

CHAPTER 302A

BUSINESS CORPORATIONS

302A.011 Definitions.

302A.115 Corporate name.

302A.215 Cumulative voting for directors.

302A.413 Preemptive rights.

302A.461 Books and records; inspection.

302A.521 Indemnification.

302A.751 Involuntary dissolution.

302A.011 DEFINITIONS.

[For text of subs 1 to 6, see M.S.1982]

Subd. 6a. **Closely held corporation.** "Closely held corporation" means a corporation which does not have more than 35 shareholders.

[For text of subs 7 to 36, see M.S.1982]

History: 1983 c 368 s 2

302A.115 CORPORATE NAME.

[For text of subs 1 to 6, see M.S.1982]

Subd. 7. **Lost names; use by others.** Each corporation formed before July 1, 1979 which has not filed the active status report required by Minnesota Statutes 1982, section 301.511 and which has not elected to become governed by this chapter before January 1, 1984 shall file that report with the secretary of state accompanied by a filing fee of \$10.

Each corporation which has not filed that report on August 1, 1983 loses its right to the exclusive use of its name. The corporation may reacquire the right to use that name by filing the report and paying the fee required by this subdivision, unless the name has been adopted for use or reserved by another person, in which case the report will be rejected unless the report can be accepted pursuant to subdivision 1, clause (d). A corporation which cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of section 302A.115.

History: 1983 c 368 s 3

302A.215 CUMULATIVE VOTING FOR DIRECTORS.

Subdivision 1. **Voting rights.** 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.

Subd. 2. **Modifications.** No amendment to the articles or bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for directors provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

History: 1983 c 368 s 4

302A.413 PREEMPTIVE RIGHTS.

[For text of subs 1 to 8, see M.S.1982]

Subd. 9. **Modification.** No amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section shall be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

History: 1983 c 368 s 5

302A.461 BOOKS AND RECORDS; INSPECTION.

[For text of subs 1 to 4, see M.S.1982]

Subd. 4a. **Protective orders.** On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed 12 months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed 12 months and in total not to exceed 36 months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate.

[For text of subd 5, see M.S.1982]

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 accurately 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: 1983 c 368 s 6,7

302A.521 INDEMNIFICATION.

[For text of subs 1 to 5, see M.S.1982]

Subd. 6. **Determination of eligibility.** (a) 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:

(1) 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;

(2) If a quorum under clause (1) 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;

(3) If a determination is not made under clause (1) or (2), by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to clause (1) or (2) 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;

(4) If a determination is not made under clauses (1) to (3), by the shareholders, excluding the votes of shares held by parties to the proceeding; or

(5) If an adverse determination is made under clauses (1) to (4), or if no determination is made under clauses (1) to (4) 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.

(b) With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subdivision 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subdivision 3 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.

[For text of subs 7 and 8, see M.S.1982]

History: 1983 c 368 s 8

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 unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;

(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 closely held corporation 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.

[For text of subd 3, see M.S.1982]

Subd. 3a. Considerations in granting relief involving closely held corporations. In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

[For text of subds 4 and 5, see M.S.1982]

History: 1983 c 368 s 9-11