

## CHAPTER 302A

## BUSINESS CORPORATIONS

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**302A.011 DEFINITIONS.**

*[For text of subs 1 to 37, see M.S.1990]*

**Subd. 38. Control share acquisition.** "Control share acquisition" means an acquisition, directly or indirectly, by an acquiring person of beneficial ownership of shares of an issuing public corporation that, except for section 302A.671, would, when added to all other shares of the issuing public corporation beneficially owned by the acquiring person, entitle the acquiring person, immediately after the acquisition, to exercise or direct the exercise of a new range of voting power within any of the ranges specified in section 302A.671, subdivision 2, paragraph (d), but does not include any of the following:

- (a) an acquisition before, or pursuant to an agreement entered into before, August 1, 1984;
- (b) an acquisition by a donee pursuant to an inter vivos gift not made to avoid section 302A.671 or by a distributee as defined in section 524.1201, clause (10);
- (c) an acquisition pursuant to a security agreement not created to avoid section 302A.671;
- (d) an acquisition under sections 302A.601 to 302A.661, if the issuing public corporation is a party to the transaction;
- (e) an acquisition from the issuing public corporation;
- (f) an acquisition for the benefit of others by a person acting in good faith and not made to avoid section 302A.671, to the extent that the person may not exercise or direct the exercise of the voting power or disposition of the shares except upon the instruction of others;
- (g) an acquisition pursuant to a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries, or by a fiduciary of the plan acting in a fiduciary capacity pursuant to the plan; or
- (h) an acquisition subsequent to January 1, 1991, pursuant to an offer to purchase for cash all shares of the voting stock of the issuing public corporation:
  - (i) which has been approved by a majority vote of the members of a committee comprised of the disinterested members of the board of the issuing public corporation formed pursuant to section 302A.673, subdivision 1, paragraph (d); and
  - (ii) pursuant to which the acquiring person will become the owner of over 50 percent of the voting stock of the issuing public corporation outstanding at the time of the transaction.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (g), or by a fiduciary of a plan described in clause (g) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan. All shares the beneficial ownership of which is acquired within a 120-day period, and all shares the beneficial ownership of which is acquired pursuant to a plan to make a control share acquisition, shall be deemed to have been acquired in the same acquisition.

Subd. 39. **Issuing public corporation.** "Issuing public corporation" means a corporation which has at least 50 shareholders.

*[For text of subds 40 to 48, see M.S.1990]*

Subd. 49. **Interested shareholder.** (a) "Interested shareholder," when used in reference to any issuing public corporation, means any person that is (1) the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation or (2) an affiliate or associate of the issuing public corporation and at any time within the four-year period immediately before the date in question was the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the then outstanding shares entitled to vote of the issuing public corporation. Notwithstanding anything stated in this subdivision, if a person who has not been a beneficial owner of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation immediately prior to a repurchase of shares by, or recapitalization of, the issuing public corporation or similar action shall become a beneficial owner of ten percent or more of the voting power solely as a result of the share repurchase, recapitalization, or similar action, the person shall not be deemed to be the beneficial owner of ten percent or more of the voting power for purposes of clause (1) or (2) unless:

(i) the repurchase, recapitalization, conversion, or similar action was proposed by or on behalf of, or pursuant to any agreement, arrangement, relationship, understanding, or otherwise (whether or not in writing) with, the person or any affiliate or associate of the person; or

(ii) the person thereafter acquires beneficial ownership, directly or indirectly, of outstanding shares entitled to vote of the issuing public corporation and, immediately after the acquisition, is the beneficial owner, directly or indirectly, of ten percent or more of the voting power of the outstanding shares entitled to vote of the issuing public corporation.

(b) Interested shareholder does not include:

- (1) the issuing public corporation or any of its subsidiaries; or
- (2) a savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or its subsidiary, or a fiduciary of the plan when acting in a fiduciary capacity pursuant to the plan.

For purposes of this subdivision, shares beneficially owned by a plan described in clause (2), or by a fiduciary of a plan described in clause (2) pursuant to the plan, are not deemed to be beneficially owned by a person who is a fiduciary of the plan.

*[For text of subds 50 and 51, see M.S.1990]*

Subd. 52. **Offeror.** "Offeror" means a person who makes or in any way participates in making a takeover offer. Offeror does not include a bank or broker-dealer loaning funds to an offeror in the ordinary course of its business or a bank, broker-dealer, attorney, accountant, consultant, employee, or other person furnishing information or advice to or performing ministerial duties for an offeror and not otherwise participating in the takeover offer. When two or more persons act as a partnership, limited partnership, syndicate, or other group pursuant to any agreement, arrangement, relationship, understanding, or otherwise, whether or not in writing, for the purpose of acquiring, owning, or voting shares of a target company, all members of the partnership, syndicate, or other group constitute "a person."

Subd. 53. **Takeover offer.** (a) "Takeover offer" means an offer to acquire shares of

an issuing public corporation from a shareholder pursuant to a tender offer or request or invitation for tenders, if, after the acquisition of all shares acquired pursuant to the offer:

(1) the offeror would be directly or indirectly a beneficial owner of more than ten percent of any class of the outstanding shares of the issuing public corporation and was directly or indirectly the beneficial owner of less than ten percent of any class of the outstanding shares of the issuing public corporation before commencement of the offer; or

(2) the beneficial ownership by the offeror of any class of the outstanding shares of the issuing public corporation would be increased by more than ten percent of that class and the offeror was directly or indirectly the beneficial owner of ten percent or more of any class of the outstanding shares of the issuing public corporation before commencement of the offer.

(b) Takeover offer does not include:

(1) an offer in connection with the acquisition of a share which, together with all other acquisitions by the offeror of shares of the same class of shares of the issuer, would not result in the offeror having acquired more than two percent of this class during the preceding 12-month period;

(2) an offer by the issuer to acquire its own shares unless the offer is made during the pendency of a takeover offer by a person who is not an associate or affiliate of the issuer;

(3) an offer in which the issuing public corporation is an insurance company subject to regulation by the commissioner of commerce, a financial institution regulated by the commissioner, or a public service utility subject to regulation by the public utilities commission.

**History:** 1991 c 58 s 9-13

### 302A.111 ARTICLES.

*[For text of subd 1, see M.S.1990]*

**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, divisions, or combinations, 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, divisions, or combinations, 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) Each share has one vote unless otherwise provided in the terms of the share (section 302A.445, subdivision 3);

(r) A corporation may issue shares for a consideration less than the par value, if any, of the shares (section 302A.405, subdivision 2); and

(s) The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval (section 302A.402).

*[For text of subs 3 to 6, see M.S.1990]*

**History:** 1991 c 49 s 1

### 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) With respect to an amendment restating the articles, a statement that the amendment restating the articles correctly sets forth without change the corresponding provisions of the articles as previously amended if the amendment was approved only by the board;

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

(e) A statement that the amendment has been adopted pursuant to this chapter.

**History:** 1991 c 49 s 2

### 302A.401 AUTHORIZED SHARES.

*[For text of subs 1 and 2, see M.S.1990]*

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 or resolutions 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. Any of the rights and preferences of a class or series:

(1) may be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

(2) may incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

(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; provided, however, where the shareholders have received notice of the creation of shares with rights or preferences not set forth in the articles before the issuance of the shares, the statement may be filed any time within one year after the issuance of the shares. The resolution is effective when the statement has been filed with the secretary of state; or, if it is not required to be filed with the secretary of state before the issuance of shares, on the date of its adoption by the directors.

(c) A statement filed with the secretary of state in accordance with paragraph (b) is not considered an amendment of the articles for purposes of sections 302A.137 and 302A.471.

**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 or at a price determined in the manner specified by the articles or by the board;

(b) Entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions in the amounts fixed by the articles or by the board or in amounts determined in the manner specified by the articles or by the board;

(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 on the terms fixed by the articles or by the board or on terms determined in the manner specified by the articles or by the board; or

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

**History:** 1991 c 49 s 3,4

### **302A.402. SHARE DIVIDENDS, DIVISIONS, AND COMBINATIONS.**

**Subdivision 1. Power to effect.** A corporation may effect a share dividend or a division or combination of its shares as provided in this section. As used in this section, the terms "division" and "combination" mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

**Subd. 2. When shareholder approval required; filing of articles of amendment.** (a) Articles of amendment must be adopted by the board and the shareholders under sections 302A.135 and 302A.137 to effect a division or combination if, as a result of the proposed division or combination:

(1) the rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or

(2) the percentage of authorized shares remaining unissued after the division or combination will exceed the percentage of authorized shares that were unissued before the division or combination.

For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of the shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of

authorized shares remaining unissued arising solely from the elimination of fractional shares under section 302A.423 must be disregarded.

(b) If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 302A.139.

**Subd. 3. By action of board alone; filing of articles of amendment.** (a) Subject to the restrictions provided in subdivision 2 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 302A.135 and 302A.137. In effecting a division or combination under this subdivision, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

(b) If a division or combination that includes an amendment of the articles is effected under this subdivision, then articles of amendment must be prepared that contain the information required by section 302A.139 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were issued before the division or combination.

**History:** 1991 c 49 s 5

### **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 in accordance with section 302A.402, 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, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other 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.

*[For text of subs 2 and 3, see M.S.1990]*

**History:** 1991 c 49 s 6

### **302A.413 PREEMPTIVE RIGHTS.**

*[For text of subs 1 and 2, see M.S.1990]*

**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 series as the series held by the shareholder or, if a class of shares has no series,

the same class as the class 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 series as the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.

*[For text of subs 4 to 9, see M.S.1990]*

**History:** 1991 c 49 s 7

### 302A.435 NOTICE.

Subdivision 1. **To whom given.** Except as otherwise provided in this chapter, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, except unless:

(1) the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or

(2) the following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:

(i) two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

(ii) all payments of dividends, provided there are at least two sent during a 12-month period.

An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

*[For text of subs 2 to 4, see M.S.1990]*

**History:** 1991 c 49 s 8

### 302A.436 ELECTRONIC COMMUNICATIONS.

Subdivision 1. **Electronic conferences.** If and to the extent authorized in the bylaws or by the board of a closely held corporation, a conference among shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders, if the same notice is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting, and if the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

Subd. 2. **Participation by electronic means.** If and to the extent authorized in the bylaws or by the board of a closely held corporation, a shareholder may participate in a regular or special meeting of shareholders not described in subdivision 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 302A.449 are met.

Subd. 3. **Waiver.** Waiver of notice of a meeting by means of communication described in subdivisions 1 and 2 may be given in the manner provided in section 302A.435, subdivision 4. Participation in a meeting by means of communication described in subdivisions 1 and 2 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 the meeting and does not participate in the consideration of the item at that meeting.

**History:** 1991 c 49 s 9

**302A.437 ACT OF THE SHAREHOLDERS.**

Subdivision 1. **Majority required.** The shareholders shall take action by the affirmative vote of the holders of the greater of (1) a majority of the voting power of the shares present and entitled to vote on that item of business, or (2) a majority of the voting power of the minimum number of the shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, 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.

*[For text of subd 2, see M.S.1990]*

**History:** 1991 c 49 s 10

**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. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegram, cablegram, or other means of electronic transmission, provided that the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or otherwise authorized 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.

*[For text of subs 2 to 7, see M.S.1990]*

Subd. 8. **Limited authority.** If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of section 302A.437, subdivision 1, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subdivision.

**History:** 1991 c 49 s 11,12

**302A.461 BOOKS AND RECORDS; INSPECTION.**

*[For text of subd 1, see M.S.1990]*

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;
- (i) Shareholder control agreements described in section 302A.457; and
- (j) A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under section 320A.401, subdivision 3.

*[For text of subd 3, see M.S.1990]*

**Subd. 4. Right to inspect.** (a) A shareholder, beneficial owner, or a holder of a voting trust certificate of a corporation that is not a publicly held corporation 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 of a corporation that is not a publicly held corporation 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.

(c) A shareholder, beneficial owner, or a holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter 358, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.

(d) For purposes of this section, 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. 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. This subdivision does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or examined under subdivision 4 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

*[For text of subs 4b to 6, see M.S.1990]*

**History:** 1991 c 49 s 13-15

### **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 excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section;

(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 to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; 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.

*[For text of subs 2 to 4, see M.S.1990]*

**History:** 1991 c 49 s 16

### 302A.551 DISTRIBUTIONS.

*[For text of subs 1 to 3, see M.S.1990]*

**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, other than those holders who give notice to the corporation of their agreement to waive their rights to that payment, 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 or the holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

A determination that 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 is presumed to be proper if the determination is made in compliance with the standard of conduct pro-

vided in section 302A.251 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation, or other methods, reasonable in the circumstances. Liability under section 302A.251 or 302A.559 will not arise if the requirements of this paragraph are met.

(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 unless those holders who do not receive distributions in that order give notice to the corporation of their agreement to waive their rights to that distribution.

**History:** 1991 c 49 s 17

### **302A.553 POWER TO ACQUIRE SHARES.**

*[For text of subs 1 and 2, see M.S.1990]*

**Subd. 3. Limitation on share purchases.** Except for redemptions under section 302A.671, subdivision 6, a publicly held corporation shall not, directly or indirectly, purchase or agree to purchase any shares entitled to vote from a person (or two or more persons who act as a partnership, limited partnership, syndicate, or other group pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise for the purpose of acquiring, owning, or voting shares of the publicly held corporation) who beneficially owns more than five percent of the voting power of the publicly held corporation for more than the market value thereof if the shares have been beneficially owned by the person for less than two years, unless the purchase or agreement to purchase is approved at a meeting of shareholders by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote or the publicly held corporation makes an offer, of at least equal value per share, to all holders of shares of the class or series and to all holders of any class or series into which the securities may be converted. For purposes of determining the period that shares have been beneficially owned by a person:

(1) shares acquired by the person by gift from a donor are deemed to have first become beneficially owned by the person when the shares were acquired by the donor;

(2) shares acquired by a trust from the settlor of the trust, or shares acquired from the trust by a beneficiary of the trust, are deemed to have first become beneficially owned by the trust or the beneficiary when the shares were acquired by the settlor; and

(3) shares acquired by an estate or personal representative as a result of the death or incapacity of a person, or shares acquired from the estate or personal representative by an heir, devisee, or beneficiary of the deceased or incapacitated person, are deemed to have first become beneficially owned by the estate, personal representative, heir, devisee, or beneficiary when the shares were acquired by the deceased or incapacitated person.

**History:** 1991 c 58 s 14

### **302A.613 PLAN APPROVAL.**

*[For text of subd 1, see M.S.1990]*

**Subd. 2. Approval by shareholders.** (a) 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. Except as provided in paragraph (b), 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 included in the exchange.

(b) A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation of the

shares of the class or series if the plan of merger or exchange effects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 302A.471 in the event of the merger or exchange.

*[For text of subd 3, see M.S.1990]*

**History:** 1991 c 49 s 18

### 302A.621 MERGER OF SUBSIDIARY.

**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 directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least 90 percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of itself or any subsidiary or may merge itself, or itself and one or more of the subsidiaries, into one of the subsidiaries under this section. 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 or subsidiaries, the name of the parent and the name of the surviving corporation;

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

(c) If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and

(d) If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger.

If the parent is a constituent corporation but is not the surviving corporation in the merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 302A.613 if the parent is a domestic corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

**Subd. 2. Notice to shareholders of subsidiary.** A copy of the plan of merger shall be mailed to each shareholder, other than the parent and any subsidiary, of each subsidiary that is a constituent corporation in the merger.

**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 each subsidiary that is a constituent corporation in the merger and the number of shares of each class and series of the subsidiary or subsidiaries owned by the parent directly, or indirectly through related corporations;

(c) The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of each subsidiary that is a constituent corporation in the merger; and

(d) A statement that the plan of merger has been approved by the parent under this section.

**Subd. 4. Articles signed, filed.** Within 30 days after a copy of the plan of merger is mailed to shareholders of each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each

subsidiary that is a constituent corporation to the merger, 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 or, if the parent is a constituent corporation but is not the surviving corporation in the merger, to the surviving corporation or its legal representative.

**Subd. 6. Rights of dissenting shareholders.** In the event all of the stock of one or more domestic subsidiaries of the parent that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenters' rights under section 302A.471, without regard to sections 302A.471, subdivision 3, and 302A.473. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenters' rights under section 302A.471, subdivision 1, paragraph (a), if the articles of incorporation of the surviving corporation constituted an amendment to the articles of incorporation of the parent, that shareholder of the parent has dissenters' rights as provided under sections 302A.471 and 302A.473. Except as provided in this subdivision, sections 302A.471 and 302A.473 do not apply to any merger effected under this section.

**Subd. 7. Nonexclusivity.** A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 302A.611, 302A.613, and 302A.615 instead of this section, in which case this section does not apply.

**History:** 1991 c 49 s 19

### **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:

- (1) with respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation is incorporated; and
- (2) with respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation is incorporated.

*[For text of subs 2 to 4, see M.S.1990]*

**History:** 1991 c 49 s 20

### **302A.675 TAKEOVER OFFER; FAIR PRICE.**

**Subdivision 1. Fair price requirement.** An offeror may not acquire shares of a publicly held corporation within two years following the last purchase of shares pursuant to a takeover offer with respect to that class, including, but not limited to, acquisitions made by purchase, exchange, merger, consolidation, partial or complete liquidation, redemption, reverse stock split, recapitalization, reorganization, or any other similar transaction, unless the shareholder is afforded, at the time of the acquisition, a reasonable opportunity to dispose of the shares to the offeror upon substantially equivalent terms as those provided in the earlier takeover offer.

**Subd. 2. Exception.** Subdivision 1 does not apply if the acquisition of shares is approved by a committee of the board's disinterested directors before the purchase of any shares by the offeror pursuant to a takeover offer. The provisions of section 302A.673, subdivision 1, paragraph (d), relating to a committee of disinterested directors, apply to this section.

**History:** 1991 c 58 s 15

**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.7291; or
- (c) By order of a court pursuant to sections 302A.741 to 302A.765.

**History:** 1991 c 49 s 21

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

*[For text of subs 1 and 2, see M.S.1990]*

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 sections 302A.727, 302A.7291, and 302A.781.

**History:** 1991 c 49 s 22

**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 known debts due or owing to the corporation, including unpaid subscriptions for shares;
- (b) Except as provided in sections 302A.727, 302A.7291, and 302A.781, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and
- (c) To give notice to creditors and claimants under section 302A.727 or to proceed under section 302A.7291.

*[For text of subs 2 and 3, see M.S.1990]*

**History:** 1991 c 49 s 23

**302A.727 DISSOLUTION PROCEDURE FOR CORPORATIONS THAT GIVE 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 creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in a legal newspaper in the county or counties where the registered office and the principal executive office of the corporation are located and by giving written notice to known creditors and claimants pursuant to section 302A.011, subdivision 17.

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 published notice or, with respect to a particular known creditor or claimant, 90 days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

**Subd. 3. Claims against corporations that give notice.** (a) A corporation that gives notice to creditors and claimants has 30 days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice 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.

(b) 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, 180 days from the date the corporation filed with the secretary of state the notice of intent to dissolve, or 90 days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

(c) 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 barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 302A.781.

(d) A creditor or claimant whose claim is rejected by the corporation under paragraph (b) is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in paragraph (b).

**Subd. 4. Articles of dissolution; when filed.** Articles of dissolution for a corporation that has given notice to creditors and claimants under this section must be filed with the secretary of state after:

(1) the 90-day period in subdivision 2, paragraph (e), has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

(2) the longest of the periods described in subdivision 3, paragraph (b), has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b).

**Subd. 5. Contents of articles.** The articles of dissolution must state:

(1) the last date on which the notice was given and: (i) that the payment of all creditors and claimants filing a claim within the 90-day period in subdivision 2, paragraph (e), has been made or provided for; or (ii) the date on which the longest of the periods described in subdivision 3, paragraph (b), expired;

(2) 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

(3) that there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision 3, paragraph (b), 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.

*History: 1991 c 49 s 24*

**302A.729** [Repealed, 1991 c 49 s 28]

**302A.7291 DISSOLUTION PROCEDURE FOR CORPORATIONS THAT DO NOT GIVE NOTICE.**

**Subdivision 1. Articles of dissolution; when filed.** Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 302A.727 must be filed with the secretary of state after:

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

(2) at least two years have elapsed from the date of filing the notice of intent to dissolve.

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

(1) if articles of dissolution are being filed pursuant to subdivision 1, clause (1),

that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

(2) 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

(3) 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.

**Subd. 3. Claims against corporations that do not give notice.** (a) If the corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

(b) If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 302A.781.

**History:** 1991 c 49 s 25

**302A.730** [Repealed, 1991 c 49 s 28]

**302A.733** [Repealed, 1991 c 49 s 28]

### **302A.734 EFFECTIVE DATE OF DISSOLUTION; CERTIFICATE.**

**Subdivision 1. Effective date.** When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

**Subd. 2. Certificate.** The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

(1) the name of the corporation;

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

(3) a statement that the corporation is dissolved.

**History:** 1991 c 49 s 26

### **302A.781 CLAIMS BARRED; EXCEPTIONS.**

**Subdivision 1. Claims barred.** Except as provided in this section, a creditor or claimant whose claims are barred under section 302A.727, 302A.7291, or 302A.759 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.

**Subd. 2. Claims reopened.** At any time within one year after articles of dissolution have been filed with the secretary of state pursuant to section 302A.727 or 302A.7291, subdivision 1, clause (2), 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, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

**Subd. 3. Obligations incurred during dissolution proceedings.** All known contrac-



tual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid or provided for 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 before the expiration of the applicable statute of limitations against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for payment of the debts, obligations, and liabilities or against shareholders to the extent permitted under section 302A.559. This subdivision does not apply to dissolution under the supervision or order of a court.

**History:** 1991 c 49 s 27

### 302A.821 MINNESOTA CORPORATE REGISTRATION.

*[For text of subs 1 and 2, see M.S.1990]*

**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 fee. The corporation may regain its good standing in this state by filing a single registration.

**Subd. 4. Notice of repeated violation.** If a corporation fails for three consecutive years to file a registration pursuant to the requirements of subdivision 1, the secretary of state shall give notice by first class 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 registration is not filed pursuant to subdivision 1 within 60 days after the mailing of the notice. For purposes of this subdivision, "delinquent registration" means a single annual registration.

**Subd. 5. Penalty.** (a) A corporation that has failed for three 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 registration 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 registration, 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 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:** 1991 c 205 s 5-7