containing:

- (a) The name of the corporation;
- (b) The present address of its registered office;
- (c) If the address of its registered office is to be changed, the new address of its registered office;
- (d) The name of its registered agent, if any;
- (e) If its registered agent is to be designated or changed, the name of its new registered agent;
- (f) If the name of its registered agent is to be changed, the name of its registered agent as changed;
- (g) A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (h) A statement that the change of registered office or registered agent was authorized by resolution approved by the affirmative vote of a majority of the directors present.

Subd. 2. **Resignation of agent.** A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates 30 days after the notice is filed with the secretary of state.

Subd. 3. **Change of business address or name of agent.** If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a

statement as required in subdivision 1, except that it need be signed only by the registered agent, need not be responsive to clauses (e) or (h), and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

History: 1981 c 270 s 11; 1982 c 497 s 18

302A.131 AMENDMENT OF ARTICLES.

The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 302A.133 to 302A.139.

History: 1981 c 270 s 12; 1982 c 497 s 19

302A.133 PROCEDURE FOR AMENDMENT BEFORE ISSUANCE OF SHARES.

Before the issuance of shares by a corporation, the articles may be amended pursuant to section 302A.171 by the incorporators or by the board.

History: 1981 c 270 s 13

302A.135 PROCEDURE FOR AMENDMENT AFTER ISSUANCE OF SHARES.

Subdivision 1. **Manner of amendment.** After the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.

Subd. 2. **Submission to shareholders.** A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment shall be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a 15-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subdivision regarding shareholder-proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

Subd. 3. **Notice.** Written notice of the shareholders' meeting setting forth the substance of the proposed amendment shall be given to each shareholder in the manner provided in section 302A.435 for the giving of notice of meetings of shareholders.

Subd. 4. **Approval by shareholders.** (a) The proposed amendment is adopted when approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except as provided in paragraph (b).

(b) If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified

proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:

(1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

(2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

History: 1981 c 270 s 14; 1982 c 497 s 20,21

302A.137 CLASS OR SERIES VOTING ON AMENDMENTS.

The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

(a) Increase or decrease the aggregate number of authorized shares of the class or series;

(b) Increase or decrease the par value of the shares of the class or series;

(c) Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;

(d) Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

(e) Change the rights or preferences of the shares of the class or series;

(f) Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same or another class or series;

(g) Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

(h) Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

(i) Limit or deny any existing preemptive rights of the shares of the class or series; or

(j) Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

History: 1981 c 270 s 15

302A.139 ARTICLES OF AMENDMENT.

When an amendment has been adopted, articles of amendment shall be prepared that contain:

(a) The name of the corporation;

(b) The amendment adopted;

(c) The date of the adoption of the amendment by the shareholders, or by the incorporators or the board where no shares have been issued;

(d) If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected; and

(e) If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.

History: 1981 c 270 s 16

302A.141 EFFECT OF AMENDMENT.

Subdivision 1. **Effect on cause of action.** An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

Subd. 2. **Effect of change of name.** If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

History: 1981 c 270 s 17

302A.151 FILING ARTICLES.

Articles of incorporation and articles of amendment shall be filed with the secretary of state.

History: 1981 c 270 s 18

302A.153 EFFECTIVE DATE OF ARTICLES.

Articles of incorporation are effective and corporate existence begins when the articles of incorporation are filed with the secretary of state accompanied by a payment of \$85, which includes a \$70 incorporation fee in addition to the \$15 filing fee required by section 302A.011, subdivision 11. Articles of amendment are effective when filed with the secretary of state or at another time within 30 days after filing if the articles of amendment so provide.

History: 1981 c 270 s 19; 1981 c 356 s 344

302A.155 PRESUMPTION; CERTIFICATE OF INCORPORATION.

When the articles of incorporation have been filed with the secretary of state and the required fee has been paid to the secretary of state, it is presumed that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated, and the secretary of state shall issue a certificate of incorporation to the corporation, but this presumption does not apply against this state in a proceeding to cancel or revoke the certificate of incorporation or to compel the involuntary dissolution of the corporation.

History: 1981 c 270 s 20

POWERS

302A.161 POWERS.

Subdivision 1. **Generally; limitations.** A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.

Subd. 2. **Duration.** A corporation has perpetual duration.

Subd. 3. **Legal capacity.** A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

Subd. 4. **Property ownership.** A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.

Subd. 5. **Property disposition.** A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.

Subd. 6. **Trading in securities; obligations.** A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality thereof.

Subd. 7. **Contracts; mortgages.** A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.

Subd. 8. **Investment.** A corporation may invest and reinvest its funds.

Subd. 9. **Holding property as security.** A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

Subd. 10. **Location.** A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

Subd. 11. **Donations.** A corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes; for the purpose of fostering national or international amateur sports competition; and for the prevention of cruelty to children and animals.

Subd. 12. **Pensions; benefits.** A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related corporations' officers, directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

Subd. 13. **Participating in management.** A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.

Subd. 14. **Insurance.** A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

Subd. 15. **Corporate seal.** A corporation may have, alter at pleasure, and use a corporate seal as provided in section 302A.163.

Subd. 16. **Bylaws.** A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 302A.181.

Subd. 17. **Committees.** A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in sections 302A.241 and 302A.243 and fix their compensation.

Subd. 18. **Officers; employees; agents.** A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties as provided in sections 302A.301 to 302A.361 and fix their compensation.

Subd. 19. **Securities.** A corporation may issue securities and rights to purchase securities as provided in sections 302A.401 to 302A.425.

Subd. 20. **Loans; guaranties; sureties.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 302A.501.

Subd. 21. **Advances.** A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 302A.505.

Subd. 22. **Indemnification.** A corporation shall indemnify persons against certain expenses and liabilities only as provided in section 302A.521.

Subd. 23. **Assumed names.** A corporation may conduct all or part of its business under one or more assumed names as provided in sections 333.001 to 333.06.

Subd. 24. **Other powers.** A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

History: 1981 c 270 s 21

302A.163 CORPORATE SEAL.

Subdivision 1. **Seal not required.** A corporation may, but need not, have a corporate seal, and the use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

Subd. 2. **Required words; use.** If a corporation has a corporate seal, the seal may consist of a mechanical imprinting device, or a rubber stamp with a facsimile of the seal affixed thereon, or a facsimile or reproduction of either. The seal need include only the word "Seal", but it may also include a part or all of the name of the corporation and a combination, derivation, or abbreviation of either or both of the phrases "a Minnesota Corporation" and "Corporate Seal". If a corporate seal is used, it or a facsimile of it may be affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on any document.

History: 1981 c 270 s 22

302A.165 EFFECT OF LACK OF POWER; ULTRA VIRES.

The doing, continuing, or performing by a corporation of an act, or an executed or wholly or partially executory contract, conveyance or transfer to or by the corporation, if otherwise lawful, is not invalid because the corporation was without the power to do, continue, or perform the act, contract, conveyance, or transfer, unless the lack of power is established in a court in this state:

(a) In a proceeding by a shareholder against the corporation to enjoin the doing, continuing, or performing of the act, contract, conveyance, or transfer. If the unauthorized act, continuation, or performance sought to be enjoined is being, or to be, performed or made pursuant to a contract to which the corporation is a party, the court may, if just and reasonable in the circumstances, set aside and enjoin the performance of the contract and in so doing may allow to the corporation or to the other parties to the contract compensation for the loss or damage sustained as a result of the action of the court in setting aside and enjoining the performance of the contract:

(b) In a proceeding by or in the name of the corporation, whether acting directly or through a legal representative, or through shareholders in a representative or derivative suit, against the incumbent or former officers or directors of the corporation for exceeding or otherwise violating their authority, or against a person having actual knowledge of the lack of power; or

(c) In a proceeding by the attorney general, as provided in section 302A.757, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

History: 1981 c 270 s 23

ORGANIZATION; BYLAWS

302A.171 ORGANIZATION.

Subdivision 1. **Role of incorporators.** If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.

Subd. 2. **Meeting.** After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

History: 1981 c 270 s 24

302A.181 BYLAWS.

Subdivision 1. **Generally.** A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the articles.

Subd. 2. **Power of board.** Initial bylaws may be adopted pursuant to section 302A.171 by the incorporators or by the first board. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subdivision 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board shall not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

Subd. 3. **Power of shareholders; procedure.** If a shareholder or shareholders holding three percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth

the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 302A.135, subdivisions 2 to 4, for amendment of the articles. The provisions of this subdivision regarding shareholder-proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

History: 1981 c 270 s 25; 1982 c 497 s 22

BOARD

302A.201 BOARD.

Subdivision 1. **Board to manage.** The business and affairs of a corporation shall be managed by or under the direction of a board, subject to the provisions of subdivision 2 and section 302A.457. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 302A.171 or by the shareholders.

Subd. 2. **Shareholder management.** The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take or the shareholders to take after action or approval of the board. As to an action taken by the shareholders in that manner:

(a) The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action;

(b) The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action;

(c) If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board; and

(d) A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subdivision.

History: 1981 c 270 s 26; 1982 c 497 s 23

302A.203 NUMBER.

The board shall consist of one or more directors. The number of directors shall be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 302A.223, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

History: 1981 c 270 s 27

302A.205 QUALIFICATIONS; ELECTION.

Directors shall be natural persons. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

History: 1981 c 270 s 28

302A.207 TERMS.

Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders. A fixed term of a director shall not exceed five years. A director holds office for the term for which the director was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

History: 1981 c 270 s 29; 1982 c 497 s 24

302A.209 ACTS NOT VOID OR VOIDABLE.

The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

History: 1981 c 270 s 30

302A.211 COMPENSATION.

Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

History: 1981 c 270 s 31

302A.213 CLASSIFICATION OF DIRECTORS.

Directors may be divided into classes as provided in the articles or bylaws.

History: 1981 c 270 s 32

302A.215 CUMULATIVE VOTING FOR DIRECTORS.

Unless the articles provide that there shall be no cumulative voting, and except as provided in section 302A.223, subdivision 5, each shareholder entitled to vote for directors has the right to cumulate those votes in the election of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

(a) The presiding officer at the meeting shall announce, before the election of directors, that shareholders shall cumulate their votes; and

(b) Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares, or by distributing all of those votes on the same principle among any number of candidates.

History: 1981 c 270 s 33

302A.221 RESIGNATION.

A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

History: 1981 c 270 s 34

302A.223 REMOVAL OF DIRECTORS.

Subdivision 1. **Modification.** The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 302A.457.

Subd. 2. **Removal by directors.** A director may be removed at any time, with or without cause, if:

- (a) The director was named by the board to fill a vacancy;
- (b) The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
- (c) A majority of the remaining directors present affirmatively vote to remove the director.

Subd. 3. **Removal by shareholders.** Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them, except as provided in subdivision 4.

Subd. 4. **Exception for corporations with cumulative voting.** In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

Subd. 5. **Election of replacements.** New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and a shareholder notifies the presiding officer at any time prior to the election of new directors of intent to cumulate the votes of the shareholder, the presiding officer shall announce before the election that cumulative voting is in effect, and shareholders shall cumulate their votes as provided in section 302A.215, clause (b).

History: 1981 c 270 s 35

302A.225 VACANCIES.

Unless different rules for filling vacancies are provided for in the articles or bylaws:

(a) (1) Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though less than a quorum; and

(2) Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase; and

(b) Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.

History: 1981 c 270 s 36

302A.231 BOARD MEETINGS.

Subdivision 1. **Time; place.** Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subdivision 2. If the board fails to select a place for a meeting, the meeting shall be held at the principal executive office, unless the articles or bylaws provide otherwise.

Subd. 2. **Electronic communications.** (a) A conference among directors by any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subdivision 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

(b) A director may participate in a board meeting not described in paragraph (a) by any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

Subd. 3. **Calling meetings; notice.** Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving ten days notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

Subd. 4. **Previously scheduled meetings.** If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

Subd. 5. **Waiver of notice.** A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

History: 1981 c 270 s 37

302A.233 ABSENT DIRECTORS.

If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition shall be counted as a vote in favor of or against the proposal and shall be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

History: 1981 c 270 s 38

302A.235 QUORUM.

A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

History: 1981 c 270 s 39; 1982 c 497 s 70

302A.237 ACT OF THE BOARD.

The board shall take action by the affirmative vote of a majority of directors present at a duly held meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles shall control.

History: 1981 c 270 s 40

302A.239 ACTION WITHOUT MEETING.

Subdivision 1. **Method.** An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

Subd. 2. **Effective time.** The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

Subd. 3. **Notice; liability.** When written action is permitted to be taken by less than all directors, all directors shall be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

History: 1981 c 270 s 41; 1982 c 497 s 25

302A.241 COMMITTEES.

Subdivision 1. **Generally.** A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees are subject at all times to the direction and control of the board, except as provided in section 302A.243.

Subd. 2. **Membership.** Committee members shall be natural persons. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee shall consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.

Subd. 3. [Repealed, 1982 c 497 s 73]

Subd. 4. **Procedure.** Sections 302A.231 to 302A.239 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

Subd. 5. **Minutes.** Minutes, if any, of committee meetings shall be made available upon request to members of the committee and to any director.

Subd. 6. **Standard of conduct.** The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 302A.251.

Subd. 7. **Committee members deemed directors.** Committee members are deemed to be directors for purposes of sections 302A.251, 302A.255, and 302A.521.

History: 1981 c 270 s 42; 1982 c 497 s 26,27

302A.243 COMMITTEE OF DISINTERESTED PERSONS.

Unless prohibited by the articles or bylaws, the board may establish a committee composed of two or more disinterested directors or other disinterested persons to determine whether it is in the best interests of the corporation to pursue a particular legal right or remedy of the corporation and whether to cause the dismissal or discontinuance of a particular proceeding that seeks to assert a right or remedy on behalf of the corporation. For purposes of this section, a director or other person is "disinterested" if the director or other person is not the owner of more than one percent of the outstanding shares of, or a present or former officer, employee, or agent of, the corporation or of a related corporation and has not

been made or threatened to be made a party to the proceeding in question. The committee, once established, is not subject to the direction or control of, or termination by, the board. A vacancy on the committee may be filled by a majority vote of the remaining members. The good faith determinations of the committee are binding upon the corporation and its directors, officers, and shareholders. The committee terminates when it issues a written report of its determinations to the board.

History: 1981 c 270 s 43; 1982 c 497 s 28

302A.251 STANDARD OF CONDUCT.

Subdivision 1. **Standard; liability.** A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

Subd. 2. **Reliance.** (a) A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board upon which the director does not serve, duly established in accordance with sections 302A.241 and 302A.243, as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

(b) Paragraph (a) does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by paragraph (a) unwarranted.

Subd. 3. **Presumption of assent; dissent.** A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

(a) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this chapter;

(b) Votes against the action at the meeting; or

(c) Is prohibited by section 302A.255 from voting on the action.

History: 1981 c 270 s 44; 1982 c 497 s 29,30

302A.255 DIRECTOR CONFLICTS OF INTEREST.

Subdivision 1. **Conflict; procedure when conflict arises.** A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:

(a) The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

(b) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by the holders of a majority of the outstanding shares, but shares owned by the interested director or directors shall not be counted in determining the presence of a quorum and shall not be voted;

(c) The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

(d) The contract or transaction is a distribution described in section 302A.551, subdivision 1, or a merger or exchange described in section 302A.601, subdivision 1 or 2.

Subd. 2. **Material financial interest.** For purposes of this section:

(a) A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and

(b) A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the director, or any combination of them have a material financial interest.

History: 1981 c 270 s 45; 1982 c 497 s 31

OFFICERS

302A.301 OFFICERS REQUIRED.

A corporation shall have one or more natural persons exercising the functions of the offices, however designated, of chief executive officer and chief financial officer.

History: 1981 c 270 s 46

302A.305 DUTIES OF REQUIRED OFFICERS.

Subdivision 1. **Presumption; modification.** Unless the articles, the bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provide otherwise, the chief executive officer and chief financial officer have the duties specified in this section.

Subd. 2. **Chief executive officer.** The chief executive officer shall:

(a) Have general active management of the business of the corporation;

(b) When present, preside at all meetings of the board and of the shareholders;

(c) See that all orders and resolutions of the board are carried into effect;

(d) Sign and deliver in the name of the corporation any deeds, mortgages, bonds, contracts or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some other officer or agent of the corporation;

(e) Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and

(f) Perform other duties prescribed by the board.

Subd. 3. **Chief financial officer.** The chief financial officer shall:

(a) Keep accurate financial records for the corporation;

(b) Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;

(c) Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers therefor;

(d) Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;

(e) Render to the chief executive officer and the board, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the corporation; and

(f) Perform other duties prescribed by the board or by the chief executive officer.

History: 1981 c 270 s 47

302A.311 OTHER OFFICERS.

The board may elect or appoint, in a manner set forth in the articles or bylaws or in a resolution approved by the affirmative vote of a majority of the directors present, any other officers or agents the board deems necessary for the operation and management of the corporation, each of whom shall have the powers, rights, duties, responsibilities, and terms in office provided for in the articles or bylaws or determined by the board.

History: 1981 c 270 s 48

302A.315 MULTIPLE OFFICES.

Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

History: 1981 c 270 s 49

302A.321 OFFICERS DEEMED ELECTED.

In the absence of an election or appointment of officers by the board, the person or persons exercising the principal functions of the chief executive officer or the chief financial officer are deemed to have been elected to those offices, except for the purpose of determining the location of the principal executive office, which in that case is the registered office of the corporation.

History: 1981 c 270 s 50

302A.331 CONTRACT RIGHTS.

The election or appointment of a person as an officer or agent does not, of itself, create contract rights. A corporation may enter into a contract with an officer or agent for a period of time if, in the board's judgment, the contract would be in the best interests of the corporation. The fact that the contract may be for a term longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

History: 1981 c 270 s 51

302A.341 RESIGNATION; REMOVAL; VACANCIES.

Subdivision 1. **Resignation.** An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

Subd. 2. **Removal.** An officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the officer.

Subd. 3. **Vacancy.** A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of a vacancy in the office of chief executive officer or chief financial officer shall, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 302A.321.

History: 1981 c 270 s 52

302A.351 DELEGATION.

Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

History: 1981 c 270 s 53

302A.361 STANDARD OF CONDUCT.

An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 302A.351 is deemed an officer for purposes of this section and sections 302A.467 and 302A.521.

History: 1981 c 270 s 54

SHARES; SHAREHOLDERS**302A.401 AUTHORIZED SHARES.**

Subdivision 1. **Board may authorize.** Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.

Subd. 2. **Terms of shares.** All the shares of a corporation:

(a) Shall be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;

(b) Shall be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have fixed the relative rights and preferences of different classes and series; and

(c) Shall have, unless a different par value is specified in the articles, a par value of one cent per share, solely for the purpose of a statute or regulation imposing a tax or fee based upon the capitalization of a corporation, and a par

value fixed by the board for the purpose of a statute or regulation requiring the shares of the corporation to have a par value.

Subd. 3. Procedure for fixing terms. (a) Subject to any restrictions in the articles, the power granted in subdivision 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.

(b) A statement setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption shall be filed with the secretary of state before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement has been filed with the secretary of state.

Subd. 4. Specific terms. Without limiting the authority granted in this section, a corporation may issue shares of a class or series:

(a) Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board;

(b) Entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions;

(c) Having preference over any class or series of shares for the payment of distributions of any or all kinds;

(d) Convertible into shares of any other class or any series of the same or another class; or

(e) Having full, partial, or no voting rights, except as provided in section 302A.137.

History: 1981 c 270 s 55; 1982 c 497 s 32

302A.403 SUBSCRIPTIONS FOR SHARES.

Subdivision 1. Signed writing. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

Subd. 2. Irrevocable period. A subscription for shares is irrevocable for a period of six months, unless the subscription agreement provides for, or unless all of the subscribers consent to, an earlier revocation.

Subd. 3. Payment; installments. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.

Subd. 4. Method of collection; forfeiture; cancellation or sale for account of subscriber. (a) Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation, or, if the amount due remains unpaid for a period of 20 days after written notice of demand for payment has been given to the delinquent subscriber, the board may declare a forfeiture of the subscription or cancel it in accordance with this subdivision.

(b) Upon forfeiture of a subscription, the shares subscribed for may be offered for sale by the corporation for a price in money equalling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to

the sale. The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale shall be paid to the delinquent subscriber or to a legal representative. The payment shall not exceed the amount actually paid by the delinquent subscriber.

(c) If, within 20 days after the corporation offers to sell the shares subscribed for by the delinquent subscriber, no prospective purchaser offers to purchase the shares for a money price sufficient to pay the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale, or if the corporation has refunded to the subscriber or a legal representative a portion of the subscription price actually paid, the subscription may be cancelled, the shares subscribed for may be restored to the status of authorized but unissued shares, and the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price.

History: 1981 c 270 s 56; 1982 c 497 s 33.34

302A.405 CONSIDERATION FOR SHARES; VALUE AND PAYMENT; LIABILITY.

Subdivision 1. Consideration; procedure. Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, valuing all nonmonetary consideration and establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) Upon authorization by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends or splits, including reverse share splits. No shares of a class or series shall be issued to the holders of shares of another class or series, unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

Subd. 2. Value; liability. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this subdivision, except in case of knowing participation in a deliberate fraud, is entitled to contribution

on an equitable basis from other directors or shareholders who are liable under this section.

Subd. 3. **Payment; liability; contribution; statute of limitations.** (a) A corporation shall issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation. Consideration in the form of a promissory note, a check, or a written agreement to transfer property or render services to a corporation in the future is fully paid when the note, check, or written agreement is delivered to the corporation.

(b) If shares are issued in violation of paragraph (a), the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:

(1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;

(2) The person to whom the shares were issued; and

(3) A successor or transferee of the interest in the corporation of a person described in clause (1) or (2), including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in clause (1) or (2), or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.

(c) (1) A pledgee or holder of any other security interest in all or any shares that have been issued in violation of paragraph (a) is not liable under paragraph (b) if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

(2) A pledgee, holder of any other security interest, or legal representative is liable under paragraph (b) only in that capacity. The liability of the person under paragraph (b) is limited to the assets held in that capacity for the person or estate of the person described in clause (1) or (2) of paragraph (b).

(3) Each person liable under paragraph (b) has a full right of contribution on an equitable basis from all other persons liable under paragraph (b) for the same transaction.

(4) An action shall not be maintained against a person under paragraph (b) unless commenced within two years from the date on which shares are issued in violation of paragraph (a).

History: 1981 c 270 s 57; 1982 c 497 s 35

302A.409 RIGHTS TO PURCHASE.

Subdivision 1. **Definition.** "Right to purchase" means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding preemptive rights.

Subd. 2. **Transferability; separability.** Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.

Subd. 3. **Issuance permitted.** A corporation may issue rights to purchase if:

(a) Shares issuable upon the exercise of all outstanding rights to purchase, including the rights to purchase that are to be issued, are authorized under section 302A.111, subdivision 1, and are unissued; and

(b) The terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.

Subd. 4. **Terms set forth.** The instrument evidencing the right to purchase or, if no instrument exists, a transaction statement, shall set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

History: 1981 c 270 s 58

302A.413 PREEMPTIVE RIGHTS.

Subdivision 1. **Presumption; modification.** Unless denied or limited in the articles or by the board pursuant to section 302A.401, subdivision 2, clause (b), a shareholder of a corporation has the preemptive rights provided in this section.

Subd. 2. **Definition.** A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.

Subd. 3. **When right accrues.** A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same class or series as those held by the shareholder or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same class or series as those held by the shareholder.

Subd. 4. **Exemptions.** A shareholder does not have a preemptive right to acquire securities or rights to purchase securities that are:

- (a) Issued for a consideration other than money;
- (b) Issued pursuant to a plan of merger or exchange;
- (c) Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;

(d) Issued upon exercise of previously issued rights to purchase securities of the corporation;

(e) Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this clause, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or

(f) Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

Subd. 5. **Fraction to be acquired.** The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue. For purposes of determining pursuant to this subdivision the total number of shares of a class or series issued and outstanding at a particular time, all shares of that class or series issuable upon a conversion or exchange or upon the exercise of rights to purchase are considered issued and outstanding at that time.

Subd. 6. **Waiver.** A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.

Subd. 7. **Notice.** When proposing the issuance of securities with respect to which shareholders have preemptive rights under this section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. The notice shall be given at least ten days before the date by which the shareholder must exercise a preemptive right and shall contain:

(a) The number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;

(b) The price and other terms and conditions upon which the shareholder may purchase them; and

(c) The time within which and the method by which the shareholder must exercise the right.

Subd. 8. **Issuance to others.** Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.

History: 1981 c 270 s 59; 1982 c 497 s 36

302A.417 SHARE CERTIFICATES; ISSUANCE AND CONTENTS; UNCERTIFICATED SHARES.

Subdivision 1. **Certificated; uncertificated.** The shares of a corporation shall be either certificated shares or uncertificated shares. Each holder of certificated shares issued in accordance with section 302A.405, subdivision 3, paragraph (a) is entitled to a certificate of shares.

Subd. 2. **Certificates; signature required.** Certificates shall be signed by an agent or officer authorized in the articles or bylaws to sign share certificates or, in the absence of an authorization, by an officer.

Subd. 3. **Signature valid.** If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

Subd. 4. **Form of certificate.** A certificate representing shares of a corporation shall contain on its face:

(a) The name of the corporation;

(b) A statement that the corporation is incorporated under the laws of this state;

(c) The name of the person to whom it is issued; and

(d) The number and class of shares, and the designation of the series, if any, that the certificate represents.

Subd. 5. **Limitations set forth.** A certificate representing shares issued by a corporation authorized to issue shares of more than one class or series shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full statement

of the designations, preferences, limitations, and relative rights of the shares of each class or series authorized to be issued, so far as they have been determined, and the authority of the board to determine the relative rights and preferences of subsequent classes or series.

Subd. 6. **Prima facie evidence.** A certificate signed as provided in subdivision 2 is prima facie evidence of the ownership of the shares referred to in the certificate.

Subd. 7. **Uncertificated shares.** Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of its shares will be uncertificated shares. The resolution does not apply to shares represented by a certificate until the certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

History: 1981 c 270 s 60

302A.419 LOST SHARE CERTIFICATES; REPLACEMENT.

Subdivision 1. **Issuance.** A new share certificate may be issued pursuant to section 336.8-405 in place of one that is alleged to have been lost, stolen, or destroyed.

Subd. 2. **Not overissue.** The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

History: 1981 c 270 s 61

302A.423 FRACTIONAL SHARES.

Subdivision 1. **Issuance; alternative exchange.** A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:

(a) Arrange for the disposition of fractional interests by those entitled to them;

(b) Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or

(c) Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

Subd. 2. **Restrictions; rights.** A corporation shall not pay money for fractional shares if that action would result in the cancellation of more than 20 percent of the outstanding shares of a class. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate or a transaction statement for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

History: 1981 c 270 s 62

302A.425 LIABILITY OF SUBSCRIBERS AND SHAREHOLDERS WITH RESPECT TO SHARES.

A subscriber for shares or a shareholder of a corporation is under no obligation to the corporation or its creditors with respect to the shares subscribed for or owned, except to pay to the corporation the full consideration for which the shares are issued or to be issued.

History: 1981 c 270 s 63

302A.429 RESTRICTION ON TRANSFER OR REGISTRATION OF SECURITIES.

Subdivision 1. How imposed. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.

Subd. 2. Restrictions permitted. A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or transaction statement may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate or transaction statement, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

History: 1981 c 270 s 64

302A.431 REGULAR MEETINGS OF SHAREHOLDERS.

Subdivision 1. Frequency. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subdivision 2.

Subd. 2. Demand by shareholder. If a regular meeting of shareholders has not been held during the immediately preceding 15 months, a shareholder or shareholders holding three percent or more of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the chief executive officer or the chief financial officer of the corporation. Within 30 days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a regular meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by section 302A.435, all at the expense of the corporation.

Subd. 3. Time; place. A regular meeting, if any, shall be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subdivision 2 shall be held in the county where the principal executive office of the corporation is located.

Subd. 4. Elections required; other business. At each regular meeting of shareholders there shall be an election of qualified successors for directors who

serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

History: 1981 c 270 s 65; 1982 c 497 s 37

302A.433 SPECIAL MEETINGS OF SHAREHOLDERS.

Subdivision 1. **Who may call.** Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

- (a) The chief executive officer;
- (b) The chief financial officer;
- (c) Two or more directors;
- (d) A person authorized in the articles or bylaws to call special meetings; or
- (e) A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote.

Subd. 2. **Demand by shareholders.** A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote may demand a special meeting of shareholders by written notice of demand given to the chief executive officer or chief financial officer of the corporation and containing the purposes of the meeting. Within 30 days after receipt of the demand by one of those officers, the board shall cause a special meeting of shareholders to be called and held on notice no later than 90 days after receipt of the demand, all at the expense of the corporation. If the board fails to cause a special meeting to be called and held as required by this subdivision, the shareholder or shareholders making the demand may call the meeting by giving notice as required by section 302A.435, all at the expense of the corporation.

Subd. 3. **Time; place.** Special meetings shall be held on the date and at the time and place fixed by the chief executive officer, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subdivision 2 shall be held in the county where the principal executive office is located.

Subd. 4. **Business limited.** The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with section 302A.435, subdivision 4.

History: 1981 c 270 s 66; 1982 c 497 s 38,39

302A.435 NOTICE.

Subdivision 1. **To whom given.** Notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.

Subd. 2. **When given.** The notice shall be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than 60 days before the date of the meeting.

Subd. 3. **Contents.** The notice shall contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a special meeting, the notice shall contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.

Subd. 4. **Waiver; objections.** A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, orally, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

History: 1981 c 270 s 67; 1982 c 497 s 40

302A.437 ACT OF THE SHAREHOLDERS.

Subdivision 1. **Majority required.** The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except where this chapter or the articles require a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

Subd. 2. **Voting by class.** In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares of that class or series as is required pursuant to subdivision 1.

History: 1981 c 270 s 68; 1982 c 497 s 41

302A.441 ACTION WITHOUT A MEETING.

An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action.

History: 1981 c 270 s 69

302A.443 QUORUM.

The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

History: 1981 c 270 s 70; 1982 c 497 s 42

302A.445 VOTING RIGHTS.

Subdivision 1. **Determination.** The board may fix a date not more than 60 days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

Subd. 2. **Certification of beneficial owner.** A resolution approved by the affirmative vote of a majority of the directors present may establish procedure whereby a shareholder may certify in writing to the corporation that all or a

portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

Subd. 3. **One vote per share.** Unless otherwise provided in the articles or bylaws or in the terms of the shares, a shareholder has one vote for each share held.

Subd. 4. **Non-shareholders.** The articles may give or prescribe the manner of giving a creditor, security holder, or other person a right to vote under this section.

Subd. 5. **Jointly owned shares.** Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.

Subd. 6. **Manner of voting; presumption.** Except as provided in subdivision 5, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

History: 1981 c 270 s 71; 1982 c 497 s 43,44

302A.447 VOTING OF SHARES BY ORGANIZATIONS AND LEGAL REPRESENTATIVES.

Subdivision 1. **Shares held by other corporation.** Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the chief executive officer or another legal representative of that corporation.

Subd. 2. **Shares held by subsidiary.** Except as provided in subdivision 3, shares of a corporation registered in the name of a subsidiary are not entitled to vote on any matter.

Subd. 3. **Shares controlled in fiduciary capacity.** Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation binding instructions on how to vote the shares.

Subd. 4. **Voting by certain representatives.** Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney-in-fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian shall not vote shares held by the person unless they are registered in the name of the person.

Subd. 5. **Voting by trustee in bankruptcy or receiver.** Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

Subd. 6. **Shares held by other organizations.** Shares registered in the name of an organization not described in subdivisions 1 to 5 may be voted either in person or by proxy by the legal representative of that organization.

Subd. 7. **Pledged shares.** A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee.

History: 1981 c 270 s 72

302A.449 PROXIES.

Subdivision 1. **Authorization.** A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

Subd. 2. **Duration.** The appointment of a proxy is valid for 11 months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the shares or in the corporation.

Subd. 3. **Termination.** An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it shall not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy with an officer of the corporation. Termination in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.

Subd. 4. **Revocation by death, incapacity.** The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.

Subd. 5. **Multiple proxies.** Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

(a) Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and

(b) If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares shall be voted as a majority of the proxies determine. If the proxies are equally divided, the shares shall not be voted.

Subd. 6. **Vote of proxy accepted; liability.** Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

History: 1981 c 270 s 73

302A.453 VOTING TRUSTS.

Subdivision 1. **Authorization; period; termination.** Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding 15 years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A copy of the agreement shall be filed with the corporation.

Subd. 2. **Voting by trustees.** Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in section 302A.445, subdivision 5.

History: 1981 c 270 s 74

302A.455 SHAREHOLDER VOTING AGREEMENTS.

A written agreement solely among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 302A.449 regarding proxies and is not subject to the provisions of section 302A.453 regarding voting trusts.

History: 1981 c 270 s 75; 1982 c 497 s 45

302A.457 SHAREHOLDER CONTROL AGREEMENTS.

Subdivision 1. **Authorized.** A written agreement solely among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subdivision 2.

Subd. 2. **Method of approval; enforceability; copies.** (a) A written agreement solely among persons described in subdivision 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

(b) The agreement is enforceable by the persons described in subdivision 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A copy of the agreement shall be filed with the corporation. The existence and location of a copy of the agreement shall be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement.

(c) A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

Subd. 3. **Liability.** The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. A shareholder is not liable pursuant to this subdivision by virtue of a shareholder vote, if the shareholder had no right to vote on the action.

Subd. 4. **Other agreements.** This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

History: 1981 c 270 s 76; 1982 c 497 s 46.47

302A.461 BOOKS AND RECORDS; INSPECTION.

Subdivision 1. **Share register; dates of issuance.** (a) A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder.

(b) A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificates or transaction statements representing shares were issued.

Subd. 2. **Other documents required.** A corporation shall keep at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subdivision 4, originals or copies of:

- (a) Records of all proceedings of shareholders for the last three years;
- (b) Records of all proceedings of the board for the last three years;
- (c) Its articles and all amendments currently in effect;
- (d) Its bylaws and all amendments currently in effect;
- (e) Financial statements required by section 302A.463 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
- (f) Reports made to shareholders generally within the last three years;
- (g) A statement of the names and usual business addresses of its directors and principal officers;
- (h) Voting trust agreements described in section 302A.453; and
- (i) Shareholder control agreements described in section 302A.457.

Subd. 3. **Financial records.** A corporation shall keep appropriate and complete financial records.

Subd. 4. **Right to inspect.** (a) A shareholder, beneficial owner, or a holder of a voting trust certificate has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:

- (1) The share register; and
- (2) All documents referred to in subdivision 2.

(b) A shareholder, beneficial owner, or a holder of a voting trust certificate has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

Subd. 5. **Cost of copies.** Copies of all documents referred to in subdivision 2 shall be furnished at the expense of the corporation. A copy of the most recently generated share register shall be furnished at the expense of the corporation if the requesting party shows a proper purpose. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

Subd. 6. **Computerized records.** The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or

magnetized spots, or micro-images, even though that makes them illegible visually, if the records can be converted, by machine and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subdivision 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subdivision 5. A copy of the conversion is admissible in evidence, and shall be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

History: 1981 c 270 s 77; 1982 c 497 s 48

302A.463 FINANCIAL STATEMENTS.

A corporation shall, upon written request by a shareholder, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which shall be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy shall be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy shall be accompanied by a statement of the chief financial officer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

History: 1981 c 270 s 78; 1982 c 497 s 49

302A.467 EQUITABLE REMEDIES.

If a corporation or an officer or director of the corporation violates a provision of this chapter, a court in this state may, in an action brought by a shareholder of the corporation, grant any equitable relief it deems just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholder.

History: 1981 c 270 s 79; 1982 c 497 s 50

302A.471 RIGHTS OF DISSENTING SHAREHOLDERS.

Subdivision 1. **Actions creating rights.** A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) An amendment of the articles that materially and adversely affects the rights or preferences of the shares of the dissenting shareholder in that it:

(1) Alters or abolishes a preferential right of the shares;

(2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) Excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be limited by dilution through the issuance of securities with similar voting rights;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a disposition in dissolution described in section 302A.725, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) A plan of merger to which the corporation is a party, except as provided in subdivision 3;

(d) A plan of exchange pursuant to which the shares of the corporation are to be acquired; or

(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

Subd. 2. Beneficial owners. (a) A shareholder shall not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter shall be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and shall be treated as a dissenting shareholder under the terms of this section and section 302A.473, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

Subd. 3. Rights not to apply. The right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger or of the acquiring corporation in an exchange, if a vote of the shareholders of the corporation is not necessary to authorize the merger or exchange.

Subd. 4. Other rights. The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subdivision 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

History: 1981 c 270 s 80

302A.473 PROCEDURES FOR ASSERTING DISSENTERS' RIGHTS.

Subdivision 1. Definitions. (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in section 302A.471, subdivision 1 or the successor by merger of that issuer.

(c) "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of the corporate action referred to in section 302A.471, subdivision 1.

(d) "Interest" means interest from the effective date of the corporate action referred to in section 302A.471, subdivision 1 until the date of payment, calculated at the rate provided in section 549.09 for interest on verdicts and judgments.

Subd. 2. Notice of action. If a corporation calls a shareholder meeting at which any action described in section 302A.471, subdivision 1 is to be voted upon,

the notice of the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 302A.471 and this section and a brief description of the procedure to be followed under these sections.

Subd. 3. Notice of dissent. If the proposed action must be approved by the shareholders, a shareholder who wishes to exercise dissenters' rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.

Subd. 4. Notice of procedure; deposit of shares. (a) After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subdivision 3 and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

(1) The address to which a demand for payment and certificates of certificated shares must be sent in order to obtain payment and the date by which they must be received;

(2) Any restrictions on transfer of uncertificated shares that will apply after the demand for payment is received;

(3) A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

(4) A copy of section 302A.471 and this section and a brief description of the procedures to be followed under these sections.

(b) In order to receive the fair value of the shares, a dissenting shareholder must demand payment and deposit certificated shares or comply with any restrictions on transfer of uncertificated shares within 30 days after the notice was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.

Subd. 5. Payment; return of shares. (a) After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subdivisions 3 and 4 the amount the corporation estimates to be the fair value of the shares, with interest, if any, accompanied by:

(1) The corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the effective date of the corporate action, together with the latest available interim financial statements;

(2) An estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and

(3) A copy of section 302A.471 and this section, and a brief description of the procedure to be followed in demanding supplemental payment.

(b) The corporation may withhold the remittance described in paragraph (a) from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subdivisions 3 and 4, the corporation shall forward to the dissenter the materials described in paragraph (a), a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subdivision 6. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subdivisions 7 and 8 apply.

(c) If the corporation fails to remit payment within 60 days of the deposit of certificates or the imposition of transfer restrictions on uncertificated shares, it

MINNESOTA STATUTES 1982

shall return all deposited certificates and cancel all transfer restrictions. However, the corporation may again give notice under subdivision 4 and require deposit or restrict transfer at a later time.

Subd. 6. **Supplemental payment; demand.** If a dissenter believes that the amount remitted under subdivision 5 is less than the fair value of the shares with interest, if any, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares, with interest, if any, within 30 days after the corporation mails the remittance under subdivision 5, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.

Subd. 7. **Petition; determination.** If the corporation receives a demand under subdivision 6, it shall, within 60 days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares, with interest, if any. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent domestic corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subdivision 6 and who have not reached agreement with the corporation. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court exceeds the amount, if any, remitted under subdivision 5.

Subd. 8. **Costs; fees; expenses.** (a) The court shall determine the costs and expenses of a proceeding under subdivision 7, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subdivision 6 is found to be arbitrary, vexatious, or not in good faith.

(b) If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

(c) The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

History: 1981 c 270 s 81

LOANS; OBLIGATIONS; DISTRIBUTIONS

302A.501 LOANS; GUARANTEES; SURETYSHIP.

Subdivision 1. **Prerequisites.** A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if

the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:

- (a) Is in the usual and regular course of business of the corporation;
- (b) Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, an organization with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;
- (c) Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
- (d) Has been approved by the affirmative vote of the holders of two-thirds of the outstanding shares.

Subd. 2. **Interest; security.** A loan, guaranty, surety contract, or other financial assistance under subdivision 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in shares of the corporation.

Subd. 3. **Banking authority not granted.** This section does not grant any authority to act as a bank or to carry on the business of banking.

History: 1981 c 270 s 82

302A.505 ADVANCES.

A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

History: 1981 c 270 s 83

302A.521 INDEMNIFICATION.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in this subdivision have the meanings given them.

(b) "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(c) "Official capacity" means (1) with respect to a director, the position of director in a corporation, (2) with respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment or agency relationship undertaken by an employee or agent of the corporation, and (3) with respect to a director, officer, employee, or agent of the corporation who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

(d) "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

(e) "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, employee, or agent whose indemnification is in issue.

Subd. 2. **Indemnification mandatory; standard.** (a) Subject to the provisions of subdivision 4, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) Acted in good faith;

(3) Received no improper personal benefit and section 302A.255, if applicable, has been satisfied;

(4) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) In the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (1) or (2), reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in subdivision 1, paragraph (c), clause (3), reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

(b) The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subdivision.

Subd. 3. **Advances.** Subject to the provisions of subdivision 4, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding, (a) upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subdivision 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied, and (b) after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The written undertaking required by clause (a) is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

Subd. 4. **Prohibition or limit on indemnification or advances.** The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subdivisions 2 and 3 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class.

Subd. 5. **Reimbursement to witnesses.** This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

Subd. 6. **Determination of eligibility.** All determinations whether indemnification of a person is required because the criteria set forth in subdivision 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 shall be made:

(a) By the board by a majority of a quorum. Directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

(b) If a quorum under clause (a) cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

(c) If a determination is not made under clause (a) or (b), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (a) or (b) or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;

(d) If a determination is not made under clauses (a) to (c), by the shareholders, excluding the votes of shares held by parties to the proceeding; or

(e) If an adverse determination is made under clauses (a) to (d), or if no determination is made under clauses (a) to (d) within 60 days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

Subd. 7. **Insurance.** A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.

Subd. 8. **Disclosure.** A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report the amount of the indemnification or advance and to whom and on whose behalf it was paid as part of the annual financial statements furnished to shareholders pursuant to section 302A.463 covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation reflected in the financial statements.

History: 1981 c 270 s 84; 1982 c 497 s 51

302A.551 DISTRIBUTIONS.

Subdivision 1. **When permitted.** The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subdivision 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary

course of business after making the distribution shall be measured in accordance with subdivision 3. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

Subd. 2. **Determination presumed proper.** A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 302A.251 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 302A.251 or 302A.559 will accrue if the requirements of this subdivision have been met.

Subd. 3. **Effect measured.** (a) In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution shall be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

(b) The effect of any other distribution shall be measured as of the date of its authorization if payment occurs 120 days or less following the date of authorization, or as of the date of payment if payment occurs more than 120 days following the date of authorization.

(c) Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.

(d) Sections 302A.551 to 302A.559 supersede all other statutes of this state with respect to distributions, and the provisions of sections 513.20 to 513.32 do not apply to distributions made by a corporation governed by this chapter.

Subd. 4. **Restrictions.** (a) A distribution may be made to the holders of a class or series of shares only if:

(1) All amounts payable to the holders of shares having a preference for the payment of that kind of distribution are paid; and

(2) The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities.

(b) If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes.

History: 1981 c 270 s 85; 1982 c 497 s 52,53

302A.553 POWER TO ACQUIRE SHARES.

Subdivision 1. **When permitted; status of shares.** A corporation may acquire its own shares, subject to section 302A.551. Shares so acquired constitute authorized but unissued shares of the corporation, unless the articles provide that they shall not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

Subd. 2. **Statement of cancellation.** If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the secretary of state a statement of cancellation showing the reduction in the authorized shares. The statement shall contain:

(a) The name of the corporation;

(b) The number of acquired shares cancelled, itemized by classes and series; and

(c) The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

History: 1981 c 270 s 86

302A.557 LIABILITY OF SHAREHOLDERS FOR ILLEGAL DISTRIBUTIONS.

Subdivision 1. **Liability.** A shareholder who receives a distribution made in violation of the provisions of section 302A.551 is liable to the corporation, its receiver or other person winding up its affairs, or a director under section 302A.559, subdivision 2, but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 302A.551.

Subd. 2. **Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

History: 1981 c 270 s 87

302A.559 LIABILITY OF DIRECTORS FOR ILLEGAL DISTRIBUTIONS.

Subdivision 1. **Liability.** In addition to any other liabilities, a director who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of section 302A.551 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 302A.251, is liable to the corporation jointly and severally with all other directors so liable and to other directors under subdivision 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 302A.551.

Subd. 2. **Contribution from shareholders.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in section 302A.557, subdivision 1.

Subd. 3. **Impleader; contribution from directors.** A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

Subd. 4. **Statute of limitations.** An action shall not be commenced under this section more than two years from the date of the distribution.

History: 1981 c 270 s 88; 1982 c 497 s 54

MERGER, EXCHANGE, TRANSFER

302A.601 MERGER, EXCHANGE, TRANSFER.

Subdivision 1. **Merger.** Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 302A.611 to 302A.651.

Subd. 2. **Exchange.** The shares of one or more classes or series of a corporation may be exchanged for shares of the same or a different class or series of one or more other corporations pursuant to a plan of exchange approved in the manner provided in sections 302A.611, 302A.613, and 302A.631 to 302A.651.

Subd. 3. **Transfer.** A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 302A.661.

History: 1981 c 270 s 89

302A.611 PLAN OF MERGER OR EXCHANGE.

Subdivision 1. **Contents of plan.** A plan of merger or exchange shall contain:

(a) The names of the corporations proposing to merge or participate in an exchange, and:

(1) In the case of a merger, the name of the surviving corporation;

(2) In the case of an exchange, the name of the acquiring corporation;

(b) The terms and conditions of the proposed merger or exchange;

(c) (1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the shares of other constituent corporations for shares of the acquiring corporation;

(d) In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

(e) Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

Subd. 2. **Other agreements.** The procedure authorized by this section does not limit the power of a corporation to acquire for money or property other than its shares all or part of the shares of a class or series of another corporation by a negotiated agreement with the shareholders of the other corporation.

History: 1981 c 270 s 90

302A.613 PLAN APPROVAL.

Subdivision 1. **Board approval; notice to shareholders.** A resolution containing the plan of merger or exchange shall be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and shall then be submitted to the shareholders of each constituent corporation at a regular or a special meeting. Written notice shall be given to every shareholder, whether or not entitled to vote at the meeting, not less than 14 days before the meeting, in the manner provided in section 302A.435 for notice of meetings of shareholders. The written notice shall state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange shall be included in or enclosed with the notice.

Subd. 2. **Approval by shareholders.** At the meeting a vote of the shareholders shall be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is affected by the plan of exchange.

Subd. 3. **When approval by shareholders not required.** Notwithstanding the provisions of subdivisions 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving or acquiring corporation is not required if:

(a) The articles of the corporation will not be amended in the transaction;

(b) Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

(c) The number of shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of shares of the corporation entitled to vote issuable on conversion or exchange of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than 20 percent, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles, the number of shares of the corporation entitled to vote immediately before the transaction; and

(d) The number of participating shares of the corporation immediately after the transaction, plus the number of participating shares of the corporation issuable on conversion or exchange of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than 20 percent, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

History: 1981 c 270 s 91; 1982 c 497 s 55,56

302A.615 ARTICLES OF MERGER; CERTIFICATE.

Subdivision 1. **Contents of articles.** Upon receiving the approval required by section 302A.613, articles of merger shall be prepared that contain:

(a) The plan of merger;

(b) For each corporation, either:

(1) A statement that the plan has been approved by a vote of the shareholders pursuant to section 302A.613, subdivision 2; or

(2) A statement that a vote of the shareholders is not required by virtue of section 302A.613, subdivision 3.

Subd. 2. **Articles signed, filed.** The articles of merger shall be signed on behalf of each constituent corporation and filed with the secretary of state.

Subd. 3. **Certificate.** The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative.

History: 1981 c 270 s 92

302A.621 MERGER OF SUBSIDIARY INTO PARENT.

Subdivision 1. **When authorized; contents of plan.** A parent owning at least 90 percent of the outstanding shares of each class and series of a subsidiary may merge the subsidiary into itself without a vote of the shareholders of either corporation. A resolution approved by the affirmative vote of a majority of the directors of the parent present shall set forth a plan of merger that contains:

(a) The name of the subsidiary and the name of the parent; and

(b) The manner and basis of converting the shares of the subsidiary into securities of the parent or of another corporation or, in whole or in part, into money or other property.

MINNESOTA STATUTES 1982

302A.621 BUSINESS CORPORATIONS

5870

Subd. 2. **Notice to shareholders.** A copy of the plan of merger shall be mailed to each shareholder, other than the parent, of the subsidiary.

Subd. 3. **Articles of merger; contents of articles.** Articles of merger shall be prepared that contain:

(a) The plan of merger;

(b) The number of outstanding shares of each class and series of the subsidiary and the number of shares of each class and series owned by the parent; and

(c) The date a copy of the plan of merger was mailed to shareholders, other than the parent, of the subsidiary.

Subd. 4. **Articles signed, filed.** Within 30 days after a copy of the plan of merger is mailed to shareholders of the subsidiary, or upon waiver of the mailing by the holders of all outstanding shares, the articles of merger shall be signed on behalf of the parent and filed with the secretary of state.

Subd. 5. **Certificate.** The secretary of state shall issue a certificate of merger to the parent or its legal representative.

History: 1981 c 270 s 93

302A.631 ABANDONMENT.

Subdivision 1. **By shareholders or plan.** After a plan of merger or exchange has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation and before the effective date of the plan, it may be abandoned:

(a) If the shareholders of each of the constituent corporations have considered abandoning the plan and the abandonment has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation;

(b) If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or

(c) Pursuant to subdivision 2.

Subd. 2. **By board; articles of abandonment.** If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If articles of merger have been filed with the secretary of state, the board shall file with the secretary of state articles of abandonment that contain:

(a) The name of the corporation;

(b) The provision of this section under which the plan is abandoned; and

(c) The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

History: 1981 c 270 s 94

302A.641 EFFECTIVE DATE OF MERGER OR EXCHANGE; EFFECT.

Subdivision 1. **Effective date.** A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.

Subd. 2. **Effect on corporation.** When a merger becomes effective:

(a) The constituent corporations become a single corporation, the surviving corporation;

(b) The separate existence of all constituent corporations except the surviving corporation ceases;

(c) The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter;

(d) The surviving corporation possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent corporations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent corporations vests in the surviving corporation without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent corporation by its current officers or, if the corporation no longer exists, by its last officers. The title to any real estate or any interest therein vested in any of the constituent corporations does not revert nor in any way become impaired by reason of the merger;

(e) The surviving corporation is responsible and liable for all the liabilities and obligations of each of the constituent corporations. A claim of or against or a pending proceeding by or against a constituent corporation may be prosecuted as if the merger had not taken place, or the surviving corporation may be substituted in the place of the constituent corporation. Neither the rights of creditors nor any liens upon the property of a constituent corporation are impaired by the merger; and

(f) The articles of the surviving corporation are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

Subd. 3. Effect on shareholders. When a merger or exchange becomes effective, the shares of the corporation or corporations to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities, money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under section 302A.471.

History: 1981 c 270 s 95

302A.651 MERGER OR EXCHANGE WITH FOREIGN CORPORATION.

Subdivision 1. When permitted. A domestic corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if the merger or exchange is permitted by the laws of the state under which the foreign corporation is incorporated.

Subd. 2. Laws applicable before transaction. Each domestic corporation shall comply with the provisions of sections 302A.601 to 302A.651 with respect to the merger or exchange of shares of corporations and each foreign corporation shall comply with the applicable provisions of the laws under which it was incorporated or by which it is governed.

Subd. 3. Domestic surviving corporation. If the surviving corporation in a merger will be a domestic corporation, it shall comply with all the provisions of this chapter.

Subd. 4. Foreign surviving corporation. If the surviving corporation in a merger will be a foreign corporation and will transact business in this state, it shall comply with the provisions of chapter 303 with respect to foreign corporations. In every case the surviving corporation shall file with the secretary of state:

(a) An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving corporation;

(b) An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

(c) An agreement that it will promptly pay to the dissenting shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 302A.473.

History: 1981 c 270 s 96

302A.661 TRANSFER OF ASSETS; WHEN PERMITTED.

Subdivision 1. **Shareholder approval; when not required.** A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, in which case no shareholder approval is required.

Subd. 2. **Shareholder approval; when required.** A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote. Written notice of the meeting shall be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice shall state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

Subd. 3. **Signing of documents.** Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

Subd. 4. **Transferee liability.** The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

History: 1981 c 270 s 97; 1982 c 497 s 57 •

DISSOLUTION

302A.701 METHODS OF DISSOLUTION.

A corporation may be dissolved:

- (a) By the incorporators pursuant to section 302A.711;
- (b) By the shareholders pursuant to sections 302A.721 to 302A.733; or
- (c) By order of a court pursuant to sections 302A.741 to 302A.765.

History: 1981 c 270 s 98

302A.711 VOLUNTARY DISSOLUTION BY INCORPORATORS.

Subdivision 1. **Manner.** A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this section.

Subd. 2. **Articles of dissolution.** (a) A majority of the incorporators shall sign articles of dissolution containing:

- (1) The name of the corporation;
- (2) The date of incorporation;
- (3) A statement that shares have not been issued;

(4) A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and

- (5) A statement that no debts remain unpaid.

(b) The articles of dissolution shall be filed with the secretary of state.

Subd. 3. **Effective date.** When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

Subd. 4. **Certificate.** The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

- (a) The name of the corporation;

(b) The date and time the articles of dissolution were filed with the secretary of state; and

- (c) A statement that the corporation is dissolved.

History: 1981 c 270 s 99

302A.721 VOLUNTARY DISSOLUTION BY SHAREHOLDERS.

Subdivision 1. **Manner.** A corporation may be dissolved by the shareholders when authorized in the manner set forth in this section.

Subd. 2. **Notice; approval.** (a) Written notice shall be given to each shareholder, whether or not entitled to vote at a meeting of shareholders, within the time and in the manner provided in section 302A.435 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, shall state that a purpose of the meeting is to consider dissolving the corporation.

(b) The proposed dissolution shall be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution shall be commenced.

History: 1981 c 270 s 100; 1982 c 497 s 58

302A.723 FILING NOTICE OF INTENT TO DISSOLVE; EFFECT.

Subdivision 1. **Contents.** If dissolution of the corporation is approved pursuant to section 302A.721, subdivision 2, the corporation shall file with the secretary of state a notice of intent to dissolve. The notice shall contain:

- (a) The name of the corporation;

(b) The date and place of the meeting at which the resolution was approved pursuant to section 302A.721, subdivision 2; and

(c) A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.

Subd. 2. **Winding up.** When the notice of intent to dissolve has been filed with the secretary of state, and subject to section 302A.731, the corporation shall cease to carry on its business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution

proceedings in accordance with section 302A.731 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

Subd. 3. **Remedies continued.** The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in section 302A.781.

History: 1981 c 270 s 101; 1982 c 497 s 59

302A.725 PROCEDURE IN DISSOLUTION.

Subdivision 1. **Collection; payment.** When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

(a) To collect or make provision for the collection of all debts due or owing to the corporation, including unpaid subscriptions for shares; and

(b) To pay or make provision for the payment of all debts, obligations, and liabilities of the corporation according to their priorities.

Subd. 2. **Transfer of assets.** Notwithstanding the provisions of section 302A.661, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.

Subd. 3. **Distribution to shareholders.** All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4.

History: 1981 c 270 s 102

302A.727 NOTICE TO CREDITORS AND CLAIMANTS.

Subdivision 1. **When permitted; how given.** When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each known creditor of and claimant against the corporation at the last known address of each known present, future, or contingent creditor and claimant. The corporation may give published notice to known creditors or claimants whose address is unknown and to unknown present, future, or contingent creditors and claimants, by publishing the notice once each week for four successive weeks in a legal newspaper as defined in section 331.02 in the county or counties where the registered office and the principal executive office of the corporation are located.

Subd. 2. **Contents.** The notice to creditors and claimants shall contain:

(a) A statement that the corporation is in the process of dissolving;

(b) A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;

(c) The date of filing the notice of intent to dissolve;

(d) The address of the office to which written claims against the corporation must be presented; and

(e) The date by which all the claims must be received, which shall be the later of 90 days after the notice of intent to dissolve was filed with the secretary of state or, with respect to a particular creditor or claimant, 90 days after the date on which notice was given to that creditor or claimant.

History: 1981 c 270 s 103; 1982 c 497 s 60

302A.729 CLAIMS IN DISSOLUTION.

Subdivision 1. **Procedure.** If the corporation gives proper notice to creditors and claimants pursuant to section 302A.727:

(a) The claim of a creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is subject to the provisions of section 302A.781;

(b) The corporation has 30 days from the receipt of each claim to accept or reject the claim by giving written notice to the person submitting it; a claim not expressly rejected in this manner is deemed accepted; and

(c) A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has 60 days from the date of rejection, or 180 days from the date the corporation filed with the secretary of state the notice of intent to dissolve, whichever is longer, to pursue any other remedies with respect to the claim. If the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim during that period, the claim is subject to the provisions of section 302A.781.

Subd. 2. **Statute of limitations.** The claim of a creditor or claimant to whom notice is not given and who does not initiate legal, administrative, or arbitration proceedings concerning the claim within two years after the date of filing the notice of intent to dissolve is thereafter subject to the provisions of 302A.781.

History: 1981 c 270 s 104; 1982 c 497 s 61

302A.731 REVOCATION OF DISSOLUTION PROCEEDINGS.

Subdivision 1. **Generally.** Dissolution proceedings commenced pursuant to section 302A.721 may be revoked prior to filing of articles of dissolution.

Subd. 2. **Notice to shareholders; approval.** Written notice shall be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 302A.435 for notice of meetings of shareholders and shall state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation shall be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.

Subd. 3. **Effective date; effect.** Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state. The corporation may thereafter resume business.

History: 1981 c 270 s 105; 1982 c 497 s 62

302A.733 ARTICLES OF DISSOLUTION; CERTIFICATE OF DISSOLUTION; EFFECT.

Subdivision 1. **Articles; when filed.** Articles of dissolution for a corporation dissolving pursuant to section 302A.721 shall be filed with the secretary of state after:

(a) The payment of claims of all known creditors and claimants has been made or provided for;

(b) The longer of the periods described in section 302A.729, subdivision 1, clause (c) has expired, if the corporation has given notice to creditors and claimants of the corporation in the manner described in section 302A.727; or, in all other cases,

(c) The two year period described in section 302A.729, subdivision 2 has expired.

Subd. 2. **Contents of articles.** The articles of dissolution shall state:

(a) Whether notice has been given to all creditors and claimants of the corporation in the manner provided in section 103, and, if notice has been given, the last date on which the notice was given and the date on which the longer of the periods described in section 302A.729, subdivision 1, clause (c) expired;

(b) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made therefor;

(c) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with section 302A.551, subdivision 4, or that adequate provision has been made for that distribution; and

(d) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding, and that all other claims are barred under section 302A.781.

Subd. 3. **Effective date.** When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

Subd. 4. **Certificate.** The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

(a) The name of the corporation;

(b) The date and time the articles of dissolution were filed with the secretary of state; and

(c) A statement that the corporation is dissolved.

History: 1981 c 270 s 106; 1982 c 497 s 63

302A.741 SUPERVISED VOLUNTARY DISSOLUTION.

After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation or, for good cause shown, a shareholder or creditor may apply to a court within the county in which the registered office of the corporation is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 302A.751 to 302A.781.

History: 1981 c 270 s 107; 1982 c 497 s 64

302A.751 INVOLUNTARY DISSOLUTION.

Subdivision 1. **When permitted.** A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

(a) In a supervised voluntary dissolution pursuant to section 302A.741;

(b) In an action by a shareholder when it is established that:

(1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

(2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner persistently unfair toward one or more minority shareholders;

(3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) The corporate assets are being misapplied or wasted; or

(5) The period of duration as provided in the articles has expired and has not been extended as provided in section 302A.801;

(c) In an action by a creditor when:

(1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

(d) In an action by the attorney general to dissolve the corporation in accordance with section 302A.757 when it is established that a decree of dissolution is appropriate.

Subd. 2. **Buy-out on motion.** In an action under subdivision 1, clause (b), involving a corporation having 25 or fewer shareholders at the time the action is commenced and in which one or more of the circumstances described in that clause is established, the court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any shares so sold shall be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under section 302A.473, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the shares under the provisions of section 302A.473, subdivision 7, and may allow interest or costs as provided in section 302A.473, subdivisions 1 and 8.

The purchase price shall be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.

Subd. 3. **Condition of corporation.** In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated or current operating profits.

Subd. 4. **Expenses.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

Subd. 5. **Venue; parties.** Proceedings under this section shall be brought in a court within the county in which the registered office of the corporation is

located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

History: 1981 c 270 s 108; 1982 c 497 s 65,66

302A.753 PROCEDURE IN INVOLUNTARY OR SUPERVISED VOLUNTARY DISSOLUTION.

Subdivision 1. **Action before hearing.** In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

Subd. 2. **Action after hearing.** After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

Subd. 3. **Discharge of obligations.** The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition shall be applied in the following order of priority to the payment and discharge or:

(a) The costs and expenses of the proceedings, including attorneys' fees and disbursements;

(b) Debts, taxes and assessments due the United States, the state of Minnesota and their subdivisions, and other states and their subdivisions, in that order;

(c) Claims duly proved and allowed to employees under the provisions of the workers' compensation act; provided, that claims under this clause shall not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

(d) Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

(e) Other claims duly proved and allowed.

Subd. 4. **Remainder to shareholders.** After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4.

History: 1981 c 270 s 109

302A.755 QUALIFICATIONS OF RECEIVERS; POWERS.

Subdivision 1. **Qualifications.** A receiver shall be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

Subd. 2. **Powers.** A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

History: 1981 c 270 s 110

302A.757 ACTION BY ATTORNEY GENERAL.

Subdivision 1. **When permitted.** A corporation may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general when it is established that:

(a) The articles and certificate of incorporation were procured through fraud;

(b) The corporation was incorporated for a purpose not permitted by section 302A.101;

(c) The corporation failed to comply with the requirements of sections 302A.021 to 302A.155 essential to incorporation under or election to become governed by this chapter;

(d) The corporation has flagrantly violated a provision of this chapter, or has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or

(e) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

Subd. 2. **Notice to corporation; correction.** An action shall not be commenced under this section until 30 days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation 30 additional days in which to effect the correction before filing the action.

History: 1981 c 270 s 111

302A.759 FILING CLAIMS IN PROCEEDINGS TO DISSOLVE.

Subdivision 1. In proceedings referred to in section 302A.751 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.

Subd. 2. If the court requires the filing of claims, it shall fix a date, which shall be not less than 120 days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that shall be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

History: 1981 c 270 s 112

302A.761 DISCONTINUANCE OF DISSOLUTION PROCEEDINGS.

The involuntary or supervised voluntary dissolution of a corporation shall be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

History: 1981 c 270 s 113

302A.763 DECREE OF DISSOLUTION.

Subdivision 1. **When entered.** In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its

property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 302A.753, the court shall enter a decree dissolving the corporation.

Subd. 2. **Effective date.** When the decree dissolving the corporation has been entered, the corporation is dissolved.

History: 1981 c 270 s 114

302A.765 FILING DECREE.

After the court enters a decree dissolving a corporation, the clerk of court shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state shall not charge a fee for filing the decree.

History: 1981 c 270 s 115

302A.771 DEPOSIT WITH STATE TREASURER OF AMOUNT DUE CERTAIN SHAREHOLDERS.

Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, shall be reduced to money and deposited with the state treasurer. The amount deposited is appropriated to the state treasurer and shall be paid over to the shareholder or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

History: 1981 c 270 s 116

302A.781 CLAIMS BARRED; EXCEPTIONS.

Subdivision 1. **Claims barred.** A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in sections 302A.729, 302A.741, 302A.751, or 302A.759, or has not initiated a legal, administrative, or arbitration proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

Subd. 2. **Claims reopened.** At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

(a) Against the corporation to the extent of undistributed assets; or

(b) If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability shall be limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder.

Subd. 3. **Claims permitted.** All debts, obligations, and liabilities incurred during dissolution proceedings shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers, directors, and shareholders of the corporation before the expiration of the applicable statute of limitations. This subdivision does not apply to dissolution under the supervision or order of a court.

History: 1981 c 270 s 117; 1982 c 497 s 67

302A.783 RIGHT TO SUE OR DEFEND AFTER DISSOLUTION.

After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

History: 1981 c 270 s 118

302A.791 OMITTED ASSETS.

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by a court in this state.

History: 1981 c 270 s 119

EXTENSION**302A.801 EXTENSION AFTER DURATION EXPIRED.**

Subdivision 1. **Extension by amendment.** A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, at any time after the date of expiration by filing an amendment to the articles as set forth in this section.

Subd. 2. **Contents of amendment.** An amendment to the articles shall be approved by the affirmative vote of a majority of the directors present and shall include:

- (a) The date the period of duration expired under the articles;
- (b) A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
- (c) A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

Subd. 3. **Approval by shareholders.** The amendment to the articles shall be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 302A.135.

Subd. 4. **Filing.** Articles of amendment conforming to section 302A.139 shall be filed with the secretary of state.

History: 1981 c 270 s 120

302A.805 EFFECT OF EXTENSION.

Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

- (a) Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
- (b) Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
- (c) Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

History: 1981 c 270 s 121

CORPORATE REGISTRATION

302A.821 MINNESOTA CORPORATE REGISTRATION.

Subdivision 1. **Information required.** A domestic corporation shall annually file with the commissioner of revenue along with the return required by sections 290.37 and 290.974, or along with an affidavit that the corporation need not file a return under section 290.37, a registration containing:

- (a) The name of the corporation;
- (b) The address of its principal executive office;
- (c) The address of its registered office;
- (d) The state of incorporation;
- (e) The former name and address of the corporation or its registered office, if changed since the corporation filed its previous return;
- (f) The name of its registered agent, if any; and
- (g) The name and business address of the officer or other person exercising the principal functions of the chief executive officer of the corporation.

Subd. 2. **Information public.** The information required by subdivision 1 shall be forwarded by the commissioner of revenue to the secretary of state and is public data. Chapter 13 does not apply to this information.

Subd. 3. **Loss of good standing.** A corporation that fails to file a registration pursuant to the requirements of subdivision 1 loses its good standing in this state and is subject to a \$25 fine. The corporation may regain its good standing in this state by filing the registration.

Subd. 4. **Notice of repeated violation.** If a corporation fails for two consecutive years to file a registration pursuant to the requirements of subdivision 1, the secretary of state shall give notice by registered mail to the corporation at its registered office that it has violated this section and is subject to dissolution by the office of the secretary of state if the delinquent registrations are not filed pursuant to subdivision 1 within 60 days after the mailing of the notice.

Subd. 5. **Penalty.** (a) A corporation that has failed for two consecutive years to file a registration pursuant to the requirements of subdivision 1, has been notified of the failure pursuant to subdivision 4, and has failed to file the delinquent registrations during the 60-day period described in subdivision 4, may be dissolved by the secretary of state as described in paragraph (b).

(b) Immediately after the expiration of the 60-day period described in paragraph (a), if the corporation has not filed the delinquent registrations, the secretary of state shall issue a certificate of involuntary dissolution, and a copy of the certificate shall be filed in the office of the secretary of state. The original certificate and a notice explaining that the corporation has been dissolved shall be sent to the registered office of the corporation. The secretary of state shall annually inform the attorney general and the commissioner of revenue of the names of corporations dissolved under this section during the preceding year. A corporation dissolved in this manner is not entitled to the benefits of section 302A.781, subdivision 1. The liability, if any, of the shareholders of a corporation dissolved in this manner shall be determined and limited in accordance with section 302A.557, except that the shareholders shall have no liability to any director of the corporation under section 302A.559, subdivision 2.

History: 1981 c 270 s 122; 1981 c 311 s 39; 1982 c 497 s 68,69; 1982 c 545 s 24

NOTE: This section is effective January 1, 1985. See Laws 1981, Chapter 270, Section 144.

NOTE: The amendments to subdivisions 4 and 5 by Laws 1982, Chapter 497, Sections 68 and 69 are effective January 1, 1985. See Laws 1982, Chapter 497, Section 74.

ACTIONS AGAINST CORPORATIONS

302A.901 SERVICE OF PROCESS ON CORPORATION.

Subdivision 1. **Who may be served.** A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent, if any, of the corporation named in the articles, or upon an officer of the corporation, or upon the secretary of state as provided in this section.

Subd. 2. **Service on secretary of state; when permitted.** If a corporation has appointed and maintained a registered agent in this state but neither its registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to appoint or maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person not a party, that no registered agent or officer can be found at the registered office in a county is conclusive evidence that the corporation has no registered agent or officer at its registered office. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and shall be made by filing with the secretary of state duplicate copies of the process, notice, or demand. The secretary of state shall immediately forward, by certified mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than 30 days notwithstanding a shorter period specified in the process, notice, or demand.

Subd. 3. **Record of service.** There shall be maintained in the office of the secretary of state a record of all processes, notices, and demands served upon the secretary of state under this section, including the date and time of service and the action taken with reference to it.

Subd. 4. **Other methods of service.** Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

History: 1981 c 270 s 123; 3Sp1981 c 2 art 1 s 35

302A.917 STATE INTERESTED; PROCEEDINGS.

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

History: 1981 c 270 s 124