

Minnesota State Bar Association

SF1431/HF747: Business Corporation Act Update

Background:

- The Minnesota Business Corporation Act (Ch. 302A) governs the internal affairs of public and private business corporations formed in Minnesota.
- A subcommittee of the Minnesota State Bar Association regularly monitors changes to the Model Business Corporation Act as well as developments in Delaware law (the leading corporate law jurisdiction) and considers if Ch. 302A should incorporate the same or similar changes.
- The changes in this bill affect the internal affairs of corporations (i.e., how the shareholders, officers, and directors interact with each other). It does not affect a corporation's external affairs (i.e., how it deals with the public).

The following are the significant changes in this legislation:

- ***Beneficial Ownership Clarification.*** The bill clarifies that the definition of “beneficial ownership” in a corporation applies to anyone who owns at least ten percent of any trust or estate or serves as a trustee for a trust or estate that owns shares in a corporation.
- ***Emergency Powers.*** Modeled after Delaware law, the bill modifies the authority of corporate boards to adopt emergency powers bylaw provisions. In the absence of such provisions, the bill establishes which emergency powers exist and provides means for their termination.
- ***Defective Acts.*** This bill establishes processes for ratifying or validating defective corporate acts, transactions, and stock issuances.
- ***Shareholder Control Agreements.*** In response to recent Delaware case law, the bill allows articles of incorporation to highlight the right to adopt shareholder control agreements. The bill also authorizes dissenters' rights for objecting shareholders.
- ***Board Approval of Contracts.*** In response to recent Delaware case law, the bill clarifies that a board may approve an agreement in final or substantially final form.
- ***Optional Officer Exculpation.*** Minnesota permits corporations to exculpate directors from personal liability under certain circumstances. Other states, including Delaware, extend this protection to officers. The bill would permit publicly held Minnesota corporations to do the same, subject to exceptions.
- ***Inspection of Books and Records.*** Current law mandates that corporations maintain certain books and records; it also allows shareholders, beneficial owners, and holders of voting trust certificates to inspect them. The bill would add equitable-enforcement provisions for beneficial owners and holders of voting trust certificates, the same as for shareholders.
- ***Mergers.*** The bill expressly permits parties to include provisions in merger agreements to allow the target to seek damages against a buyer that has breached the agreement.