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REPORT
TO THE
SENATE OF THE STATE OF MINNESOTA
FROM THE
ADVISORY TASK FORCE ON MINNESOTA CORPORATION LAW

1 TO THE SENATE OF THE STATE OF MINNESOTA:

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Preface

4

5 The Advisory Task Force on Minnesota Corporation Law was
6 formed in May, 1979, as a cooperative effort of the Minnesota
7 Senate, the Secretary of State of Minnesota, and the
8 Corporation, Banking, and Business Law Section of the Minnesota
9 State Bar Association. Pursuant to written agreements with the
10 Rules and Administration Committee of the Minnesota Senate, the
11 Task Force committed to carry on a systematic analysis of
12 Minnesota's business corporation laws (principally sections
13 301.01 to 301.67 of the Minnesota Statutes and related statutory
14 provisions) and to develop and submit to the Minnesota Senate by
15 December 31, 1980, a proposal for revising and modernizing
16 Minnesota's business corporation laws to meet the legitimate and
17 contemporary business needs of local businesses, large and
18 small, whose corporate affairs are governed by those laws.

19 The Task Force is pleased to submit this Report and the
20 accompanying proposed bill to enact a new Minnesota Business
21 Corporation Act in fulfillment of its undertaking. We urge that
22 the Minnesota Legislature enact the proposed new Minnesota
23 Business Corporation Act during the 1981 Session.

24 The substance of this Report follows these prefatory
25 comments. First, we describe the problems posed by our present
26 business corporation laws, point out contemporary approaches to
27 corporate law revision undertaken elsewhere, detail the approach
28 adopted and followed by the Task Force as it developed the
29 proposed new Minnesota Business Corporation Act, and highlight
30 the most significant provisions of the proposed new act.
31 Second, our Reporter's section-by-section analysis of the
32 proposed new act follows that discussion and details for each
33 section the derivation of the section, the present Minnesota
34 statutory counterpart, any change from present law, and an
35 explanation of the section. Finally, we set forth the text of
36 the proposed act.

37 The members of the Task Force and its Committees are

1 lawyers. They devoted countless hours to this project in the
2 process of reading voluminous research materials and researching
3 numerous substantive and policy questions on their own,
4 attending many meetings, debating, deliberating, and, finally,
5 developing the proposed new Minnesota Business Corporation Act.
6 The Task Force and its committees met a total of 60 times for a
7 total of 205 hours.

8 Thirteen persons served on the Task Force: Robert W. Boyd,
9 Richard J. FitzGerald, Avron L. Gordon (Chairman, Liquidations
10 and Dissolutions Committee), Williams J. Hay, John S. Hibbs
11 (Chairman), Paul A. Magnuson, Robert A. Minish, Lawrence
12 Perlman, Robert J. Sefkow, Ralph Strangis (Chairman, Fundamental
13 Changes Committee), Burt E. Swanson, Tom Togas, and Robert B.
14 Whitlock (Chairman, Shareholder Rights Committee). Twenty-six
15 additional persons served on active Committees of the Task
16 Force: William F. Archerd, Thomas M. Brown, Earl F. Colborn,
17 Jr. (Chairman, Close Corporations Committee), Patrick J.
18 Delaney, Charlton Dietz, William T. Dolan, Thomas D. Feinberg,
19 George P. Flannery, Gerald T. Flom, James T. Hale, Robert J.
20 Johnson, D. William Kaufman, Glenn R. Kessel, Logan Langworth,
21 Richard G. Lareau (Chairman, Directors and Officers Committee),
22 James B. Lund, Gerald E. Magnuson, Professor Joseph E. Olson,
23 Michael Prichard, Jerry F. Rotman, Henry J. Savelkoul, Paul J.
24 Scheerer, Neil I. Sell, Archibald C. Spencer, Paul M. Torgerson,
25 and Sherman Winthrop. The differing perspectives of the members
26 of the Task Force and the Committees produced particularly
27 lively debate and finely-honed provisions in the proposed new
28 act, reflecting a negotiated and reasonable adjustment of those
29 differences.

30 We gratefully acknowledge the work of our Reporter, Bert
31 Black, whose exceptional scholarship, administrative talents,
32 and substantial contributions to the development of the proposed
33 new business corporation act cannot be overstated. He
34 coordinated all activities of the Task Force and each of its
35 Committees, somehow kept the project on schedule, helped the
36 Task Force develop and then adhere to its approach, assured that
37 members of the Task Force and the Committees analyzed both sides

1 of all policy issues and were aware of the differing policies
2 reflected in the laws of other states, produced detailed
3 research on a multitude of issues on short notice, drafted
4 countless versions of proposed sections of the act and much of
5 the final proposed act itself, and prepared the
6 section-by-section analysis of the proposed act included in of
7 this Report.

8 We are also indebted to six Liaison Representatives to the
9 Task Force from the legislative and executive branches of
10 government of the State of Minnesota: Peter S. Wattson,
11 Minnesota Senate Counsel, whose considerable expertise, complete
12 objectivity, superior drafting skills, and long hours devoted to
13 this project were invaluable to the Task Force; Sue Halverson,
14 Special Assistant Attorney General in the Consumer Protection
15 Division of the Office of the Minnesota Attorney General; Mark
16 Winkler, Deputy Secretary of State at the time the Task Force
17 was formed; Randy Sayers, Director of the Corporations Division
18 of the Office of the Secretary of State of Minnesota; Tracy
19 Godfrey, representing the Minnesota Department of Economic
20 Development; and Daniel W. Hardy, Assistant to the Commissioner
21 of the Securities Division of the Minnesota Department of
22 Commerce. Our Liaison Representatives participated actively in
23 meetings of the Task Force, helped us focus on problems, policy
24 considerations, and solutions from the perspective of agencies
25 of government and the public generally, suggested various
26 provisions that appear in the proposed act, and otherwise
27 contributed importantly to the development of the proposed new
28 business corporation act.

29 The early work of the Task Force was aided significantly by
30 Amy A. Anderson, Paul C. Dorn, Philip Finkelstein, and Karmen
31 Nelson, who served as our research assistants while students at
32 the University of Minnesota Law School. Numerous other students
33 at the University of Minnesota Law School and the Hamline
34 University School of Law also rendered valuable legal research
35 assistance to the Task Force and its Committees.

36 We benefited considerably from the thoughtful comments and
37 suggestions submitted to us by many lawyers, law professors, and

1 organizations in response to our exposure draft of the proposed
2 new business corporation act. Of particular assistance to the
3 Task Force as it developed the final version of the proposal
4 were the extensive critiques of the exposure draft submitted by
5 Professor Richard M. Buxbaum of the School of Law at the
6 University of California, Berkeley; Professor Andrew W. Haines
7 of William Mitchell College of Law; Professor Harry J.
8 Haynsworth of the University of South Carolina School of Law;
9 Raymond B. Ondov of Austin, Minnesota; Paul Marinac of the
10 Office of the Minnesota Revisor of Statutes; Bernard Rosenberg
11 of Minneapolis; Professor W. Edward Sell of the University of
12 Pittsburgh School of Law; Professor Stanley Siegel of the School
13 of Law at the University of California, Los Angeles; Archibald
14 C. Spencer of Minneapolis; Michael J. Welsh of St. Paul; the
15 Corporate Counsel Association of Minnesota; and members of the
16 Committee on Corporate Laws of the Corporation, Banking, and
17 Business Law Section of the American Bar Association.

18 Finally, we acknowledge our debt to the University of
19 Minnesota Law School and the Office of Senate Counsel of the
20 State of Minnesota for invaluable technical and support services
21 furnished to the Task Force throughout this project.

22

23 Background
24 -----

25 The Minnesota Supreme Court, in National New Haven Bank v.
26 Northwestern Guaranty Loan Co., 61 Minn. 375, 386, 63 N.W. 1079,
27 1082 (1895), made the following observation about Minnesota's
28 business corporation laws of the 1890's:

29 Every case adds new proof to what has been so often
30 remarked--that the statutes of this state regulating
31 corporations are crude, inconsistent and in conflict
32 with each other, and it is often difficult to spell
33 out of them the real intent of the legislature.

34 This observation would be essentially accurate if made today.

35 The Advisory Task Force on Minnesota Corporation Law was
36 formed because of mounting concern that the corporation laws
37 governing Minnesota business corporations are technically and
38 substantively deficient, out of date, and a source of confusion
39 and frustration in the modern business world for shareholders,

1 directors, officers, creditors, governmental agencies, lawyers,
2 and the courts.

3 Minnesota has the second oldest business corporation laws
4 in the nation. Our present "business corporation act" is found
5 in sections 301.01 to 301.67 of the Minnesota Statutes and was
6 enacted in 1933, partially on the basis of chapter 300 and
7 partially on the basis of the old "Uniform Business Corporation
8 Act" which was relatively contemporary in 1933. It applies to
9 all Minnesota business corporations formed after its enactment
10 other than banks, savings banks, building and loan associations,
11 trust companies and insurance companies, and to pre-1933 general
12 business corporations that did not timely exercise their right
13 to reject it. Our business corporation act has been amended
14 from time to time and in piecemeal fashion since 1933, but it is
15 still basically 1933 legislation in terms of language, style,
16 and underlying philosophy.

17 The corporation laws governing most Minnesota business
18 corporations are not confined to the business corporation act
19 contained in sections 301.01 to 301.67, although this lack of
20 exclusivity is somewhat obscured by deficient
21 cross-referencing. Business corporations formed or coming under
22 those sections are also governed by substantive provisions of
23 corporation law contained in chapter 300 (e.g., sections 300.03,
24 300.04, 300.081, 300.10, 300.11, 300.25, 300.36, 300.49, 300.59,
25 300.61, 300.63, 300.66, and 300.67) and in chapter 316 (e.g.,
26 sections 316.02, 316.03, 316.04, 316.05, 316.06, and 316.10).

27 Chapter 300 is Minnesota's former general business
28 corporation law. Allowing for sporadic and piecemeal
29 legislative interruptions, portions of chapter 300 find their
30 historical statutory basis in the Minnesota Laws of 1858 (the
31 year Minnesota was granted statehood) and, as to some
32 provisions, in our Territorial Laws of 1851. Today, chapter 300
33 is the principal body of business corporation law applicable to
34 banks, savings banks, building and loan associations, trust
35 companies, insurance companies, and public service corporations,
36 as well as a few general business corporations formed before
37 1933.

1 Chapter 316 contains rules governing certain actions
2 against corporations. The legislative antecedents of most of
3 the provisions of chapter 316 also date back to the 1950's.

4 The Corporations Division of the Office of the Secretary of
5 State informed the Task Force that 6,000 to 7,000 new Minnesota
6 business corporations are incorporated annually. A sampling of
7 new incorporations undertaken by the Corporation Division and
8 the Reporter of the Task Force indicates that in excess of 90
9 percent of the Minnesota business corporations formed each year
10 are closely-held and that a substantial number of them are
11 formed without legal assistance.

12 Needlessly structured formality pervades our business
13 corporation laws. Few opportunities exist for closely-held
14 corporations or publicly-owned corporations to use the more
15 informal and flexible procedures that are available to business
16 corporations in most other states. Our business corporation
17 laws not only fail to reflect these developments elsewhere, but
18 effectively mandate outdated practices and prohibit shareholders
19 and corporate managers from adopting contemporary practices; in
20 other respects, our laws simply fail to provide necessary
21 authorization for the adoption of other contemporary practices.

22 A specific recitation of each deficiency in our business
23 corporation laws would serve no particularly useful purpose here.
24 However, a general description of some of the more serious
25 deficiencies is illustrative. Our Minnesota business
26 corporation laws:

27 (1) Impede the ability of shareholders to obtain various
28 information, both economic and noneconomic, relevant to their
29 investment in a corporation;

30 (2) Fail to reflect the marked changes in recent years in
31 methods of accounting for business transactions and remain
32 wedded, in varying degrees, to such outmoded concepts as "par
33 value", "stated capital", "earned surplus", "paid-in surplus",
34 and "net earnings", which were originally devised to protect the
35 rights of shareholders and creditors, but which no longer serve
36 that purpose;

37 (3) Do not adequately take into account the needs and

1 practices of closely-held corporations, which, as indicated,
2 comprise more than 90 percent of all Minnesota business
3 corporations;

4 (4) Require, for no compellingly useful purpose, that new
5 business corporations publish a notice of incorporation and
6 record amendments of articles of incorporation, among other
7 documents, with county recorders, producing essentially needless
8 paper work and expense;

9 (5) Force reference to provisions of chapter 300 for the
10 authority of a corporation governed by sections 301.01 to 301.67
11 to make charitable contributions or to furnish, wholly or
12 partially at its own expense, pensions and medical,
13 hospitalization, accident, and disability insurance;

14 (6) Fail to recognize the contemporary fact that, in many
15 instances, directors, particularly those who are not officers or
16 employees of a corporation, must rely on information or advice
17 furnished to them by officers, employees, or experts in reaching
18 decisions;

19 (7) Do not expressly recognize the contemporary practice in
20 other states permitting corporate directors substantial
21 flexibility in the decision-making process, including delegating
22 authority (but not responsibility) to committees of the board in
23 addition to an executive committee;

24 (8) Compel shareholders and our courts to refer to obscure,
25 outdated, and unnecessarily narrow provisions of chapters 300
26 and 316 for authority to seek, and to grant, equitable relief
27 under various circumstances;

28 (9) Contain cumbersome rules with respect to fundamental
29 corporate actions, including corporate mergers, exchanges of
30 shares, and dissolutions;

31 (10) Provide for involuntary dissolution, apparently as an
32 intended means of providing a remedy for certain abuses not
33 otherwise curable, but condition entitlement to that remedy on
34 such stringent and unrealistic standards that involuntary
35 dissolution is almost never available as a remedy for those
36 abuses;

37 (11) Frustrate current notions of participatory corporate

1 democracy by permitting holders of voting shares to block
2 proposed corporate actions favored by a substantial majority of
3 shareholders simply by absenting themselves from the
4 decision-making process; and

5 (12) Essentially ignore the evolution of rules relating to
6 disclosure and accountability provided for in federal and state
7 laws.

8 These deficiencies are curable, and most states long ago
9 set about to update their business corporation laws, often after
10 long study and debate, on the basis of then-prevailing needs and
11 practices, and largely without regard to outmoded provisions
12 already on the books. This pace accelerated after the first
13 version of the Model Business Corporation Act was published in
14 1946. The Committee on Corporate Laws of the Corporation,
15 Banking, and Business Law Section of the American Bar
16 Association has since then regularly reviewed and periodically
17 updated the Model Act, most recently in 1980.

18 The current trend in business corporation laws is
19 illustrated by the Model Act, by the Delaware business
20 corporation laws and by new business corporation laws adopted in
21 the 1970's in Arizona, California, Florida, Michigan, and New
22 Jersey, among other states. Portions of the Model Business
23 Corporation Act have been adopted in almost all states,
24 including in a few, quite limited respects, Minnesota. It is
25 significant that the Model Act was long ago used as the basis
26 for revised business corporation statutes in our neighboring
27 states of Wisconsin (1951), North Dakota (1957), Iowa (1959), and
28 South Dakota (1965).

29 The current trend reflected in modern business corporation
30 laws is toward flexible and enabling legislation and away from
31 predominantly restrictive and regulatory legislation. It
32 reflects recognition of the fact that since the modern business
33 corporation may be national or even international in scope, the
34 state of its incorporation may be largely incidental and be
35 selected primarily on the basis of which state's business
36 corporation law offers the greatest degree of flexibility and
37 the most clear-cut recognition of contemporary business needs

1 and practices.

2 The current trend offers the flexioility needed by business
3 corporations today and takes account of evolving federal and
4 state securities laws. In addition, most modern business
5 corporation laws reflect recent changes in methods of accounting
6 for business transactions, and they generally simplify, clarify,
7 and modernize the body of law governing business corporations.
8 In short, the current trend is to provide for a general
9 statutory format for the contemporary conduct of corporate
10 business, with sufficient flexibility to enable the parties to
11 alter the format as necessary to meet their legitimate needs.

12

13 Approach

14

15 The Task Force began its work in June, 1979. It initially
16 sorted out in broad, structural terms the issues confronting
17 it. The first questions related to the basic scope of statutory
18 focus. The Task Force determined that chapters 300 and 316 of
19 the Minnesota Statutes were completely out of date, a
20 circumstance that ordinarily would warrant repeal or, at the
21 least, extensive revision. However, the Task Force determined
22 that it would be inappropriate to repeal or completely revise
23 chapter 300 or chapter 316, or even the portions of those
24 statutory provisions that also apply to corporations formed or
25 coming under sections 301.01 to 301.67, because serious
26 disruptions could occur in long-standing, legitimate practices
27 of corporations that are not permitted to incorporate under or
28 that rejected the opportunity to come under sections 301.01 to
29 301.67. Similarly, the Task Force considered, but subsequently
30 rejected, undertaking parallel amendments in the Minnesota
31 securities laws.

32 Accordingly, the Task Force concluded that it should focus
33 primarily on sections 301.01 to 301.67 and only secondarily on
34 the sections of chapters 300 and 316 applicable to most
35 Minnesota business corporations. After reviewing the business
36 corporation laws embodied in those provisions, the Task Force
37 further concluded that although some of the policy

1 considerations reflected in sections 301.01 to 301.67 and in
2 those sections of chapters 300 and 316 continue to have
3 validity, the corporation laws governing most Minnesota business
4 corporations are generally beyond further piecemeal revision and
5 should be replaced by a clearly written, self-contained, and
6 contemporary new business corporation act.

7 Finally, the Task Force concluded that after a suitable
8 transition period, all Minnesota business corporations
9 previously formed or coming under sections 301.01 to 301.67
10 should become subject to the new business corporation act,
11 sections 301.01 to 301.67 should be repealed (the right of
12 repeal is reserved in section 301.59), and all pre-1933 business
13 corporations that rejected sections 301.01 to 301.67 should have
14 an opportunity to elect to come under the new act.

15 The Task Force then focused on broad policy questions with
16 respect to what functions a sound business corporation law
17 should and should not serve. It was realized at the outset that
18 a sound business corporation law must clearly reflect the
19 still-valid historical notion that corporation law, as such, is
20 fundamentally a collection of rules for internal governance of
21 the rights, powers, duties, liabilities, and responsibilities of
22 shareholders, directors, and officers. Ideally, these rules
23 should balance the interests of each group with care and with an
24 appreciation of the legitimate needs and reasonable expectations
25 of each group in the contemporary business world.

26 A law that permitted the establishment and continuance of
27 autocratic, unaccountable management would be wholly untenable.
28 On the other hand, a law that placed management in a
29 straitjacket and subjected corporate directors and officers to
30 attack for every act or failure to act would be equally
31 untenable, would seriously disrupt operations of all
32 corporations, large or small, and would certainly result in an
33 early flight of many Minnesota corporations to other states and
34 encourage future organizers of corporations to form their
35 corporations elsewhere. Moreover, although a sound business
36 corporation law should recognize the legitimate interests of
37 creditors, it should balance those interests against the equally

1 strong need for certainty in certain corporate transactions.

2 The fundamental functions of a sound business corporation
3 law are:

4 (1) To provide a modern, flexible, and certain framework
5 for governing private rights, which can readily be adapted to
6 the legitimate needs of all corporations, whether publicly-owned
7 or closely-held;

8 (2) To provide, as rules, all of the provisions that would
9 normally be expected to result from associative bargaining if
10 all parties were represented by counsel, coupled with the
11 expressed flexibility to vary those rules whenever necessary to
12 reflect the actual associative bargain;

13 (3) To be so comprehensive, straightforward, and clear that
14 transaction costs can be substantially reduced for anyone
15 wishing to form or to be involved in Minnesota corporations;

16 (4) To eliminate any straitjacket on the development or
17 implementation of programs and policies of honest management;

18 (5) To permit corporate directors substantial flexibility
19 in the decision-making process, without permitting abdication of
20 their functions and responsibilities;

21 (6) To reflect the fact that although shareholders bear the
22 risk of changes in the value of their shares (through changes in
23 corporate net worth) and contract with others to manage the
24 assets of the corporation, the interests of shareholders and
25 managers of publicly-owned corporations are not inherently
26 inconsistent, but are usually made consistent by basic market
27 incentives;

28 (7) To increase the accountability of management and the
29 flow of information to shareholders by providing expanded
30 protection for the rights of shareholders, particularly those
31 holding minority interests;

32 (8) To recognize the legitimate interests of creditors,
33 while at the same time providing certainty to shareholders,
34 directors, and officers with respect to those interests in
35 certain corporate transactions;

36 (9) To offer those drafting corporate documents an
37 increased opportunity for creative corporate planning by

1 permitting them to provide precisely the corporate structure
2 that most nearly fulfills the needs of the client; and
3 (10) To permit recourse to the courts to remedy any
4 possible abuses resulting from substantially increased
5 managerial flexibility.

6 In essence, then, a sound business corporation law should
7 embody substantial flexibility and informality in matters of
8 procedure, together with substantial disclosure of and
9 accountability for the corporate actions resulting from those
10 procedures.

11 After formulating its perception in broad outline of the
12 functions to be served by a sound business corporation law, the
13 Task Force focused on the means of implementing each of those
14 functions. Our Reporter developed a comprehensive list of
15 hundreds of specific policy questions, formulated on the basis
16 of provisions in the Model Business Corporation Act and in the
17 corporation laws of Delaware, California, Maryland, and
18 Virginia. Whatever the answer to a policy question, a
19 legislative response was contained in one of those sources or in
20 current Minnesota law.

21 The Task Force organized Committees, including members of
22 the Task Force and many other experienced lawyers, to study
23 special topics and to develop recommendations for consideration
24 by the Task Force. Separate Committees were organized to study
25 issues pertaining to closely-held corporations; directors and
26 officers; dissolutions; shareholder rights; and corporate
27 mergers, exchanges, and sales of assets. The Task Force itself
28 studied all other relevant topics.

29 With the aid of sets of policy questions for each topic,
30 members of the Task Force and its Committees were able to focus
31 on, debate, and tentatively decide policy questions related to a
32 particular topic, and then turn to the matching legislative
33 response to each tentative policy decision. After research and
34 further debate, either a policy decision or the matching
35 legislative response was revised in order to reach the desired
36 result. Then, as proposed provisions covering all of the
37 separate topics were combined in the form of a draft statute,

1 substantial additional changes were made to close gaps and to
2 eliminate duplication and internal inconsistencies in language
3 and, in some cases, policy. On August 5, 1980, the Task Force
4 completed an exposure draft of a proposed new business
5 corporation act and distributed more than 400 copies of the
6 draft to lawyers, law professors, and organizations in Minnesota
7 and throughout the nation. Numerous helpful comments and
8 suggestions were received. On October 1, 1980, the Task Force
9 resumed its meetings and, on its own and on the basis of
10 comments and suggestions submitted to it, developed the final
11 draft of the proposed new Minnesota Business Corporation Act.
12 The proposed new act was unanimously approved at a meeting of
13 the Task Force on December 17, 1980.

14

15

Highlights of the Proposal

16

17 As is indicated in considerable detail in our Reporter's
18 section-by-section analysis of the proposed act, portions of the
19 proposed new Minnesota Business Corporation Act were derived
20 from provisions in sections 301.01 to 301.67 and chapters 300
21 and 316 of the Minnesota Statutes. Most of those provisions
22 were rewritten in whole or in part for clarity and consistency
23 with other provisions in the proposed act. Other portions of
24 the proposed new business corporation act were similarly derived
25 from the Model Business Corporation Act and the business
26 corporation laws of California, Connecticut, Delaware, Georgia,
27 Illinois, Maryland, Michigan, New Jersey, and New York.
28 However, other provisions in the proposed new act have no
29 counterpart elsewhere and represent innovations in business
30 corporation law.

31 For example, the Task Force knew that the corporation laws
32 of various states had been amended or supplemented recently to
33 include special provisions applicable only to closely-held
34 corporations, and that a proposed "Close Corporation Supplement"
35 to the Model Business Corporation Act, also applicable only to
36 closely-held corporations, has been in the drafting stage for
37 the past few years. These special provisions are characterized

1 by extraordinary flexibility and informality and by greatly
2 enhanced shareholder protection, but these provisions also are
3 highly complex, easy to breach, applicable, as indicated, only
4 to closely-held corporations and, then, only to a limited
5 category of closely-held corporations. Because the Task Force
6 estimated that more than 97 percent of all Minnesota business
7 corporations are closely held, its Committee on Close
8 Corporations developed a proposed set of statutory provisions to
9 apply only to closely-held corporations, which went beyond
10 similar laws enacted in other states and did so without the
11 complexity and risks inherent in those laws. The Task Force
12 considered, but ultimately rejected, the concept of separate
13 provisions applicable only to closely-held corporations--not
14 because of a belief that closely-held corporations did not need
15 substantially more flexibility and informality than are
16 available under present law or that the shareholders of those
17 corporations were not entitled to greater protection than is
18 afforded by present law, but because of a perception that the
19 contemporary needs and expectations of shareholders, directors,
20 and officers of a business corporation do not depend solely on
21 whether or not the corporation is closely-held.

22 Accordingly, in what represents the most innovative
23 development anywhere in the nation, the proposed Minnesota
24 business corporation act embodies the notion that all business
25 corporations, whether closely-held or publicly-owned, should be
26 permitted to operate with substantial flexibility and
27 informality (to the extent consistent with applicable securities
28 and other laws), and that the shareholders of all business
29 corporations are entitled to enhanced protection in terms of
30 disclosure and management accountability. This conclusion
31 affirmed the perception of the Task Force of the functions to be
32 served by a sound business corporation law and set the tone for
33 the proposed new act: substantial flexibility and informality
34 in matters of procedure, together with substantial disclosure of
35 and accountability for the corporate actions resulting from
36 those procedures.

37 It is not feasible to summarize here all of the provisions

1 of the proposed new business corporation act, as each section of
2 the proposal is analyzed in our Reporter's section-by-section
3 analysis. However, some provisions represent significant
4 changes in or additions to present law and warrant brief
5 discussion here.

6

7 Section 1 - Definitions

8 The proposed act defines thirty-six words or phrases,
9 whereas the current law defines only twelve. Some of the added
10 terms are defined with reference to definitions already used in
11 other statutes. For example, the definition of security in
12 section 1, subdivision 26, uses the definition set forth in
13 Minnesota Statutes, Section 80A.14(q), and the definition of
14 "transaction statement" in section 1, subdivision 33, uses the
15 definition set forth in section 336.8-408(4). Other terms are
16 defined so that repetition of a lengthy list throughout the
17 statute may be avoided. One example is the definition of "legal
18 representative" in section 1, subdivision 16. The remainder of
19 the defined terms have been defined in order to remove
20 uncertainties about the procedures to be followed in certain
21 situations. For example, the definition of "written action" in
22 section 1, subdivision 36, includes duplicate copies of the
23 written action as parts of one instrument, consistent with
24 current practice. Similarly, the definition of "filed with the
25 secretary of state" in section 1, subdivision 11, treats a
26 document as filed when a valid document is delivered to the
27 secretary of state, thus eliminating questions about whether a
28 document is or is not filed if the official stamp does not
29 appear on the document and removing any possibility of risk
30 resulting from an inadvertent delay in affixing the official
31 stamp.

32 Sections 2 to 4 - Application

33 Assuming that the proposed new act is enacted during the
34 1981 session, the act will take effect on July 1, 1981. However,
35 corporations are not required to come under the act until
36 January 1, 1983. This gives the shareholders, directors, and
37 officers of each corporation 18 months to analyze the new law

1 and consider and adopt any necessary amendments in the articles
2 of incorporation or bylaws. During this grace period, new
3 corporations may be formed under either sections 301.01 to
4 301.67 or the new act. Existing corporations may elect to come
5 under the new act at any time between July 1 1981 and December
6 31, 1982.

7 The proposed act also exempts certain corporations from its
8 application. Chapter 300 contains no reservation of power to
9 amend or repeal the chapter. The absence of that reservation may
10 mean that corporations originally incorporated under chapter 300
11 and not now subject to sections 301.01 to 301.67 cannot be
12 forced to come under another chapter. Those corporations may,
13 if they choose, elect to come under the proposed act. However,
14 many of these corporations cannot so elect because other
15 chapters of the Minnesota Statutes require them to form under
16 and remain governed by chapter 300.

17 After the grace period expires, sections 301.01 to 301.67
18 are repealed, all existing business corporations formed or
19 coming under those provisions will automatically come under the
20 new act, and all new business corporations must form under this
21 act.

22 It should be noted that certain chapters and sections of
23 chapters that currently apply to business corporations will not
24 apply to corporations governed by the new act. We have taken
25 this approach for two reasons: First, the existence of these
26 rather out-of-the-way sections creates numerous traps for even
27 the most experienced corporate counsel. By incorporating in the
28 new act substantially all of the substantive law relating to
29 Minnesota business corporations, we hope to reduce that danger.
30 Obviously, some relevant substantive provisions, including the
31 securities and tax laws, do not appear in the new act. However,
32 with these and a few other exceptions, matters affecting the
33 internal affairs of the corporation may be determined by
34 reference to one chapter which may be reproduced and
35 disseminated as a unit more easily than the former hodge-podge
36 of applicable laws. Second, we have examined the policies
37 underlying the sections appearing in those other chapters, and

1 have included in the new act only those policies that appear
2 consistent with contemporary business needs and practices,
3 making reference to other chapters wholly unnecessary with a few
4 minor exceptions applicable only to public service corporations.

5 Section 3 merely validates any transactions that are
6 commenced prior to the time a corporation comes under the new
7 act, but which are continued or completed after that time.

8 Section 4 reserves to the Legislature the absolute right to
9 compel corporations incorporated under the new act to abide by
10 all changes in the act that future Legislatures may impose.

11 Section 5 - Purposes

12 This section is broadly worded so that prohibitions in
13 other statutes are the only obstacles to incorporation of a
14 forprofit corporation under the new act. Nonprofit corporations
15 remain governed entirely by other chapters, principally chapter
16 317. The reason for this broad wording is the desire to permit
17 changes in other chapters to control the purposes section. All
18 of the organizations formerly prohibited from incorporating
19 under sections 301.01 to 301.67 must, by the terms of other
20 laws, incorporate under specific chapters, chiefly chapter 300.
21 There is no reason to add a prohibition to that specific
22 directive.

23 Section 7 - Formation

24 This section requires much less detail in the articles of
25 incorporation. In fact, only four basic items are required:
26 the corporate name, the address of registered office, the number
27 of authorized shares, and the names and addresses of each
28 incorporator. Thus, "postcard incorporation" will be a reality
29 for persons wishing to avail themselves of the statutory rules
30 without modification.

31 The remainder of section 7 is devoted largely to the rules
32 that will apply to a corporation choosing to file only a short
33 form (subdivisions 2 and 3) or that will not apply to a
34 corporation filing that form (subdivision 4). The "laundry
35 list" quality of this section is designed to bring the various
36 choices of basic corporate structure to the attention of anyone
37 considering incorporation. This heightened awareness of

1 corporate options at the time of incorporation will avoid
2 problems at later stages in the life of the corporation.

3 The items included in the list fall into three categories:
4 rules that may be altered only in the articles; rules that may
5 be altered in either the articles or the bylaws, if any, of the
6 corporation; and other rules that may be adopted in the articles
7 or, in all but two cases, the bylaws, but which will not apply
8 unless specifically adopted.

9 Section 8 - Corporate Name

10 We have added the word "limited" to the list of words
11 indicating the corporate nature of the organization, primarily
12 because many professional corporations are authorized by chapter
13 319A to use, and actually use, that word. This section empowers
14 the Secretary of State to decide whether a name is or is not
15 "deceptively similar" to a name in use. The section also warns
16 holders of corporate names of the existence of numerous other
17 laws restricting the use of names.

18 Section 9 - Reserved Name

19 Names permitted under Section 8 may be reserved for
20 continuous periods under this section .

21 Sections 12 to 17 - Amendment of Articles

22 The most important change in the amendment process from
23 present law is the provision in section 14 which permits the
24 articles to be amended by a majority of the shares represented
25 at a meeting. Other important changes permit the incorporators
26 to amend the articles before shares are issued without having to
27 file completely new articles, as under present law, and require
28 class voting on amendments that would impair in certain ways the
29 rights of shareholders under their "investment contract", that
30 is, the terms of their shares. Generally, the number of
31 occasions requiring class voting has been greatly expanded.

32 Sections 19 and 20 - Effective Dates; Presumption of
33 Incorporation

34 The most notable change from present law is that articles
35 and amendments to the articles are effective when filed;
36 effectiveness will no longer depend on the issuance of a
37 certificate. Another change contained in section 20 is the end

1 of de facto incorporation and corporation by estoppel. The
2 simplified mode of incorporation under section 7 makes it
3 unnecessary to recognize any corporation which has not complied
4 with the fundamentally simple requirements of that section.

5 Sections 21 - Powers

6 Corporations are entities that have limited powers. Section
7 21 specifically grants many powers to corporations that the
8 current law leaves unstated, in addition to the powers expressly
9 granted in sections 301.01 to 301.67 and in chapter 300. While
10 these powers are too numerous to catalogue here, some of them
11 include the powers to deal in securities, to act as pledgor, to
12 pay pensions and establish profit-sharing plans, to purchase
13 life insurance for persons connected with the corporation, and
14 to advance or loan money to certain persons.

15 Section 22 - Corporate Seal

16 This section makes it clear that a corporation may, but
17 need not, have a corporate seal and describes in detail what
18 kinds of seals will be valid if the corporation uses one.

19 Section 24 - Organization

20 This new section grants incorporators certain specific
21 powers in organizing the corporate entity. These powers are not
22 explicitly stated in the current statute, but can be vital to
23 successful organization.

24 Section 25 - Bylaws

25 This section makes it clear that the corporation may, but
26 need not, have bylaws. It also provides a specific procedure
27 for amending the bylaws.

28 Sections 26 to 45 - Directors

29 Section 26 provides new language recognizing the
30 contemporary fact that the board does not necessarily personally
31 manage the corporation. It also gives the shareholders the
32 right to govern the affairs of the corporation directly, either
33 by a unanimous vote or pursuant to a unanimous shareholder
34 control agreement (see section 76). This right should be
35 particularly useful to the small, closely-held corporations
36 which comprise more than 90 percent of Minnesota business
37 corporations.

1 Under section 27, a board need consist of only one
2 director, irrespective of the number of shareholders, unlike our
3 present law which requires three directors, or a number of
4 directors equalling the number of shareholders, whichever is
5 smaller.

6 Section 28 governs the terms of board members, who will
7 serve either for indefinite terms or for fixed terms of five
8 years or less, unless they die, resign, or are removed or
9 disqualified. Those serving indefinite terms must stand for
10 election at regular meetings (see section 65). Directors may
11 also hold over, as under present law, until their successors are
12 qualified.

13 Section 32 specifically validates classification of
14 directors. Current law has no equivalent provision. The
15 classification may be either by staggered terms of office or by
16 representation of particular classes of shares.

17 Section 33 changes present law with respect to cumulative
18 voting, both by clarifying how shares are voted cumulatively
19 and, more importantly, by eliminating the former requirement of
20 24 hours' advance notice of a shareholder's intention to
21 cumulate votes.

22 Our current law does not specifically provide for
23 resignations by directors. Section 34 governs the method and
24 effective time of a resignation.

25 Section 37 is consistent with our current law on board
26 meetings, but it contains a change and several new provisions.
27 It requires meetings to be held at the principal executive
28 office, not at the registered office, if no place is fixed for
29 the meetings. It recognizes meetings held entirely by
30 electronic means as valid meetings, if held on proper notice.
31 Finally, it establishes specific rules for waiver of notice of
32 meetings by attendance at the meeting.

33 Section 38 is entirely new. It permits absent directors to
34 vote directly for or against specific proposals by a written
35 document.

36 Under section 39, the quorum for directors has now been
37 made the same as the quorum for shareholders (see section 70),

1 that is, a majority, unless the articles or bylaws provide for a
2 larger or smaller number.

3 Section 40 reflects current law governing the majority
4 required for board approval, but adds a provision that permits
5 the articles to require a larger proportion than the new act may
6 require for a particular action.

7 Current law requires unanimity for board action without a
8 meeting. Section 41 permits less than unanimous action for
9 routine matters not requiring a vote of the shareholders if the
10 articles permit it.

11 Section 42 is almost totally without equivalent in the
12 current law. It expressly validates the creation of any number
13 of committees; permits committees to fulfill any function the
14 board assigns; permits any person, whether or not a director, to
15 be a committee member; permits the board to delegate total
16 control of a particular area to a committee, but requires the
17 board to retain full responsibility for all actions of all
18 committees; requires committees to follow the same basic
19 procedures that directors must follow; and requires non-director
20 committee members to conform to the same standard of conduct
21 that directors must meet, but extends to them the same
22 opportunity for indemnification and advances of expenses
23 available to directors.

24 Section 43 is totally new. It provides for the
25 establishment of an independent committee of disinterested
26 persons to consider the merits of derivative suits. That
27 committee is independent of the board and may dismiss derivative
28 suits if it finds it in the best interests of the corporation to
29 do so. This validates a practice already permitted by federal
30 case law, and it has been included to avoid any uncertainty with
31 respect to the power of a Minnesota corporation to use this
32 mechanism to terminate the patent abuses of strike suits.

33 The standard of conduct to which directors will be held
34 under section 44 is the same as under the present statute.
35 However, this section does add two items with respect to the
36 conduct of directors. It permits a director to rely on
37 information provided by certain persons whom a director might

1 assume are in a position to speak with authority. It also
2 places the burden of proving that a director disagrees with the
3 action of the board on that director, and sets forth ways in
4 which that dissent must be expressed.

5 Section 45 is new. It is intended to cover only the
6 situation where there is self-dealing; other matters, such as
7 those covered by the corporate opportunity doctrine, have been
8 adequately developed in the case law. This section requires a
9 director of a corporation who has a material financial interest,
10 or whose immediate family has a material financial interest, in
11 an organization dealing with the corporation to meet certain
12 standards of fairness or to receive, after full disclosure, the
13 approval of a disinterested majority of the board or the
14 shareholders. Note here that neither an interested director nor
15 the shares owned by that director will be counted in calculating
16 a quorum.

17 Sections 46 to 54 - Officers

18 Section 46 eliminates the requirement that there be a
19 president, secretary and treasurer. Instead, the only
20 requirement is that some person act as chief executive officer
21 and some person act as chief financial officer. Both positions
22 may be filled by the same person.

23 Section 47 outlines the powers and duties of these two
24 required officers. A corporation may prescribe different powers
25 and duties if it wishes.

26 Section 49 reflects current law in making it clear that one
27 person may hold any number of positions; it also permits that
28 person to execute documents that must be signed by him in two or
29 more official capacities, by one signature and an indication of
30 the capacities in which the documents are signed.

31 Section 50 is a new provision. If a corporation has failed
32 to choose officers, the persons exercising the powers of the two
33 required officers are deemed to be those officers.

34 Section 51 restates current law, while making clear the
35 ability of the board to enter into long-term employment
36 contracts with officers.

37 Section 52 on resignation of officers parallels section 34

1 on resignation of directors. The resignation provision is not
2 expressly dealt with in the current statute; nor is the vacancy
3 provision.

4 Section 53 makes it clear that an officer may delegate
5 powers, but may not delegate responsibilities.

6 The standard of care imposed by section 54 is the same
7 standard imposed by current law. The section requires that
8 certain persons in addition to those chosen directly by the
9 board conform to that standard. The section does not
10 specifically permit an officer to satisfy that standard by
11 reliance on experts.

12 Sections 55 to 78 - Shares and Shareholders

13 Section 55 permits the board to establish classes of shares
14 without amending the articles. For corporations whose shares
15 have no par value, the section sets a par value for limited
16 purposes.

17 Section 56 simplifies the current law with respect to
18 subscriptions for shares. It extends the period of
19 irrevocability to six months. It also retains the corporate
20 option of enforcing the agreement as a contractual debt, selling
21 the shares for the account of the shareholder, or rescinding the
22 transaction, but the method has been greatly simplified.

23 Under section 57, future consideration is still valid, but
24 only if it is promised to the corporation in an enforceable
25 written agreement. This gives the corporation an action for
26 damages due to breach of the agreement if that consideration is
27 not transferred to the corporation at the proper time. Receipt
28 of the agreement also constitutes consideration sufficient to
29 permit the corporation to issue shares immediately; under
30 current law, shares may not be issued until the underlying
31 consideration is actually in the hands of the corporation. The
32 section also makes it clear that no consideration is required
33 for shares issued in splits, dividers or conversions, and
34 provides clearer rules governing liability for deficient
35 consideration, imposing an absolute liability on the shareholder
36 to pay the total consideration agreed to, and imposing
37 conditional liabilities on other persons.

1 Preemptive rights are covered in detail by section 59,
2 which is totally new and which provides the first specific rules
3 in the history of Minnesota corporate law defining what those
4 rights are, when those rights arise, and how they are to be
5 exercised.

6 Section 60 permits Minnesota corporations to have
7 uncertificated shares, a concept already part of Article 8 of
8 the Minnesota U.C.C. This section also requires only one
9 signature on each share certificate, and it deems the signature
10 of a former official or agent valid if that person was an
11 officer or agent at the time the certificate was signed.
12 Finally, this section states a more specific rule regarding
13 share certificates as evidence of ownership.

14 Section 61 merely permits the replacement of lost share
15 certificates suggested by section 336.8-405.

16 Section 62 is new. It permits corporations to issue
17 fractional shares or to provide alternative methods of
18 transferring value in lieu of fractional shares.

19 Section 64 is without equivalent in the current statute and
20 expressly validates restrictions on transfers of securities
21 under certain conditions.

22 Section 65 recognizes that many Minnesota corporations have
23 no need to hold shareholder meetings on an annual basis. It
24 permits the corporation to hold meetings on any less frequent
25 basis it chooses, but it protects shareholders by permitting
26 them to call a meeting under certain easily-met conditions, at
27 the expense of the corporation. At each meeting, each director
28 serving for an indefinite term must stand for election.

29 Section 66 reflects current law with respect to special
30 meetings, but makes it clear that only those items set forth in
31 the notice may be considered at a special meeting.

32 Notice is covered in section 67, which is consistent with,
33 but more detailed than, present law. It also permits waiver of
34 notice orally and by attendance at the meeting in question.
35 Both forms of waiver are new to Minnesota statutory law.

36 Section 68 states the majority vote needed to approve an
37 action at a shareholder meeting. This presumption replaces the

1 scattered and varying statements of required majorities present
2 in the current law. It also makes it clear that larger voting
3 requirements will be valid if set forth in the articles.

4 Subdivision 2 of this section requires that any class voting on
5 a matter must approve the matter by at least the same percentage
6 as required for all shares voting on the matter.

7 Section 70 establishes the quorum for meetings of
8 shareholders as a majority, unless the articles or bylaws
9 provide for a larger or smaller number.

10 Section 71 makes one change and adds three new principles
11 to voting rights. It removes the reference to "closing the
12 corporate books" prior to shareholder meetings which is an
13 outmoded practice. It also permits the corporation to treat
14 beneficial owners as record owners for certain purposes such as
15 forwarding corporate information or voting. It makes it clear
16 that shares owned by joint owners may be voted by any one of
17 them, absent receipt by the corporation of written notice from
18 one of the other joint owners denying authority of a joint owner
19 to vote the shares. Lastly, it establishes the presumption that
20 any shareholder who merely votes, votes all shares in the manner
21 indicated.

22 Most of the provisions of section 72 are new. Subdivision
23 1 of this section adds legal representatives to the list of
24 persons who may vote shares of a corporation held by an
25 unrelated corporation. Subdivision 3 prohibits the voting of
26 shares of the corporation held by the corporation (or a
27 subsidiary) in a fiduciary capacity except in strict accordance
28 with the instructions of the beneficial owner. Subdivisions 4
29 to 7 clarify the voting rights of various classes of
30 fiduciaries, pledgees, or representatives of non-corporate
31 entities.

32 Section 73 largely reflects current law with respect to
33 proxies. The section permits one joint owner of shares to sign
34 a proxy appointment, unless one of the joint owners either gives
35 written notice to the corporation denying the authority of a
36 joint owner to appoint a proxy, or signs a different proxy
37 appointment. The section also relieves the corporation of

1 liability for accepting votes cast by valid proxies.

2 Section 74 covers voting trusts, and the only change with
3 regard to them is a provision that permits voting by two or more
4 trustees only if they all agree.

5 Section 75 is new to the statutes, but simply validates
6 shareholder voting agreements, which have been upheld by the
7 courts.

8 Section 76 is also totally new to Minnesota statutory
9 corporation law. It permits the shareholders to agree
10 unanimously to bind each other and the corporation upon any
11 matter, even a matter that is traditionally reserved to the
12 board of directors.

13 Section 77 covers inspection of books and records. The
14 main change here permits shareholders to examine and copy
15 certain categories of corporate documents as a matter of
16 absolute right, without any showing of proper purpose. Other
17 records may be available upon a showing of a "proper purpose,"
18 which is defined with the Delaware case law in mind.

19 Section 78 essentially reflects current law on financial
20 statements except that instead of furnishing the statements on
21 request, the corporation is required to send those statements to
22 every shareholder, every year.

23 Section 79 is new in format, and replaces sections in
24 current law applicable to Minnesota business corporations which
25 permit various forms of equitable relief. The new wording
26 leaves the choice of relief to the court.

27 Sections 80 and 81 - Dissenters' Rights and Appraisal

28 -----
29 These sections provide entirely new procedures for
30 asserting dissenters' rights by shareholders. The events upon
31 which dissenters' rights accrue have been greatly expanded from
32 present law to include as a basis for dissent almost every
33 fundamental change, as well as certain amendments to the
34 articles. The appraisal procedure requires shareholders to
35 submit notice of intent to demand payment, to refrain from
36 voting for the proposal, to demand payment and, if they feel the
37 amount paid to be insufficient, to demand supplemental payment.
The appraisal section is much more detailed in its procedures

1 than current law which is vague at best.

2 Sections 82 and 83 - Loans and Obligations

3 Sections 82 and 83 establish procedures for authorizing
4 loans and advances to persons for both corporate and
5 non-corporate purposes, and for authorizing guarantees for loans
6 to other persons.

7 Section 84 - Indemnification

8 Section 84 covers indemnification. While the current law
9 is based on the old Model Act provision, this section is
10 relatively new. Subject to any prohibition or limitation in the
11 articles or bylaws, it mandates indemnification of and advances
12 of expenses to corporate directors, officers, employees, and
13 agents who meet a specific standard of conduct, but prohibits
14 indemnification under any other circumstances. Advances of
15 expenses will not be required for, but will be available to,
16 persons who are witnesses in a proceeding, but have not been
17 made or threatened to be made parties to it. This section
18 expends the use of insurance and requires disclosure to
19 shareholders when indemnification is granted, or advances are
20 made, in derivative actions.

21 Sections 85 to 88 - Distributions

22 Most of the philosophy of current law with respect to
23 dividends and when dividends will be permitted is discarded by
24 the proposed act. The old test depended upon the existence of a
25 "surplus" of available assets over the sum of par value, stated
26 value, and liabilities. The new standard requires only that the
27 corporation be able to pay its debts in the ordinary course of
28 business immediately after the distribution. The determination
29 of whether it will be able to pay its debts in the ordinary
30 course of business is left to the discretion of the board, with
31 absolute liability in the board under section 88 if the
32 corporation is unable to pay its debts in the ordinary course of
33 business and if the directors authorized the distributions
34 without conforming to the standard of conduct prescribed in
35 section 44. Similar restrictions are placed on the ability of
36 the corporation to reacquire its own shares by section 86 which
37 also abolishes "treasury shares". Shareholders are absolutely

1 liable for amounts received in violation of the standard for
2 payment of distributions, but only to the extent that the amount
3 they actually received exceeded the amount they would have been
4 entitled to receive if the standard set forth in section 85 had
5 been met.

6 Sections 89 to 97 - Fundamental Changes
7 -----

8 The existing procedures relating fundamental changes have
9 been rewritten so that they are easier to read; moreover, one
10 procedure has been eliminated while a new one has been
11 introduced. Section 89 generally authorizes mergers, exchanges
12 of shares, and sales of assets. Consolidation, a little-used
13 method of fundamental change, has been eliminated, while an
14 exchange of shares, a newer concept that maintains the existence
15 of the two corporate entities throughout the transaction has
16 been added.

17 The vote required by section 91 to approve a merger or
18 exchange is a majority of all voting shares, as opposed to the
19 two-thirds vote required by current law. The section also
20 permits the surviving corporation to forego a vote of its own
21 shareholders if the merger or exchange will result in minimal or
22 no dilution of shareholder voting power.

23 Short form mergers are permitted under section 93. Instead
24 of the 100 percent ownership required by current law, this
25 section permits short-form mergers if 90 percent or more of the
26 shares of the subsidiary are owned by the parent. However,
27 minority shareholders must be notified of the merger.

28 Section 94 authorizes the abandonment of a plan adopting a
29 fundamental change and is without equivalent in the current law.

30 The earliest effective date of a merger is changed by
31 section 95 to the date on which the articles of merger are
32 filed, rather than the date on which a certificate of merger is
33 issued as provided in present law. The opportunity to specify a
34 later effective date is preserved.

35 Section 97 reflects current law with respect to sales of
36 assets except that subdivisions 3 and 4 are new. They permit
37 the cure of defects in the transfer of assets and the
restriction of successor liability to liabilities imposed by the

1 agreement of transfer by other state statutes, such as Article 6
2 of the U.C.C.

3 Sections 98 to 119 - Dissolution

4 These sections authorize three methods of dissolution, all
5 of which are currently authorized by sections 301.01 to 301.67:
6 voluntary dissolution, supervised voluntary dissolution, and
7 involuntary dissolution. There are two sets of procedures, one
8 for voluntary dissolution and another for supervised voluntary
9 and involuntary dissolution. The procedures differ from the
10 current law for each method.

11 Section 98 generally authorizes these three methods of
12 dissolution and merely rephrases current law. However, there is
13 an additional clause generally authorizing voluntary dissolution
14 by the incorporators of a corporation. Under current law, in
15 order to dissolve, one must apparently issue shares and then
16 have the shareholders approve the dissolution. Section 99 is
17 totally new and further details the procedure to be used by
18 incorporators. Compliance with the procedures set forth in the
19 section will satisfy all requirements for dissolution by the
20 incorporators.

21 Sections 100 to 107 cover the procedure in voluntary
22 dissolution by the shareholders. Much of the procedure is new.

23 Section 100 reflects current law for shareholder-approved
24 dissolutions, except that the required shareholder approval has
25 been reduced from at least two-thirds of the voting shares to a
26 majority of the voting shares.

27 Section 101 introduces a new procedure. After the
28 dissolution is approved by the shareholders, the corporation
29 must file a notice of intent to dissolve with the secretary of
30 state. At the time of that filing, the corporation may start
31 winding up its affairs. However, corporate existence continues,
32 and unlike current law, the authority of directors and officers
33 continues.

34 Section 102 reflects current law with respect to the
35 collection of assets and payment of debts, but the duty of
36 executing the requirements of the section is left with the
37 directors and officers. Trustees in voluntary dissolution have

1 been eliminated.

2 Under section 103, the corporation may give creditors
3 notice that it intends to dissolve. The corporation may also
4 give notice to the public by a published notice. This notice is
5 required so that creditors may file claims for debts owed them
6 by the corporation. This is a new concept in Minnesota law. If
7 notice is given under this section, the corporation will be able
8 to wind its affairs up with more certainty that claims will be
9 barred by section 117.

10 If the corporation does give notice, section 104, also
11 totally new, requires creditors to file claims within a fixed
12 period of time. Claims not filed during that time are barred by
13 section 117. The virtue of this procedure is that it provides a
14 relatively clear picture of the corporation's liabilities and
15 can be used to wind up the affairs of the corporation as quickly
16 as possible.

17 Section 105 permits the shareholders of a corporation to
18 revoke a dissolution in the same manner in which they approved
19 the dissolution.

20 Section 106, governing the articles of dissolution, is
21 consistent with section 301.56, but it is more detailed. It
22 also sets new conditions that must be met in order for the
23 corporation to file the articles of dissolution.

24 Section 107 merely clarifies which persons have a right to
25 convert voluntary dissolution proceedings into a supervised
26 voluntary dissolution.

27 Involuntary dissolution is governed by sections 108 to 115.
28 Section 108 sets forth the grounds for involuntary dissolution
29 or alternative equitable relief. Although the grounds are
30 similar to those required by current law, there are
31 differences. Director deadlock is added as a ground; it need
32 not be accompanied by a situation where the corporation is
33 earning no profit. (This matter is also addressed in
34 subdivision 2.) Fraudulent or illegal acts continue to be a
35 ground, but dissolution should be granted more frequently to
36 minor shareholders who have been treated inequitably by
37 management. Subdivision 2 is intended to encourage the courts

1 to grant dissolution more frequently by eliminating the
2 financial condition of the corporation as a factor relevant to
3 that decision. Under this section, the court may award
4 attorneys' fees, both to reimburse expenses and to deter
5 harassment.

6 Sections 109 and 110 list the powers, duties, and
7 qualifications of receivers. Most of the details are consistent
8 with current law. However, title to the assets does not rest in
9 the receiver.

10 Sections 111 to 115 detail the proceedings in involuntary
11 dissolution and are consistent with current law, except that
12 dissolution takes place when the decree of dissolution is
13 entered, not when it is filed with the Secretary of State.

14 Section 116 is new. It requires deposit with the State
15 Treasurer of funds otherwise distributable to a shareholder
16 where the shareholder cannot be found.

17 Section 117 bars claims not filed with the corporation in
18 accordance with the new act. This promotes certainty and
19 clarity in defining the end of exposure to liability. There is
20 a limited exception for after-arising liabilities or situations
21 where the claimant establishes good cause for a tardy filing.

22 Sections 118 and 119 authorize certain acts of
23 representation or transfer even after the corporation no longer
24 exists.

25 Sections 120 and 121 - Extension of Period of Duration

26 These sections merely permit corporations with limited
27 periods of duration provided for in the articles to extend their
28 own existence.

29 Section 122 - Annual Report

30 This new section requires each Minnesota corporation to
31 fill out and return to the Secretary of State a simple form
32 supplied and distributed by the Secretary of State. The report
33 will serve as a continuing active status report.

34 Sections 123 to 125 - Actions Against Corporations

35 Section 123 is consistent with current law on service as
36 well as the Rules of Civil Procedure. Section 124 is currently
37 applicable to business corporations.

1
2 Need for Continuing Review
3 -----

4 New ideas for inclusion in business corporation laws have
5 developed rapidly, especially in states that are working
6 aggressively to improve their attractiveness as places of
7 incorporation, and this process will continue in Minnesota and
8 elsewhere. Therefore, while we believe that enactment of the
9 accompanying proposed new Minnesota Business Corporation Act
10 will place Minnesota ahead of all other jurisdictions, we also
11 believe that this new status can be maintained only if our
12 business corporation act continues to receive regular,
13 analytical review, on the basis of changing needs and practices
14 and new ideas generated in Minnesota and elsewhere to
15 accommodate those changes.

16

17 December 22, 1980

18

19 Respectfully submitted,

20 ADVISORY TASK FORCE ON
21 MINNESOTA CORPORATION LAW
22
23
24
25
26

27 By.....
28 John S. Hibbs, Chairman

1 A bill for an act

2 relating to corporations; modernizing and improving
3 provisions governing business corporations;
4 appropriating money; amending Minnesota Statutes 1980,
5 Sections 53.01; 303.05, Subdivision 1; 308.341;
6 319A.03; 319A.05; 319A.12, Subdivisions 1a and 2;
7 319A.20; and 367.42, Subdivision 1; proposing new law
8 coded in Minnesota Statutes, Chapter 302A; repealing
9 Minnesota Statutes 1980, Sections 301.01 to 301.67.

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

12 Section 1. [302A.011] [DEFINITIONS.]

13 Subdivision 1. [SCOPE.] For the purposes of sections 1 to
14 125, unless the language or context clearly indicates that a
15 different meaning is intended, the words, terms, and phrases
16 defined in this section have the meanings given them.

17 Subd. 2. [ACQUIRING CORPORATION.] "Acquiring corporation"
18 means the domestic or foreign corporation that acquires the
19 shares of a corporation in an exchange.

20 Subd. 3. [ADDRESS.] "Address" means mailing address. In
21 the case of a registered office or principal executive office,
22 the term means the office address, which shall not be a post
23 office box.

24 Subd. 4. [ARTICLES.] "Articles" means, in the case of a
25 corporation incorporated under or governed by sections 1 to 125,
26 articles of incorporation, articles of amendment, a resolution
27 of election to become governed by sections 1 to 125, a statement
28 of change of registered office or registered agent, a statement

1 establishing or fixing the rights and preferences of a class or
 2 series of shares, a statement of cancellation of authorized
 3 shares, articles of merger, articles of abandonment, and
 4 articles of dissolution. In the case of a foreign corporation,
 5 the term includes all documents serving a similar function
 6 required to be filed with the secretary of state or other
 7 officer of the corporation's state of incorporation.

8 Subd. 5. [BOARD.] "Board" means the board of directors of
 9 a corporation.

10 Subd. 6. [CLASS.] "Class", when used with reference to
 11 shares, means a category of shares that differs in designation
 12 or one or more rights or preferences from another category of
 13 shares of the corporation.

14 Subd. 7. [CONSTITUENT CORPORATION.] "Constituent
 15 corporation" means a domestic or foreign corporation that is a
 16 party to a merger or exchange.

17 Subd. 8. [CORPORATION.] "Corporation" means a corporation,
 18 other than a foreign corporation, organized for profit and
 19 incorporated under or governed by sections 1 to 125.

20 Subd. 9. [DIRECTOR.] "Director" means a member of the
 21 board.

22 Subd. 10. [DISTRIBUTION.] "Distribution" means a direct or
 23 indirect transfer of money or other property, other than its own
 24 shares, with or without consideration, or an incurrence of
 25 indebtedness, by a corporation to or for the benefit of any of
 26 its shareholders in respect of its shares. A distribution may
 27 be in the form of a dividend or a distribution in liquidation,
 28 or as consideration for the purchase, redemption, or other
 29 acquisition of its shares, or otherwise.

30 Subd. 11. [FILED WITH THE SECRETARY OF STATE.] "Filed with
 31 the secretary of state" means that an original of a document
 32 meeting the applicable requirements of sections 1 to 125,
 33 signed, acknowledged in the manner provided in Minnesota
 34 Statutes, Sections 358.32 to 358.40, and accompanied by a filing
 35 fee of \$10, has been delivered to the secretary of state of this
 36 state. The secretary of state shall endorse on the original the
 37 word "Filed" and the month, day, year, and time of filing,

1 record the document in the office of the secretary of state, and
 2 return the document to the person who delivered it for filing.

3 Subd. 12. [FOREIGN CORPORATION.] "Foreign corporation"
 4 means a corporation organized for profit that is incorporated
 5 under laws other than the laws of this state for a purpose or
 6 purposes for which a corporation may be incorporated under
 7 sections 1 to 125.

8 Subd. 13. [GOOD FAITH.] "Good faith" means honesty in fact
 9 in the conduct of the act or transaction concerned.

10 Subd. 14. [INTENTIONALLY.] "Intentionally" means that the
 11 person referred to either has a purpose to do or fail to do the
 12 act or cause the result specified or believes that the act or
 13 failure to act, if successful, will cause that result. A person
 14 "intentionally" violates a statute if the person intentionally
 15 does the act or causes the result prohibited by the statute, or
 16 if the person intentionally fails to do the act or cause the
 17 result required by the statute, even though the person may not
 18 know of the existence or constitutionality of the statute or the
 19 scope or meaning of the terms used in the statute.

20 Subd. 15. [KNOW; KNOWLEDGE.] A person "knows" or has
 21 "knowledge" of a fact when the person has actual knowledge of
 22 it. A person does not "know" or have "knowledge" of a fact
 23 merely because the person has reason to know of the fact.

24 Subd. 16. [LEGAL REPRESENTATIVE.] "Legal representative"
 25 means a person empowered to act for another person, including,
 26 but not limited to, an agent, officer, partner, or associate of,
 27 an organization; a trustee of a trust; a personal
 28 representative; an executor of a will; an administrator of an
 29 estate; a trustee in bankruptcy; and a receiver, guardian,
 30 custodian, or conservator of the person or estate of a person.

31 Subd. 17. [NOTICE.] "Notice" is given to a person when
 32 mailed to the person at an address designated by the person or
 33 at the last known address of the person, or when communicated to
 34 the person orally, or when handed to the person, or when left at
 35 the office of the person with a clerk or other person in charge
 36 of the office, or if there is no one in charge, when left in a
 37 conspicuous place in the office, or if the office is closed or

1 the person to be notified has no office, when left at the
 2 dwelling house or usual place of abode of the person with some
 3 person of suitable age and discretion then residing therein.
 4 Notice is given to a corporation when mailed or delivered to it
 5 at its registered office. Notice by mail is given when
 6 deposited in the United States mail with sufficient postage
 7 affixed.

8 Subd. 18. [OFFICER.] "Officer" means a person elected,
 9 appointed, or otherwise designated as an officer by the board,
 10 and any other person deemed elected as an officer pursuant to
 11 section 50.

12 Subd. 19. [ORGANIZATION.] "Organization" means a domestic
 13 or foreign corporation, partnership, limited partnership, joint
 14 venture, association, business trust, estate, trust, enterprise,
 15 and any other legal or commercial entity.

16 Subd. 20. [OUTSTANDING SHARES.] "Outstanding shares" means
 17 all shares duly issued and not reacquired by a corporation.

18 Subd. 21. [PARENT.] "Parent" of a corporation means a
 19 corporation that directly, or indirectly through related
 20 corporations, owns more than 50 percent of the voting shares of
 21 the corporation.

22 Subd. 22. [PERSON.] "Person" includes a natural person and
 23 an organization.

24 Subd. 23. [PRINCIPAL EXECUTIVE OFFICE.] "Principal
 25 executive office" means an office where the elected or appointed
 26 chief executive officer of a corporation has an office. If the
 27 corporation has no elected or appointed chief executive officer,
 28 "principal executive office" means the registered office of the
 29 corporation.

30 Subd. 24. [REGISTERED OFFICE.] "Registered office" means
 31 the place in this state designated in the articles of a
 32 corporation as the registered office of the corporation.

33 Subd. 25. [RELATED CORPORATION.] "Related corporation"
 34 means a parent or subsidiary of a corporation or another
 35 subsidiary of a parent of the corporation.

36 Subd. 26. [SECURITY.] "Security" has the meaning given it
 37 in Minnesota Statutes, Section 80A.14, Paragraph (a).

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

7 Subd. 28. [SHARE.] "Share" means one of the units, however
 8 designated, into which the shareholders' proprietary interests
 9 in a corporation are divided.

10 Subd. 29. [SHAREHOLDER.] "Shareholder" means a person
 11 registered on the books or records of a corporation or its
 12 transfer agent or registrar as the owner of one or more shares
 13 of the corporation.

14 Subd. 30. [SIGNED.] (a) "Signed" means that the signature
 15 of a person has been written on a document, as provided in
 16 Minnesota Statutes, Section 645.44, Subdivision 14, and, with
 17 respect to a document required by sections 1 to 125 to be filed
 18 with the secretary of state, means that the document has been
 19 signed by a person authorized to do so by sections 1 to 125, the
 20 articles or bylaws, or a resolution approved by the affirmative
 21 vote of a majority of the directors or the holders of a majority
 22 of the voting shares present.

23 (b) A signature on a document not required by sections 1 to
 24 125 to be filed with the secretary of state may be a facsimile
 25 affixed, engraved, printed, placed, stamped with indelible ink,
 26 or in any other manner reproduced on the document.

27 Subd. 31. [SUBSIDIARY.] "Subsidiary" of a specified
 28 corporation means a corporation having more than 50 percent of
 29 its voting shares owned directly, or indirectly through related
 30 corporations, by the specified corporation.

31 Subd. 32. [SURVIVING CORPORATION.] "Surviving corporation"
 32 means the domestic or foreign corporation resulting from a
 33 merger.

34 Subd. 33. [TRANSACTION STATEMENT.] "Transaction statement"
 35 means an "initial transaction statement" as defined in Minnesota
 36 Statutes, Section 336.8-402(4).

37 Subd. 34. [VOTE.] "Vote" includes authorization by written

1 action.

2 Subd. 35. [VOTING SHARES.] "Voting shares" means
 3 outstanding shares entitled to vote.

4 Subd. 36. [WRITTEN ACTION.] "Written action" means a
 5 written document signed by all of the persons required to take
 6 the action described. The term also means the counterparts of a
 7 written document signed by any of the persons taking the action
 8 described. Each counterpart constitutes the action of the
 9 persons signing it, and all the counterparts, taken together,
 10 constitute one written action by all of the persons signing them.

11 APPLICATION

12 Sec. 2. [302A.021] [APPLICATION AND ELECTION.]

13 Subdivision 1. [ELECTION BY CHAPTER 300 CORPORATIONS.] A
 14 corporation incorporated under Minnesota Statutes, Chapter 300
 15 for a purpose or purposes for which a corporation may be
 16 incorporated under sections 1 to 125 may elect to become
 17 governed by sections 1 to 125.

18 Subd. 2. [ELECTION BY BUSINESS AND PROFESSIONAL
 19 CORPORATIONS.] A corporation incorporated under Minnesota
 20 Statutes, Sections 301.01 to 301.67 may elect, on or after July
 21 1, 1981 and before January 1, 1983, to become governed by
 22 sections 1 to 125. A corporation incorporated under Minnesota
 23 Statutes, Sections 301.01 to 301.67 and 319A.01 to 319A.22 may
 24 elect, on or after July 1, 1981 and before January 1, 1983, to
 25 become governed by sections 1 to 125 and Minnesota Statutes,
 26 Sections 319A.01 to 319A.22.

27 Subd. 3. [CONFORMING ARTICLES OF ELECTING CORPORATIONS.]
 28 If the articles of an electing corporation include a provision
 29 prohibited by sections 1 to 125 or omit a provision required by
 30 sections 1 to 125 or are otherwise inconsistent with sections 1
 31 to 125, the electing corporation shall amend its articles to
 32 conform to the requirements of sections 1 to 125. The
 33 appropriate provisions of the corporation's articles or bylaws
 34 or the law by which it was governed before the effective date of
 35 the election made pursuant to this section control the manner of
 36 adoption of the amendment.

37 Subd. 4. [METHOD OF ELECTION.] An election to become

1 governed by sections 1 to 125 shall be made by resolution
 2 approved by the affirmative vote of the holders of a majority,
 3 or a larger proportion or number required by the articles, of
 4 the shares represented and voting at a duly held meeting of the
 5 corporation. The resolution, and articles of amendment if
 6 required, shall be filed with the secretary of state and is
 7 effective upon filing.

8 Subd. 5. [EFFECT OF ELECTION UPON BYLAWS.] Upon filing an
 9 election pursuant to subdivision 4, all provisions of the bylaws
 10 that are consistent with sections 1 to 125 remain or become
 11 effective and all provisions of the bylaws that are inconsistent
 12 with sections 1 to 125 cease to be effective.

13 Subd. 6. [CHOICE OF INCORPORATION UNTIL JANUARY 1, 1983.]
 14 From July 1, 1981 to December 31, 1982, inclusive, a corporation
 15 incorporated for a purpose or purposes for which a corporation
 16 may be incorporated under sections 1 to 125 may be incorporated
 17 either under sections 1 to 125 or under Minnesota Statutes,
 18 Sections 301.01 to 301.67, or, if applicable, Minnesota
 19 Statutes, Sections 301.01 to 301.67 and 319A.01 to 319A.22.

20 Subd. 7. [NON-ELECTING BUSINESS CORPORATIONS SUBJECT TO
 21 LAW AS OF JANUARY 1, 1983.] A corporation in existence on
 22 January 1, 1983 and incorporated for a purpose or purposes for
 23 which a corporation may be incorporated under sections 1 to 125
 24 or, if applicable, sections 1 to 125 and Minnesota Statutes,
 25 Chapter 319A, other than a corporation incorporated under
 26 Minnesota Statutes, Chapter 300, that has not elected before
 27 January 1, 1983 to become subject to sections 1 to 125, becomes
 28 governed by sections 1 to 125 or, if applicable, sections 1 to
 29 125 and Minnesota Statutes, Chapter 319A, on January 1, 1983 as
 30 fully as though the corporation had been incorporated under
 31 sections 1 to 125 or, if applicable, sections 1 to 125 and
 32 Minnesota Statutes, Chapter 319A. All provisions of the
 33 articles and bylaws of the corporation that may be included in
 34 the articles or bylaws under sections 1 to 125 remain in
 35 effect. All provisions of the articles and bylaws of the
 36 corporation that are inconsistent with sections 1 to 125 cease
 37 to be effective on January 1, 1983. Any provisions required by

1 sections 1 to 125 to be contained in the articles that do not
 2 appear in the articles are read into them as a matter of law.

3 Subd. 8. [INCORPORATION AFTER JANUARY 1, 1983.] Effective
 4 January 1, 1983, a corporation incorporated for a purpose or
 5 purposes for which a corporation may be incorporated under
 6 sections 1 to 125 shall be incorporated only under sections 1 to
 7 125.

8 Subd. 9. [LAWS NOT TO APPLY.] Minnesota Statutes, Sections
 9 222.19, 222.23, 300.01, 300.02, 300.06 to 300.09, 300.12 to
 10 300.68, and Chapters 301 and 316 do not apply to a corporation
 11 incorporated under or governed by sections 1 to 125.

12 Sec. 3. [302A.031] [TRANSITION.]

13 The continuation or completion of any act by a corporation
 14 that has not incorporated under, but has become governed by,
 15 sections 1 to 125, and the continuation or performance of any
 16 executed or wholly or partially executory contract, conveyance,
 17 or transfer to or by the corporation, shall, if otherwise lawful
 18 before the corporation became governed by sections 1 to 125,
 19 remain valid, and may be continued, completed, consummated,
 20 enforced, or terminated as required or permitted by a statute
 21 applicable prior to the date on which the corporation became
 22 governed by sections 1 to 125.

23 Sec. 4. [302A.041] [RESERVATION OF RIGHT.]

24 The state reserves the right to amend or repeal the
 25 provisions of sections 1 to 125. A corporation incorporated
 26 under or governed by sections 1 to 125 is subject to this
 27 reserved right.

28 INCORPORATION; ARTICLES

29 Sec. 5. [302A.101] [PURPOSES.]

30 A corporation may be incorporated under sections 1 to 125
 31 for any business purpose or purposes, unless some other statute
 32 of this state requires incorporation for any of those purposes
 33 under a different law. Unless otherwise provided in its
 34 articles, a corporation has general business purposes.

35 Sec. 6. [302A.105] [INCORPORATORS.]

36 One or more natural persons of full age may act as
 37 incorporators of a corporation by filing with the secretary of

1 state articles of incorporation for the corporation.

2 Sec. 7. [302A.111] [ARTICLES.]

3 Subdivision 1. [REQUIRED PROVISIONS.] The articles of
4 incorporation shall contain:

5 (a) The name of the corporation;

6 (b) The address of the registered office of the corporation
7 and the name of its registered agent, if any, at that address;

8 (c) The aggregate number of shares that the corporation has
9 authority to issue; and

10 (d) The name and address of each incorporator.

11 Subd. 2. [STATUTORY PROVISIONS THAT MAY BE MODIFIED ONLY
12 IN ARTICLES.] The following provisions govern a corporation
13 unless modified in the articles:

14 (a) A corporation has general business purposes (section 5);

15 (b) A corporation has perpetual existence and certain
16 powers (section 21);

17 (c) The power to adopt, amend, or repeal the bylaws is
18 vested in the board (section 25);

19 (d) A corporation must allow cumulative voting for
20 directors (section 33);

21 (e) The affirmative vote of a majority of directors present
22 is required for an action of the board (section 40);

23 (f) A written action by the board taken without a meeting
24 must be signed by all directors (section 41);

25 (g) The board may authorize the issuance of securities and
26 rights to purchase securities (section 55, subdivision 1);

27 (h) All shares are common voting shares of one class and
28 one series (section 55, subdivision 2, clauses (a) and (b));

29 (i) All shares have equal rights and preferences in all
30 matters not otherwise provided for by the board (section 55,
31 subdivision 2, clause (b));

32 (j) The par value of shares is fixed at one cent per share
33 for certain purposes and may be fixed by the board for certain
34 other purposes (section 55, subdivision 2, clause (c));

35 (k) The board or the shareholders may issue shares for any
36 consideration or for no consideration to effectuate share
37 dividends or splits, and determine the value of nonmonetary

- 1 consideration (section 57, subdivision 1);
- 2 (l) Shares of a class or series must not be issued to
- 3 holders of shares of another class or series to effectuate share
- 4 dividends or splits, unless authorized by a majority of the
- 5 voting shares of the same class or series as the shares to be
- 6 issued (section 57, subdivision 1);
- 7 (m) A corporation may issue rights to purchase securities
- 8 whose terms, provisions, and conditions are fixed by the board
- 9 (section 58);
- 10 (n) A shareholder has certain preemptive rights, unless
- 11 otherwise provided by the board (section 59);
- 12 (o) The affirmative vote of the holders of a majority of
- 13 the voting shares represented and voting at a duly held meeting
- 14 is required for an action of the shareholders, except where
- 15 section 1 to 125 requires the affirmative vote of a majority of
- 16 all voting shares (section 68, subdivision 1); and
- 17 (p) Shares of a corporation acquired by the corporation may
- 18 be reissued (section 86, subdivision 1).
- 19 Subd. 3. [STATUTORY PROVISIONS THAT MAY BE MODIFIED EITHER
- 20 IN ARTICLES OR IN BYLAWS.] The following provisions govern a
- 21 corporation unless modified either in the articles or in the
- 22 bylaws:
- 23 (a) Directors serve for an indefinite term that expires at
- 24 the next regular meeting of shareholders (section 29);
- 25 (b) The compensation of directors is fixed by the board
- 26 (section 31);
- 27 (c) A certain method must be used for removal of directors
- 28 (section 35);
- 29 (d) A certain method must be used for filling board
- 30 vacancies (section 36);
- 31 (e) If the board fails to select a place for a board
- 32 meeting, it must be held at the principal executive office
- 33 (section 37, subdivision 1);
- 34 (f) A director may call a board meeting, and the notice of
- 35 the meeting need not state the purpose of the meeting (section
- 36 37, subdivision 3);
- 37 (g) A majority of the board is a quorum for a board meeting

1 (section 39);

2 (h) A committee shall consist of one or more persons, who
3 need not be directors, appointed by affirmative vote of a
4 majority of the directors present (section 42, subdivision 2);

5 (i) A majority of a committee is a quorum for a committee
6 meeting, unless otherwise provided by a resolution of the board
7 (section 42, subdivision 3);

8 (j) The board may establish a committee of disinterested
9 persons (section 43);

10 (k) The chief executive officer and chief financial officer
11 have specified duties, until the board determines otherwise
12 (section 47);

13 (l) Officers may delegate some or all of their duties and
14 powers, if not prohibited by the board from doing so (section
15 53);

16 (m) The board may establish uncertificated shares (section
17 60, subdivision 7);

18 (n) Regular meetings of shareholders need not be held,
19 unless demanded by a shareholder under certain conditions
20 (section 65);

21 (o) Not less than 10-days nor more than 60-days notice is
22 required for a meeting of shareholders (section 67, subdivision
23 2);

24 (p) The number of shares required for a quorum at a
25 shareholders meeting is a majority of the voting shares (section
26 70);

27 (q) The board may fix a date up to 50 days before the date
28 of a shareholders' meeting as the date for the determination of
29 the holders of voting shares entitled to notice of and to vote
30 at the meeting (section 71, subdivision 1);

31 (r) Each share has one vote unless otherwise provided in
32 the terms of the share (section 71, subdivision 3); and

33 (s) Indemnification of certain persons is required (section
34 84); and

35 (t) The board may authorize, and the corporation may make,
36 distributions not prohibited, limited, or restricted by an
37 agreement (section 85, subdivision 1).

1 Subd. 4. [OPTIONAL PROVISIONS: SPECIFIC SUBJECTS.] The
2 following provisions relating to the management of the business
3 or the regulation of the affairs of a corporation may be
4 included either in the articles or, except for naming members of
5 the first board or fixing a greater than majority director or
6 shareholder vote, in the bylaws:

7 (a) The members of the first board may be named in the
8 articles (section 26, subdivision 1);

9 (b) A manner for increasing or decreasing the number of
10 directors may be provided (section 27);

11 (c) Additional qualifications for directors may be imposed
12 (section 28);

13 (d) Directors may be classified (section 32);

14 (e) The day or date, time, and place of board meetings may
15 be fixed (section 37, subdivision 1);

16 (f) Absent directors may be permitted to give written
17 consent or opposition to a proposal (section 38);

18 (g) A larger than majority vote may be required for board
19 action (section 40);

20 (h) Authority to sign and deliver certain documents may be
21 delegated to an officer or agent of the corporation other than
22 the chief executive officer (section 47, subdivision 2);

23 (i) Additional officers may be designated (section 48);

24 (j) Additional powers, rights, duties, and responsibilities
25 may be given to officers (section 49);

26 (k) A method for filling vacant offices may be specified
27 (section 52, subdivision 3);

28 (l) A certain officer or agent may be authorized to sign
29 share certificates (section 60, subdivision 2);

30 (m) The transfer or registration of transfer of securities
31 may be restricted (section 64);

32 (n) The day or date, time, and place of regular shareholder
33 meetings may be fixed (section 65, subdivision 3);

34 (o) Certain persons may be authorized to call special
35 meetings of shareholders (section 66, subdivision 1);

36 (p) Notices of shareholder meetings may be required to
37 contain certain information (section 67, subdivision 3);

1 (q) A larger than majority vote may be required for
2 shareholder action (section 68);

3 (r) Voting rights may be granted in or pursuant to the
4 articles to persons who are not shareholders (section 71,
5 subdivision 4);

6 (s) Corporate actions giving rise to dissenter rights may
7 be designated (section 80, subdivision 1, clause (e)); and

8 (t) The rights and priorities of persons to receive
9 distributions may be established (section 85).

10 Subd. 5. [OPTIONAL PROVISIONS: GENERALLY.] The articles
11 may contain other provisions not inconsistent with law relating
12 to the management of the business or the regulation of the
13 affairs of the corporation.

14 Subd. 6. It is not necessary to set forth in the articles
15 any of the corporate powers granted by sections 1 to 125.

16 Sec. 8. [302A.115] [CORPORATE NAME.]

17 Subdivision 1. [REQUIREMENTS; PROHIBITIONS.] The corporate
18 name:

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

21 (b) Shall contain the word "corporation", "incorporated",
22 or "limited", or shall contain an abbreviation of one or more of
23 these words, or the word "company" or the abbreviation "Co." if
24 that word or abbreviation is not immediately preceded by the
25 word "and" or the character "&". This provision does not affect
26 the right of a domestic corporation existing on January 1, 1983
27 or a foreign corporation authorized to do business in this state
28 on that date to continue the use of its name;

29 (c) Shall not contain a word or phrase that indicates or
30 implies that it is incorporated for a purpose other than one or
31 more business purposes for which a corporation may be
32 incorporated under sections 1 to 125;

33 (d) Shall not be the same as, or deceptively similar to,
34 the name of a domestic corporation or a foreign corporation
35 authorized to do business in this state, or a name the exclusive
36 right to which is, at the time, reserved in the manner provided
37 in section 9 or in Minnesota Statutes, Sections 333.001 to

1 333.52, unless there is filed with the articles one of the
 2 following:

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

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

10 (3) The applicant's affidavit that the corporation with the
 11 same or deceptively similar name has been incorporated in this
 12 state for at least three years, if it is a domestic corporation,
 13 or has been authorized to do business in this state for at least
 14 three years, if it is a foreign corporation, and has not during
 15 the three year period filed any document with the secretary of
 16 state; that the applicant has mailed written notice to the
 17 corporation by certified mail, return receipt requested,
 18 properly addressed to the registered office of the corporation
 19 shown in the records of the secretary of state, that the
 20 applicant intends to use the same or deceptively similar name
 21 and the notice has been returned to the applicant as
 22 undeliverable to the addressee corporation; that the applicant,
 23 after diligent inquiry, has been unable to find any telephone
 24 listing for the corporation with the same or deceptively similar
 25 name in the county in which is located the registered office of
 26 the corporation shown in the records of the secretary of state;
 27 and that the applicant has no knowledge that the corporation is
 28 currently engaged in business in this state.

29 Subd. 2. [DETERMINATION.] The secretary of state shall
 30 determine whether a name is "deceptively similar" to another
 31 name for purposes of this section and section 9.

32 Subd. 3. [OTHER LAWS AFFECTING USE OF NAMES.] This section
 33 and section 9 do not abrogate or limit the law of unfair
 34 competition or unfair practices, nor Minnesota Statutes,
 35 Sections 333.001 to 333.52, nor the laws of the United States
 36 with respect to the right to acquire and protect copyrights,
 37 trade names, trademarks, service names, service marks, or any

1 other rights to the exclusive use of names or symbols, nor
 2 derogate the common law or the principles of equity.

3 Subd. 4. [USE OF NAME BY SUCCESSOR CORPORATION.] A
 4 corporation that is merged with another domestic or foreign
 5 corporation, or that is incorporated by the reorganization of
 6 one or more domestic or foreign corporations, or that acquires
 7 by sale, lease, or other disposition to or exchange with a
 8 domestic corporation all or substantially all of the assets of
 9 another domestic or foreign corporation including its name, may
 10 have the same name as that used in this state by any of the
 11 other corporations, if the other corporation was incorporated
 12 under the laws of, or is authorized to transact business in,
 13 this state.

14 Subd. 5. [INJUNCTION.] The use of a name by a corporation
 15 in violation of this section does not affect or vitiate its
 16 corporate existence, but a court in this state may, upon
 17 application of the state or of a person interested or affected,
 18 enjoin the corporation from doing business under a name assumed
 19 in violation of this section, although its articles may have
 20 been filed with the secretary of state and a certificate of
 21 incorporation issued.

22 Sec. 9. [302A.117] [RESERVED NAME.]

23 Subdivision 1. [WHO MAY RESERVE.] The exclusive right to
 24 the use of a corporate name otherwise permitted by section 8 may
 25 be reserved by:

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

28 (b) A person intending to incorporate a corporation under
 29 sections 1 to 125;

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

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

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

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

1 state; or

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

6 Subd. 2. [METHOD OF RESERVATION.] The reservation shall be
7 made by filing with the secretary of state a request that the
8 name be reserved. If the name is available for use by the
9 applicant, the secretary of state shall reserve the name for the
10 exclusive use of the applicant for a period of 12 months. The
11 reservation may be renewed for successive 12 month periods.

12 Subd. 3. [TRANSFER OF RESERVATION.] The right to the
13 exclusive use of a corporate name reserved pursuant to this
14 section may be transferred to another person by or on behalf of
15 the applicant for whom the name was reserved by filing with the
16 secretary of state a notice of the transfer and specifying the
17 name and address of the transferee.

18 Sec. 10. [302A.121] [REGISTERED OFFICE; REGISTERED AGENT.]

19 Subdivision 1. [REGISTERED OFFICE.] A corporation shall
20 continuously maintain a registered office in this state. A
21 registered office need not be the same as the principal place of
22 business or the principal executive office of the corporation.

23 Subd. 2. [REGISTERED AGENT.] A corporation may designate
24 in its articles a registered agent. The registered agent may be
25 a natural person residing in this state, a domestic corporation,
26 or a foreign corporation authorized to transact business in this
27 state. The registered agent must maintain a business office
28 that is identical with the registered office.

29 Sec. 11. [302A.123] [CHANGE OF REGISTERED OFFICE OR
30 REGISTERED AGENT.]

31 Subdivision 1. [STATEMENT.] A corporation may change its
32 registered office or designate or change its registered agent by
33 filing with the secretary of state a statement containing:

- 34 (a) The name of the corporation;
35 (b) The present address of its registered office;
36 (c) If the address of its registered office is to be
37 changed, the new address of its registered office;

- 1 (d) The name of its registered agent, if any;
- 2 (e) If its registered agent is to be designated or changed,
- 3 the name of its new registered agent;
- 4 (f) A statement that the address of its registered office
- 5 and the address of the business office of its registered agent,
- 6 as changed, will be identical; and
- 7 (g) A statement that the change was authorized by
- 8 resolution approved by the affirmative vote of a majority of the
- 9 directors present.

10 Subd. 2. [RESIGNATION OF AGENT.] A registered agent of a
11 corporation may resign by filing with the secretary of state a
12 duplicate signed written notice of resignation. The secretary
13 of state shall forward one of the filed originals to the
14 corporation at its registered office. The appointment of the
15 agent terminates 30 days after the notice is filed with the
16 secretary of state.

17 Subd. 3. [CHANGE OF BUSINESS ADDRESS OF AGENT.] If the
18 business address of a registered agent changes, the agent shall
19 change the address of the registered office of each corporation
20 represented by that agent by filing with the secretary of state
21 a statement as required in subdivision 1, except that it need be
22 signed only by the registered agent, need not be responsive to
23 clauses (e) or (g), and must recite that a copy of the statement
24 has been mailed to each of those corporations.

25 Sec. 12. [302A.131] [AMENDMENT OF ARTICLES.]

26 A corporation may at any time amend its articles to include
27 or modify any provision that is required or permitted to appear
28 in the articles or to omit any provision not required to be
29 included in the articles.

30 Sec. 13. [302A.133] [PROCEDURE FOR AMENDMENT BEFORE
31 ISSUANCE OF SHARES.]

32 Before the issuance of shares by a corporation, the
33 articles may be amended pursuant to section 24 by the
34 incorporators or by the board.

35 Sec. 14. [302A.135] [PROCEDURE FOR AMENDMENT AFTER
36 ISSUANCE OF SHARES.]

37 Subdivision 1. [MANNER OF AMENDMENT.] After the issuance

1 of shares by the corporation, the articles may be amended in the
 2 manner set forth in this section.

3 Subd. 2. [SUBMISSION TO SHAREHOLDERS.] A resolution
 4 approved by the affirmative vote of a majority of the directors
 5 present, or proposed by a shareholder or shareholders holding
 6 one percent or more of all voting shares, that sets forth the
 7 proposed amendment shall be submitted to a vote at the next
 8 regular or special meeting of the shareholders of which notice
 9 can be timely given. Any number of amendments may be submitted
 10 to the shareholders and voted upon at one meeting, but the same
 11 or substantially the same amendment proposed by a shareholder or
 12 shareholders need not be submitted to the shareholders or be
 13 voted upon at more than one meeting during a 15-month period.
 14 The resolution may amend the articles in their entirety to
 15 restate and supersede the original articles and all amendments
 16 to them. An amendment that restates the articles need not set
 17 forth the names or addresses of the incorporators nor of any
 18 former directors or registered agents.

19 Subd. 3. [NOTICE.] Written notice of the shareholders'
 20 meeting setting forth the substance of the proposed amendment
 21 shall be given to each shareholder in the manner provided in
 22 section 67 for the giving of notice of meetings of shareholders.

23 Subd. 4. [APPROVAL BY SHAREHOLDERS.] (a) The proposed
 24 amendment is adopted when approved by the affirmative vote of
 25 the holders of a majority of the voting shares present, except
 26 as provided in paragraph (b).

27 (b) If the articles provide for a specified proportion or
 28 number equal to or larger than the majority necessary to
 29 transact a specified type of business at a meeting, or if it is
 30 proposed to amend the articles to provide for a specified
 31 proportion or number equal to or larger than the majority
 32 necessary to transact a specified type of business at a meeting,
 33 the affirmative vote necessary to add the provision to, or to
 34 amend an existing provision in, the articles is the larger of:

35 (1) The specified proportion or number or, in the absence
 36 of a specific provision, the affirmative vote necessary to
 37 transact the type of business described in the proposed

1 amendment at a meeting immediately before the effectiveness of
 2 the proposed amendment; or

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

6 Sec. 15. [302A.137] [CLASS OR SERIES VOTING ON
 7 AMENDMENTS.]

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

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

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

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

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

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

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

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

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

37 (i) Limit or deny any existing preemptive rights of the

1 shares of the class or series; or

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

5 Sec. 16. [302A.139] [ARTICLES OF AMENDMENT.]

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

8 (a) The name of the corporation;

9 (b) The amendment adopted;

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

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

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

20 Sec. 17. [302A.141] [EFFECT OF AMENDMENT.]

21 Subdivision 1. [EFFECT ON CAUSE OF ACTION.] An amendment
22 does not affect an existing cause of action in favor of or
23 against the corporation, nor a pending suit to which the
24 corporation is a party, nor the existing rights of persons other
25 than shareholders.

26 Subd. 2. [EFFECT OF CHANGE OF NAME.] If the corporate name
27 is changed by the amendment, a suit brought by or against the
28 corporation under its former name does not abate for that reason.

29 Sec. 18. [302A.151] [FILING ARTICLES.]

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

32 Sec. 19. [302A.153] [EFFECTIVE DATE OF ARTICLES.]

33 Articles of incorporation are effective and corporate
34 existence begins when the articles of incorporation are filed
35 with the secretary of state. Articles of amendment are
36 effective when filed with the secretary of state or at another
37 time within 30 days after filing if the articles of amendment so

1 provide.

2 Sec. 20. [302A.155] [PRESUMPTION; CERTIFICATE OF
3 INCORPORATION.]

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

POWERS

14 Sec. 21. [3024.161] [POWERS-]

15 Subdivision 1. [GENERALLY; LIMITATIONS.] A corporation has
16 the powers set forth in this section, subject to any limitations
17 provided in any other statute of this state or in its articles.

18 Subd. 2. [DURATION.] A corporation has perpetual duration.

19 Subd. 3. LEGAL CAPACITY. A corporation may sue and be
20 sued, complain and defend and participate as a party or
21 otherwise in any legal, administrative, or arbitration
22 proceeding, in its corporate name.

23 Subd. 4. [PROPERTY OWNERSHIP.] A corporation may purchase,
24 lease, or otherwise acquire, own, hold, improve, use, and
25 otherwise deal in and with, real or personal property, or any
26 interest therein, wherever situated.

27 Subd. 5. [PROPERTY DISPOSITION.] A corporation may sell,
28 convey, mortgage, create a security interest in, lease,
29 exchange, transfer, or otherwise dispose of all or any part of
30 its real or personal property, or any interest therein, wherever
31 situated.

32 Subd. 6. TRADING IN SECURITIES; OBLIGATIONS. A
33 corporation may purchase, subscribe for, or otherwise acquire,
34 own, hold, vote, use, employ, sell, exchange, mortgage, lend,
35 create a security interest in, or otherwise dispose of and
36 otherwise use and deal in and with, securities or other
37 interests in, or obligations of, a person or direct or indirect

1 obligations of any domestic or foreign government or
 2 instrumentality thereof.

3 Subd. 7. [CONTRACTS; MORTGAGES.] A corporation may make
 4 contracts and incur liabilities, borrow money, issue its
 5 securities, and secure any of its obligations by mortgage of or
 6 creation of a security interest in all or any of its property,
 7 franchises and income.

8 Subd. 8. [INVESTMENT.] A corporation may invest and
 9 reinvest its funds.

10 Subd. 9. [HOLDING PROPERTY AS SECURITY.] A corporation may
 11 take and hold real and personal property, whether or not of a
 12 kind sold or otherwise dealt in by the corporation, as security
 13 for the payment of money loaned, advanced, or invested.

14 Subd. 10. [LOCATION.] A corporation may conduct its
 15 business, carry on its operations, have offices, and exercise
 16 the powers granted by sections 1 to 125 anywhere in the universe.

17 Subd. 11. [DONATIONS.] A corporation may make donations,
 18 irrespective of corporate benefit, for the public welfare; for
 19 social, community, charitable, religious, educational,
 20 scientific, civic, literary, and testing for public safety
 21 purposes, and for similar or related purposes; for the purpose
 22 of fostering national or international amateur sports
 23 competition; for the prevention of cruelty to children and
 24 animals; and, in time of war or other national emergency, for
 25 any and all purposes in aid thereof.

26 Subd. 12. [WAR; NATIONAL EMERGENCY.] At the request of the
 27 government of the United States or of this state or any of their
 28 respective agencies, a corporation may transact any lawful
 29 business in time of war or other national emergency,
 30 notwithstanding any limitation on the purposes set forth in its
 31 articles.

32 Subd. 13. [PENSIONS; BENEFITS.] A corporation may pay
 33 pensions, retirement allowances, and compensation for past
 34 services to and for the benefit of, and establish, maintain,
 35 continue, and carry out, wholly or partially at the expense of
 36 the corporation, employee or incentive benefit plans, trusts,
 37 and provisions to or for the benefit of, any or all of its and

1 its related corporations' officers, directors, employees, and
 2 agents and the families, dependents, and beneficiaries of any of
 3 them. It may indemnify and purchase and maintain insurance for
 4 and on behalf of a fiduciary of any of these employee benefit
 5 and incentive plans, trusts, and provisions.

6 Subd. 14. [PARTICIPATING IN MANAGEMENT.] A corporation may
 7 participate in any capacity in the promotion, organization,
 8 ownership, management, and operation of any organization or in
 9 any transaction, undertaking, or arrangement that the
 10 participating corporation would have power to conduct by itself,
 11 whether or not the participation involves sharing or delegation
 12 of control with or to others.

13 Subd. 15. [INSURANCE.] A corporation may provide for its
 14 benefit life insurance and other insurance with respect to the
 15 services of any or all of its officers, directors, employees,
 16 and agents, or on the life of a shareholder for the purpose of
 17 acquiring at the death of the shareholder any or all shares in
 18 the corporation owned by the shareholder.

19 Subd. 16. [CORPORATE SEAL.] A corporation may have, alter
 20 at pleasure, and use a corporate seal as provided in section 22.

21 Subd. 17. [BYLAWS.] A corporation may adopt, amend, and
 22 repeal bylaws relating to the management of the business or the
 23 regulation of the affairs of the corporation as provided in
 24 section 25.

25 Subd. 18. [COMMITTEES.] A corporation may establish
 26 committees of the board of directors, elect or appoint persons
 27 to the committees, and define their duties as provided in
 28 sections 42 and 43 and fix their compensation.

29 Subd. 19. [OFFICERS; EMPLOYEES; AGENTS.] A corporation may
 30 elect or appoint officers, employees, and agents of the
 31 corporation, and define their duties as provided in sections 46
 32 to 54 and fix their compensation.

33 Subd. 20. [SECURITIES.] A corporation may issue securities
 34 and rights to purchase securities as provided in sections 55 to
 35 63.

36 Subd. 21. [LOANS; GUARANTIES; SURETIES.] A corporation may
 37 lend money to, guarantee an obligation of, become a surety for,

1 or otherwise financially assist persons as provided in section
 2 82.

3 Subd. 22. [ADVANCES.] A corporation may make advances to
 4 its directors, officers, and employees and those of its
 5 subsidiaries as provided in section 83.

6 Subd. 23. [INDEMNIFICATION.] A corporation shall indemnify
 7 persons against certain expenses and liabilities only as
 8 provided in section 84.

9 Subd. 24. [ASSUMED NAMES.] A corporation may conduct all
 10 or part of its business under one or more assumed names as
 11 provided in Minnesota Statutes, Sections 333.001 to 333.06.

12 Subd. 25. [OTHER POWERS.] A corporation may have and
 13 exercise all other powers necessary or convenient to effect any
 14 or all of the business purposes for which the corporation is
 15 incorporated.

16 Sec. 22. [302A.163] [CORPORATE SEAL.]

17 Subdivision 1. [SEAL NOT REQUIRED.] A corporation may, but
 18 need not, have a corporate seal, and the use or nonuse of a
 19 corporate seal does not affect the validity or enforceability of
 20 a document or act. If a corporation has a corporate seal, the
 21 use of the seal by the corporation on a document is not
 22 necessary.

23 Subd. 2. [REQUIRED WORDS; USE.] If a corporation has a
 24 corporate seal, the seal may consist of a mechanical imprinting
 25 device, or a rubber stamp with a facsimile of the seal affixed
 26 thereon, or a facsimile or reproduction of either. The seal
 27 need include only the word "Seal", but it may also include a
 28 part or all of the name of the corporation and a combination,
 29 derivation, or abbreviation of either or both of the phrases "a
 30 Minnesota Corporation" and "Corporate Seal". If a corporate
 31 seal is used, it or a facsimile of it may be affixed, engraved,
 32 printed, placed, stamped with indelible ink, or in any other
 33 manner reproduced on any document.

34 Sec. 23. [302A.165] [EFFECT OF LACK OF POWER; ULTRA
 35 VIRES.]

36 The doing, continuing, or performing by a corporation of an
 37 act, or an executed or wholly or partially executory contract,

1 conveyance or transfer to or by the corporation, if otherwise
 2 lawful, is not invalid because the corporation was without the
 3 power to do, continue, or perform the act, contract, conveyance,
 4 or transfer, unless the lack of power is established in a court
 5 in this state:

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

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

25 (c) In a proceeding by the attorney general, as provided in
 26 section 111, to dissolve the corporation, or in a proceeding by
 27 the attorney general to enjoin the corporation from the
 28 transaction of unauthorized business.

29 ORGANIZATION; BYLAWS

30 Sec. 24. [302A.171] [ORGANIZATION.]

31 Subdivision 1. [ROLE OF INCORPORATORS.] If the first board
 32 is not named in the articles, the incorporators may elect the
 33 first board or may act as directors, in the same manner as
 34 directors, with all of the powers, rights, duties, and
 35 liabilities of directors, until directors are elected, until
 36 shares are issued, or until the organization of the corporation
 37 is complete, whichever occurs first.

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

21 Sec. 25. [302A.181] [BYLAWS.]

22 Subdivision 1. [GENERALLY.] A corporation may, but need
 23 not, have bylaws. Bylaws may contain any provision relating to
 24 the management of the business or the regulation of the affairs
 25 of the corporation not inconsistent with law or the articles.

26 Subd. 2. [POWER OF BOARD.] Initial bylaws may be adopted
 27 pursuant to section 24 by the incorporators or by the first
 28 board. Unless reserved by the articles to the shareholders, the
 29 power to adopt, amend, or repeal the bylaws is vested in the
 30 board. The power of the board is subject to the power of the
 31 shareholders, exercisable in the manner provided in subdivision
 32 3, to adopt, amend, or repeal bylaws adopted, amended, or
 33 repealed by the board. After the adoption of the initial
 34 bylaws, the board shall not adopt, amend, or repeal a bylaw
 35 fixing a quorum for meetings of shareholders, prescribing
 36 procedures for removing directors or filling vacancies in the
 37 board, or fixing the number of directors or their

1 classifications, qualifications, or terms of office, but may
 2 adopt or amend a bylaw to increase the number of directors.
 3 Subd. 3. [POWER OF SHAREHOLDERS; PROCEDURE.] If a
 4 shareholder or shareholders holding one percent or more of all
 5 voting shares propose a resolution for action by the
 6 shareholders to adopt, amend, or repeal bylaws adopted, amended,
 7 or repealed by the board and the resolution sets forth the
 8 provision or provisions proposed for adoption, amendment, or
 9 repeal, the limitations and procedures for submitting,
 10 considering, and adopting the resolution are the same as
 11 provided in section 14, subdivisions 2 to 4, for amendment of
 12 the articles.

13 BOARD

14 Sec. 26. [302A.201] [BOARD.]

15 Subdivision 1. [BOARD TO MANAGE.] The business and affairs
 16 of a corporation shall be managed by or under the direction of a
 17 board, subject to the provisions of subdivision 2 and section
 18 76. The members of the first board may be named in the articles
 19 or elected by the incorporators pursuant to section 24 or by the
 20 shareholders.

21 Subd. 2. [SHAREHOLDER MANAGEMENT.] The holders of the
 22 voting shares of the corporation may, by unanimous affirmative
 23 vote, take any action that sections 1 to 125 require or permit
 24 the board to take or the shareholders to take after action or
 25 approval of the board. As to an action taken by the
 26 shareholders in that manner:

27 (a) The directors have no duties, liabilities, or
 28 responsibilities as directors under sections 1 to 125 with
 29 respect to or arising from the action;

30 (b) The shareholders collectively and individually have all
 31 of the duties, liabilities, and responsibilities of directors
 32 under sections 1 to 125 with respect to and arising from the
 33 action;

34 (c) If the action relates to a matter required or permitted
 35 by sections 1 to 125 or by any other law to be approved or
 36 adopted by the board, either with or without approval or
 37 adoption by the shareholders, the action is deemed to have been

1 approved or adopted by the board; and

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

7 Sec. 27. [302A.203] [NUMBER.]

8 The board shall consist of one or more directors. The
9 number of directors shall be fixed by, or in the manner provided
10 in, the articles or bylaws. The number of directors may be
11 increased or, subject to section 35, decreased at any time by
12 amendment to, or in the manner provided in, the articles or
13 bylaws.

14 Sec. 28. [302A.205] [QUALIFICATIONS; ELECTION.]

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

18 Sec. 29. [302A.207] [TERMS.]

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

26 Sec. 30. [302A.209] [ACTS NOT VOID OR VOIDABLE.]

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

30 Sec. 31. [302A.211] [COMPENSATION.]

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

33 Sec. 32. [302A.213] [CLASSIFICATION OF DIRECTORS.]

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

36 Sec. 33. [302A.215] [CUMULATIVE VOTING FOR DIRECTORS.]

37 Unless the articles provide that there shall be no

1 cumulative voting, and except as provided in section 35,
 2 subdivision 5, each shareholder entitled to vote for directors
 3 has the right to cumulate those votes in the election of
 4 directors by giving written notice of intent to cumulate those
 5 votes to the presiding officer at the meeting at which the
 6 election is to occur at any time before the election of
 7 directors at the meeting, in which case:

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

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

16 Sec. 34. [302A.221] [RESIGNATION.]

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

21 Sec. 35. [302A.223] [REMOVAL OF DIRECTORS.]

22 Subdivision 1. [MODIFICATION.] The provisions of this
 23 section apply unless modified by the articles, the bylaws, or an
 24 agreement described in section 76.

25 Subd. 2. [REMOVAL BY DIRECTORS.] A director may be removed
 26 at any time, with or without cause, by the affirmative vote of a
 27 majority of the directors present, if:

28 (a) The director was named by the board to fill a vacancy;

29 (b) The shareholders have not elected directors in the
 30 interval between the time of the appointment to fill a vacancy
 31 and the time of the removal; and

32 (c) A majority of the remaining directors vote to remove
 33 the director.

34 Subd. 3. [REMOVAL BY SHAREHOLDERS.] Any one or all of the
 35 directors may be removed at any time, with or without cause, by
 36 the affirmative vote of the holders of the proportion or number
 37 of the voting shares of the classes or series the director

1 represents sufficient to elect them, except as provided in
 2 subdivision 4.

3 Subd. 4. [EXCEPTION FOR CORPORATIONS WITH CUMULATIVE
 4 VOTING.] In a corporation having cumulative voting, unless the
 5 entire board is removed simultaneously, a director is not
 6 removed from the board if there are cast against removal of the
 7 director the votes of a number of shares sufficient to elect the
 8 director at an election of the entire board under cumulative
 9 voting.

10 Subd. 5. [ELECTION OF REPLACEMENTS.] New directors may be
 11 elected at a meeting at which directors are removed. If the
 12 corporation allows cumulative voting and a shareholder notifies
 13 the presiding officer at any time prior to the election of new
 14 directors of intent to cumulate the votes of the shareholder,
 15 the presiding officer shall announce before the election that
 16 cumulative voting is in effect, and shareholders shall cumulate
 17 their votes as provided in section 33, clause (b).

18 Sec. 36. [302A.225] [VACANCIES.]

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

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

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

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

33 Sec. 37. [302A.231] [BOARD MEETINGS.]

34 Subdivision 1. [TIME; PLACE.] Meetings of the board may be
 35 held from time to time as provided in the articles or bylaws at
 36 any place within or without the state that the board may select
 37 or by any means described in subdivision 2. If the board fails

1 to select a place for a meeting, the meeting shall be held at
 2 the principal executive office, unless the articles or bylaws
 3 provide otherwise.

4 Subd. 2. [ELECTRONIC COMMUNICATIONS.] (a) A conference
 5 among directors by any means of communication through which the
 6 directors may simultaneously hear each other during the
 7 conference constitutes a board meeting, if the same notice is
 8 given of the conference as would be required by subdivision 3
 9 for a meeting, and if the number of directors participating in
 10 the conference would be sufficient to constitute a quorum at a
 11 meeting. Participation in a meeting by that means constitutes
 12 presence in person at the meeting.

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

19 Subd. 3. [CALLING MEETINGS; NOTICE.] Unless the articles
 20 or bylaws provide for a different time period, a director may
 21 call a board meeting by giving ten days notice to all directors
 22 of the date, time, and place of the meeting. The notice need
 23 not state the purpose of the meeting unless the articles or
 24 bylaws require it.

25 Subd. 4. [PREVIOUSLY SCHEDULED MEETINGS.] If the day or
 26 date, time, and place of a board meeting have been provided in
 27 the articles or bylaws, or announced at a previous meeting of
 28 the board, no notice is required. Notice of an adjourned
 29 meeting need not be given other than by announcement at the
 30 meeting at which adjournment is taken.

31 Subd. 5. [WAIVER OF NOTICE.] A director may waive notice
 32 of a meeting of the board. A waiver of notice by a director
 33 entitled to notice is effective whether given before, at, or
 34 after the meeting, and whether given in writing, orally, or by
 35 attendance. Attendance by a director at a meeting is a waiver
 36 of notice of that meeting, except where the director objects at
 37 the beginning of the meeting to the transaction of business

1 because the meeting is not lawfully called or convened and does
 2 not participate thereafter in the meeting.

3 Sec. 36. [302A.233] [ABSENT DIRECTORS.]

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

15 Sec. 39. [302A.235] [QUORUM.]

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

27 Sec. 40. [302A.237] [ACT OF THE BOARD.]

28 The board shall take action by the affirmative vote of a
 29 majority of directors present at a duly held meeting, except
 30 where sections 1 to 125 or the articles require the affirmative
 31 vote of a larger proportion or number. If the articles require
 32 a larger proportion or number than is required by sections 1 to
 33 125 for a particular action, the articles shall control.

34 Sec. 41. [302A.239] [ACTION WITHOUT MEETING.]

35 Subdivision 1. [METHOD.] An action required or permitted
 36 to be taken at a board meeting may be taken by written action
 37 signed by all of the directors unless the action need not be

1 approved by the shareholders and the articles so provide, in
 2 which case, the action may be taken by written action signed by
 3 the smaller number of directors that would be required to take
 4 the same action at a meeting of the board at which all directors
 5 were present.

6 Subd. 2. [EFFECTIVE TIME.] The written action is effective
 7 when signed by the required number of directors, unless a
 8 different effective time is provided in the written action.

9 Subd. 3. [NOTICE; LIABILITY.] When written action is
 10 permitted to be taken by less than all directors, all directors
 11 shall be notified immediately of its text and effective date.
 12 Failure to provide the notice does not invalidate the written
 13 action. A director who does not sign or consent to the written
 14 action has no liability for the action or actions taken thereby.

15 Sec. 42. [302A.241] [COMMITTEES.]

16 Subdivision 1. [GENERALLY.] A resolution approved by the
 17 affirmative vote of a majority of the board may establish
 18 committees having the authority of the board in the management
 19 of the business of the corporation to the extent provided in the
 20 resolution. Committees are subject at all times to the
 21 direction and control of the board, except as provided in
 22 section 43.

23 Subd. 2. [MEMBERSHIP.] Committee members shall be natural
 24 persons. Unless the articles or bylaws provide for a different
 25 membership, a committee shall consist of one or more persons,
 26 who need not be directors, appointed by affirmative vote of a
 27 majority of the directors present.

28 Subd. 3. [QUORUM.] A majority of the members of the
 29 committee present at a meeting is a quorum for the transaction
 30 of business, unless a larger or smaller proportion or number is
 31 provided in the articles or bylaws or in a resolution approved
 32 by the affirmative vote of a majority of the directors present.

33 Subd. 4. [PROCEDURE.] Sections 37 to 41 apply to
 34 committees and members of committees to the same extent as those
 35 sections apply to the board and directors.

36 Subd. 5. [MINUTES.] Minutes, if any, of committee meetings
 37 shall be made available upon request to members of the committee

1 and to any director.

2 Subd. 6. [STANDARD OF CONDUCT.] The establishment of,
3 delegation of authority to, and action by a committee does not
4 alone constitute compliance by a director with the standard of
5 conduct set forth in section 44.

6 Subd. 7. [COMMITTEE MEMBERS DEEMED DIRECTORS.] Committee
7 members are deemed to be directors for purposes of sections 44,
8 45, and 84.

9 Sec. 43. [302A.243] [COMMITTEE OF DISINTERESTED PERSONS.]
10 Unless prohibited by the articles or bylaws, the board may
11 establish a committee composed of two or more disinterested
12 directors or other disinterested persons to determine whether or
13 not it is in the best interests of the corporation to pursue a
14 particular legal right or remedy of the corporation and whether
15 to cause the dismissal or discontinuance of a particular
16 proceeding that seeks to assert a right or remedy on behalf of
17 the corporation. For purposes of this section, a director or
18 other person is "disinterested" if the director is not the owner
19 of more than one percent of the outstanding shares of, or a
20 present or former officer, employee, or agent of, the
21 corporation or of a related corporation and has not been made or
22 threatened to be made a party to the proceeding in question. The
23 committee, once established, is not subject to the direction or
24 control of, or termination by, the board. A vacancy on the
25 committee may be filled by a majority vote of the remaining
26 members. The good faith determinations of the committee are
27 binding upon the corporation and its directors, officers, and
28 shareholders. The committee terminates when it issues a written
29 report of its determinations.

30 Sec. 44. [302A.251] [STANDARD OF CONDUCT.]

31 Subdivision 1. [STANDARD; LIABILITY.] A director shall
32 discharge the duties of the position of director in good faith,
33 in a manner the director reasonably believes to be in the best
34 interests of the corporation, and with the care an ordinarily
35 prudent person in a like position would exercise under similar
36 circumstances. A person who so performs those duties is not
37 liable by reason of being or having been a director of the

1 corporation.

2 Subd. 2. [RELIANCE.] (a) A director is entitled to rely on
3 information, opinions, reports, or statements, including
4 financial statements and other financial data, in each case
5 prepared or presented by:

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

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

12 (3) A committee of the board upon which the director does
13 not serve, duly established in accordance with sections 39 and
14 40, as to matters within its designated authority, if the
15 director reasonably believes the committee to merit confidence.

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

19 Subd. 3. [PRESUMPTION OF ASSENT; DISSENT.] A director who
20 is present at a meeting of the board when an action is approved
21 by the affirmative vote of a majority of the directors present
22 is presumed to have assented to the action approved, unless the
23 director:

24 (a) Objects at the beginning of the meeting to the
25 transaction of business because the meeting is not lawfully
26 called or convened and does not participate thereafter in the
27 meeting; or

28 (b) Votes against the action at the meeting.

29 Sec. 45. [302A.255] [DIRECTOR CONFLICTS OF INTEREST.]

30 Subdivision 1. [CONFLICT; PROCEDURE WHEN CONFLICT ARISES.]

31 A contract or other transaction between a corporation and one or
32 more of its directors, or between a corporation and an
33 organization in or of which one or more of its directors are
34 directors, officers, or legal representatives or have a material
35 financial interest, is not void or voidable because the director
36 or directors or the other organizations are parties or because
37 the director or directors are present at the meeting of the

1 shareholders or the board or a committee at which the contract
 2 or transaction is authorized, approved, or ratified, if:

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

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

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

23 Subd. 2. [MATERIAL FINANCIAL INTEREST.] For purposes of
 24 this section:

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

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

35 OFFICERS

36 Sec. 46. [302A.301] [OFFICERS REQUIRED.]

37 A corporation shall have one or more natural persons

1 exercising the functions of the offices, however designated, of
 2 chief executive officer and chief financial officer.

3 Sec. 47. [302A.305] [DUTIES OF REQUIRED OFFICERS.]

4 Subdivision 1. [PRESUMPTION; MODIFICATION.] Unless the
 5 articles, the bylaws, or a resolution adopted by the board and
 6 not inconsistent with the articles or bylaws, provide otherwise,
 7 the chief executive officer and chief financial officer have the
 8 duties specified in this section.

9 Subd. 2. [CHIEF EXECUTIVE OFFICER.] The chief executive
 10 officer shall:

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

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

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

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

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

26 (f) Perform other duties prescribed by the board.

27 Subd. 3. [CHIEF FINANCIAL OFFICER.] The chief financial
 28 officer shall:

29 (a) Keep accurate financial records for the corporation;

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

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

36 (d) Render to the chief executive officer and the board,
 37 whenever requested, an account of all transactions by the chief

1 financial officer and of the financial condition of the
 2 corporation;
 3

4 (e) In the absence of the chief executive officer, preside
 5 at all meetings of the board and of the shareholders; and

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

8 Sec. 48. [302A.311] [OTHER OFFICERS.]

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

17 Sec. 49. [302A.315] [MULTIPLE OFFICES.]

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

25 Sec. 50. [302A.321] [OFFICERS DEEMED ELECTED.]

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

33 Sec. 51. [302A.331] [CONTRACT RIGHTS.]

34 The election or appointment of a person as an officer or
 35 agent does not, of itself, create contract rights. A
 36 corporation may enter into a contract with an officer or agent
 37 for a period of time if, in the board's judgment, the contract
 would be in the best interests of the corporation. The fact

1 that the contract may be for a term longer than the terms of the
2 directors who authorized or approved the contract does not make
3 the contract void or voidable.

4 Sec. 52. [302A.341] [RESIGNATION; REMOVAL; VACANCIES.]

5 Subdivision 1. [RESIGNATION.] An officer may resign at any
6 time by giving written notice to the corporation. The
7 resignation is effective without acceptance when the notice is
8 given to the corporation, unless a later effective date is
9 specified in the notice.

10 Subd. 2. [REMOVAL.] An officer may be removed at any time,
11 with or without cause, by a resolution approved by the
12 affirmative vote of a majority of the directors present, subject
13 to the provisions of a shareholder control agreement. The
14 removal is without prejudice to any contractual rights of the
15 officer.

16 Subd. 3. [VACANCY.] A vacancy in an office because of
17 death, resignation, removal, disqualification, or other cause
18 may, or in the case of a vacancy in the office of chief
19 executive officer or chief financial officer shall, be filled
20 for the unexpired portion of the term in the manner provided in
21 the articles or bylaws, or determined by the board, or pursuant
22 to section 50.

23 Sec. 53. [302A.351] [DELEGATION.]

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

32 Sec. 54. [302A.361] [STANDARD OF CONDUCT.]

33 An officer shall discharge the duties of an office in good
34 faith, in a manner the officer reasonably believes to be in the
35 best interests of the corporation, and with the care an
36 ordinarily prudent person in a like position would exercise
37 under similar circumstances. A person exercising the principal

1 functions of an office or to whom some of all of the duties and
 2 powers of an office are delegated pursuant to section 53 is
 3 deemed an officer for purposes of this section and sections 79
 4 and 84.

5 SHARES; SHAREHOLDERS

6 Sec. 55. [302A.401] [AUTHORIZED SHARES.]

7 Subdivision 1. [BOARD MAY AUTHORIZE.] Subject to any
 8 restrictions in the articles, a corporation may issue securities
 9 and rights to purchase securities when authorized by the board.

10 Subd. 2. [TERMS OF SHARES.] All the shares of a
 11 corporation:

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

15 (b) Shall be common voting shares having equal rights and
 16 preferences in all matters not otherwise provided for by the
 17 board, unless and to the extent that the articles have fixed the
 18 relative rights and preferences of different classes and series;
 19 and

20 (c) Shall have, unless a different par value is specified
 21 in the articles, a par value of one cent per share, solely for
 22 the purpose of a statute or regulation imposing a tax or fee
 23 based upon the capitalization of a corporation, and a par value
 24 fixed by the board for the purpose of a statute or regulation
 25 requiring the shares of the corporation to have a par value.

26 Subd. 3. [PROCEDURE FOR FIXING TERMS.] (a) Subject to any
 27 restrictions in the articles, the power granted in subdivision 2
 28 may be exercised by a resolution approved by the affirmative
 29 vote of a majority of the directors present establishing a class
 30 or series, setting forth the designation of the class or series,
 31 and fixing the relative rights and preferences of the class or
 32 series.

33 (b) A statement setting forth the name of the corporation
 34 and the text of the resolution and certifying the adoption of
 35 the resolution and the date of adoption shall be filed with the
 36 secretary of state before the issuance of any shares affected by
 37 the resolution. The resolution is effective when the statement

1 has been filed with the secretary of state.

2 Subd. 4. [SPECIFIC TERMS.] Without limiting the authority
3 granted in this section, a corporation may issue shares of a
4 class or series:

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

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

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

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

14 (e) Having full, partial, or no voting rights, except as
15 provided in section 15.

16 Sec. 56. [302A.403] [SUBSCRIPTIONS FOR SHARES.]

17 Subdivision 1. [SIGNED WRITING.] A subscription for
18 shares, whether made before or after the incorporation of a
19 corporation, is not enforceable against the subscriber unless it
20 is in writing and signed by the subscriber.

21 Subd. 2. [IRREVOCABLE PERIOD.] A subscription for shares
22 of a corporation to be incorporated is irrevocable for a period
23 of six months, unless the subscription agreement provides for,
24 or unless all of the subscribers consent to, an earlier
25 revocation.

26 Subd. 3. [PAYMENT; INSTALLMENTS.] A subscription for
27 shares, whether made before or after the incorporation of a
28 corporation, shall be paid in full at the time or times, or in
29 the installments, if any, specified in the subscription
30 agreement. In the absence of a provision in the subscription
31 agreement specifying the time at which the subscription is to be
32 paid, the subscription shall be paid at the time or times
33 determined by the board, but a call made by the board for
34 payment on subscriptions shall be uniform for all shares of the
35 same class or for all shares of the same series.

36 Subd. 4. [METHOD OF COLLECTION; FORFEITURE; CANCELLATION
37 OR SALE FOR ACCOUNT OF SUBSCRIBER.] (a) Unless otherwise

1 provided in the subscription agreement, in the event of default
 2 in the payment of an installment or call when due, the
 3 corporation may proceed to collect the amount due in the same
 4 manner as a debt due the corporation, or the board may declare a
 5 forfeiture of the subscription or cancel it in accordance with
 6 this subdivision.

7 (b) A forfeiture of the subscription shall not be declared
 8 against a subscriber unless the amount due remains unpaid for a
 9 period of 20 days after written notice of a demand for payment
 10 has been given. Upon forfeiture of the subscription, the shares
 11 subscribed for may be offered for sale by the corporation for a
 12 price in money equalling or exceeding the sum of the full
 13 balance owed by the delinquent subscriber plus the expenses
 14 incidental to the sale. The excess of net proceeds realized by
 15 the corporation over the sum of the amount owed by the
 16 delinquent subscriber plus the expenses incidental to the sale
 17 shall be paid to the delinquent subscriber or to a legal
 18 representative. The payment shall not exceed the amount
 19 actually paid by the delinquent subscriber.

20 (c) If, within 20 days after the corporation offers to sell
 21 the shares subscribed for by the delinquent subscriber, no
 22 prospective purchaser offers to purchase the shares for a money
 23 price sufficient to pay the sum of the full balance owed by the
 24 delinquent subscriber plus the expenses incidental to the sale,
 25 or if the corporation has refunded to the subscriber or a legal
 26 representative a portion of the subscription price actually paid
 27 that exceeds ten percent of the subscription price, the
 28 subscription may be cancelled and the shares subscribed for may
 29 be cancelled and restored to the status of authorized but
 30 unissued shares. The portion of the purchase price retained by
 31 the corporation that does not exceed ten percent of the
 32 subscription price is forfeited to the corporation.

33 Sec. 57. [302A.405] [CONSIDERATION FOR SHARES: VALUE AND
 34 PAYMENT; LIABILITY.]

35 Subdivision 1. [CONSIDERATION; PROCEDURE.] Subject to any
 36 restrictions in the articles:

37 (a) Shares may be issued for any consideration, including,

1 without limitation, money or other tangible or intangible
 2 property received by the corporation or to be received by the
 3 corporation under a written agreement, or services rendered to
 4 the corporation or to be rendered to the corporation under a
 5 written agreement, as authorized by resolution approved by the
 6 affirmative vote of a majority of the directors present, or
 7 approved by the affirmative vote of the holders of a majority of
 8 the voting shares present, valuing all nonmonetary consideration
 9 and establishing a price in money or other consideration, or a
 10 minimum price, or a general formula or method by which the price
 11 will be determined; and

12 (b) Upon authorization by resolution approved by the
 13 affirmative vote of a majority of the directors present or
 14 approved by the affirmative vote of the holders of a majority of
 15 the voting shares present, the corporation may, without
 16 consideration, issue its own shares in exchange for or in
 17 conversion of its outstanding shares, or issue its own shares
 18 pro rata to its shareholders or the shareholders of one or more
 19 classes or series, to effectuate share dividends or splits,
 20 including reverse share splits. No shares of a class or series
 21 shall be issued to the holders of shares of another class or
 22 series, unless the issuance either is expressly provided for in
 23 the articles or is approved at a meeting by the affirmative vote
 24 of the holders of a majority of all voting shares of the same
 25 class or series as the shares to be issued.

26 Subd. 2. [VALUE; LIABILITY.] The determinations of the
 27 board or the shareholders as to the amount or fair value or the
 28 fairness to the corporation of the consideration received or to
 29 be received by the corporation for its shares or the terms of
 30 payment, as well as the agreement to issue shares for that
 31 consideration, are presumed to be proper if they are made in
 32 good faith and on the basis of accounting methods, or a fair
 33 valuation or other method, reasonable in the circumstances.
 34 Directors or shareholders who are present and entitled to vote,
 35 and who, intentionally or without reasonable investigation, fail
 36 to vote against approving an issue of shares for a consideration
 37 that is unfair to the corporation, or overvalue property or

1 services received or to be received by the corporation as
 2 consideration for shares issued, are jointly and severally
 3 liable to the corporation for the benefit of the then
 4 shareholders who did not consent to and are damaged by the
 5 action, to the extent of the damages of those shareholders. A
 6 director or shareholder against whom a claim is asserted
 7 pursuant to this subdivision, except in case of knowing
 8 participation in a deliberate fraud, is entitled to contribution
 9 on an equitable basis from other directors or shareholders who
 10 are liable under this section.

11 Subd. 3. [PAYMENT; LIABILITY; CONTRIBUTION; STATUTE OF
 12 LIMITATIONS.] (a) A corporation shall issue only shares that are
 13 nonassessable or that are assessable but are issued with the
 14 unanimous consent of the shareholders. "Nonassessable" shares
 15 are shares for which the agreed consideration has been fully
 16 paid, delivered, or rendered to the corporation. Consideration
 17 in the form of a promissory note, a check, or a written
 18 agreement to transfer property or render services to a
 19 corporation in the future is fully paid when the note, check, or
 20 written agreement is delivered to the corporation.

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

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

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

30 (3) A successor or transferee of the interest in the
 31 corporation of a person described in clause (1) or (2),
 32 including a purchaser of shares, a subsequent assignee,
 33 successor, or transferee, a pledgee, a holder of any other
 34 security interest in the assets of the corporation or shares
 35 granted by the person described in clause (1) or (2), or a legal
 36 representative of or for the person or estate of the person,
 37 which successor, transferee, purchaser, assignee, pledgee,

1 holder, or representative acquired the interest knowing of the
2 violation.

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

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

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

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

22 Sec. 58. [302A.409] [RIGHTS TO PURCHASE.]

23 Subdivision 1. [DEFINITION.] "Right to purchase" means the
24 right, however designated, pursuant to the terms of a security
25 or agreement, entitling a person to subscribe to, purchase, or
26 acquire securities of a corporation, whether by the exchange or
27 conversion of other securities, or by the exercise of options,
28 warrants, or other rights, or otherwise, but excluding
29 preemptive rights.

30 Subd. 2. [TRANSFERABILITY; SEPARABILITY.] Rights to
31 purchase may be either transferable or nontransferable and
32 either separable or inseparable from other securities of the
33 corporation, as the board may determine under this section.

34 Subd. 3. [ISSUANCE PERMITTED.] A corporation may issue
35 rights to purchase if:

36 (a) Shares issuable upon the exercise of all outstanding
37 rights to purchase, including the rights to purchase that are to

1 be issued, are authorized under section 7, subdivision 1, and
 2 are unissued; and

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

8 Subd. 4. [TERMS SET FORTH.] The instrument evidencing the
 9 right to purchase or, if no instrument exists, a transaction
 10 statement, shall set forth in full, summarize, or incorporate by
 11 reference all the terms, provisions, and conditions applicable
 12 to the right to purchase.

13 Sec. 59. [302A.413] [PREEMPTIVE RIGHTS.]

14 Subdivision 1. [PRESUMPTION; MODIFICATION.] Unless denied
 15 or limited in the articles or by the board pursuant to section
 16 55, subdivision 2, clause (b), a shareholder of a corporation
 17 has the preemptive rights provided in this section.

18 Subd. 2. [DEFINITION.] A preemptive right is the right of
 19 a shareholder to acquire a certain fraction of the unissued
 20 securities or rights to purchase securities of a corporation
 21 before the corporation may offer them to other persons.

22 Subd. 3. [WHEN RIGHT ACCRUES.] A shareholder has a
 23 preemptive right whenever the corporation proposes to issue new
 24 or additional shares or rights to purchase shares of the same
 25 class or series as those held by the shareholder or new or
 26 additional securities other than shares, or rights to purchase
 27 securities other than shares, that are exchangeable for,
 28 convertible into, or carry a right to acquire new or additional
 29 shares of the same class or series as those held by the
 30 shareholder.

31 Subd. 4. [EXEMPTIONS.] A shareholder does not have a
 32 preemptive right to acquire securities or rights to purchase
 33 securities that are:

34 (a) Issued for a consideration other than money;
 35 (b) Issued pursuant to a plan of merger or exchange;
 36 (c) Issued pursuant to an employee or incentive benefit
 37 plan approved at a meeting by the affirmative vote of the

1 holders of a majority of all voting shares:

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

4 (e) Issued pursuant to a public offering of the
5 corporation's securities or rights to purchase securities. For
6 purposes of this clause, "public offering" means an offering of
7 the corporation's securities or rights to purchase securities to
8 the general public; or

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

12 Subd. 5. [FRACTION TO BE ACQUIRED.] The fraction of the
13 new issue that each shareholder may acquire by exercise of a
14 preemptive right is the ratio that the number of shares of that
15 class or series owned by the shareholder before the new issue
16 bears to the total number of shares of that class or series
17 issued and outstanding before the new issue. For purposes of
18 determining pursuant to this subdivision the total number of
19 shares of a class or series issued and outstanding at a
20 particular time, all shares of that class or series issuable
21 upon a conversion or exchange or upon the exercise of rights to
22 purchase are considered issued and outstanding at that time.

23 Subd. 6. [WAIVER.] A shareholder may waive a preemptive
24 right in writing. The waiver is binding upon the shareholder
25 whether or not consideration has been given for the waiver.
26 Unless otherwise provided in the waiver, a waiver of preemptive
27 rights is effective only for the proposed issuance described in
28 the waiver.

29 Subd. 7. [NOTICE.] When proposing the issuance of
30 securities with respect to which shareholders have preemptive
31 rights under this section, the board shall cause notice to be
32 given to each shareholder entitled to preemptive rights. The
33 notice shall be given at least ten days before the date by which
34 the shareholder must exercise a preemptive right and shall
35 contain:

36 (a) The number or amount of securities with respect to
37 which the shareholder has a preemptive right, and the method

1 used to determine that number or amount;

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

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

6 Subd. 6. [ISSUANCE TO OTHERS.] Securities that are subject
7 to preemptive rights but not acquired by shareholders in the
8 exercise of those rights may, for a period not exceeding one
9 year after the date fixed by the board for the exercise of those
10 preemptive rights, be issued to persons the board determines, at
11 a price not less than, and on terms no more favorable to the
12 purchaser than, those offered to the shareholders. Securities
13 that are not issued during that one year period shall, at the
14 expiration of the period, again become subject to preemptive
15 rights of shareholders.

16 Sec. 60. [302A.417] [SHARE CERTIFICATES; ISSUANCE AND
17 CONTENTS; UNCERTIFICATED SHARES.]

18 Subdivision 1. [CERTIFICATED; UNCERTIFICATED.] The shares
19 of a corporation shall be either certificated shares or
20 uncertificated shares. Each holder of certificated shares issued
21 in accordance with section 57, subdivision 3, paragraph (a) is
22 entitled to a certificate of shares.

23 Subd. 2. [CERTIFICATES; SIGNATURE REQUIRED.] Certificates
24 shall be signed by an agent or officer authorized in the
25 articles or bylaws to sign share certificates or, in the absence
26 of an authorization, by an officer.

27 Subd. 3. [SIGNATURE VALID.] If a person signs or has a
28 facsimile signature placed upon a certificate while an officer,
29 transfer agent, or registrar of a corporation, the certificate
30 may be issued by the corporation, even if the person has ceased
31 to have that capacity before the certificate is issued, with the
32 same effect as if the person had that capacity at the date of
33 its issue.

34 Subd. 4. [FORM OF CERTIFICATE.] A certificate representing
35 shares of a corporation shall contain on its face:

36 (a) The name of the corporation;

37 (b) A statement that the corporation is incorporated under

1 the laws of this state;

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

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

5 Subd. 5. [LIMITATIONS SET FORTH.] A certificate
6 representing shares issued by a corporation authorized to issue
7 shares of more than one class or series shall set forth upon the
8 face or back of the certificate, or shall state that the
9 corporation will furnish to any shareholder upon request and
10 without charge, a full statement of the designations,
11 preferences, limitations, and relative rights of the shares of
12 each class or series authorized to be issued, so far as they
13 have been determined, and the authority of the board to
14 determine the relative rights and preferences of subsequent
15 classes or series.

16 Subd. 6. [PRIMA FACIE EVIDENCE.] A certificate signed as
17 provided in subdivision 2 is prima facie evidence of the
18 ownership of the shares referred to in the certificate.

19 Subd. 7. [UNCERTIFICATED SHARES.] Unless uncertificated
20 shares are prohibited by the articles or bylaws, a resolution
21 approved by the affirmative vote of a majority of the directors
22 present may provide that some or all of any or all classes and
23 series of its shares will be uncertificated shares. The
24 resolution does not apply to shares represented by a certificate
25 until the certificate is surrendered to the corporation. Within
26 a reasonable time after the issuance or transfer of
27 uncertificated shares, the corporation shall send to the new
28 shareholder the information required by this section to be
29 stated on certificates. Except as otherwise expressly provided
30 by statute, the rights and obligations of the holders of
31 certificated and uncertificated shares of the same class and
32 series are identical.

33 Sec. 61. [302A.419] ILGST SHARE CERTIFICATES;
34 REPLACEMENT.]

35 Subdivision 1. [ISSUANCE.] A new share certificate may be
36 issued pursuant to Minnesota Statutes, Section 336.8-405 in
37 place of one that is alleged to have been lost, stolen, or

1 destroyed.

2 Subd. 2. [NOT OVERISSUE.] The issuance of a new
 3 certificate under this section does not constitute an overissue
 4 of the shares it represents.

5 Sec. 62. [302A.423] [FRACTIONAL SHARES.]

6 Subdivision 1. [ISSUANCE; ALTERNATIVE EXCHANGE.] A
 7 corporation may issue fractions of a share originally or upon
 8 transfer. If it does not issue fractions of a share, it shall
 9 in connection with an original issuance of shares:

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

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

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

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

34 Sec. 63. [302A.425] [LIABILITY OF SUBSCRIBERS AND
 35 SHAREHOLDERS WITH RESPECT TO SHARES.]

36 A subscriber for shares or a shareholder of a corporation
 37 is under no obligation to the corporation or its creditors with

1 respect to the shares subscribed for or owned, except to pay to
 2 the corporation the full consideration for which the shares are
 3 issued or to be issued.

4 Sec. 64. [302A.429] [RESTRICTION ON TRANSFER OR
 5 REGISTRATION OF SECURITIES.]

6 Subdivision 1. [HOW IMPOSED.] A restriction on the
 7 transfer or registration of transfer of securities of a
 8 corporation may be imposed in the articles, in the bylaws, by a
 9 resolution adopted by the shareholders, or by an agreement among
 10 or other written action by a number of shareholders or holders
 11 of other securities or among them and the corporation. A
 12 restriction is not binding with respect to securities issued
 13 prior to the adoption of the restriction, unless the holders of
 14 those securities are parties to the agreement or voted in favor
 15 of the restriction.

16 Subd. 2. [RESTRICTIONS PERMITTED.] A written restriction
 17 on the transfer or registration of transfer of securities of a
 18 corporation that is not manifestly unreasonable under the
 19 circumstances and is noted conspicuously on the face or back of
 20 the certificate or transaction statement may be enforced against
 21 the holder of the restricted securities or a successor or
 22 transferee of the holder, including a pledgee or a legal
 23 representative. Unless noted conspicuously on the face or back
 24 of the certificate or transaction statement, a restriction, even
 25 though permitted by this section, is ineffective against a
 26 person without knowledge of the restriction.

27 Sec. 65. [302A.431] [REGULAR MEETINGS OF SHAREHOLDERS.]

28 Subdivision 1. [FREQUENCY.] Regular meetings of
 29 shareholders may be held on an annual or other less frequent
 30 periodic basis, but need not be held unless required by the
 31 articles or bylaws or by subdivision 2.

32 Subd. 2. [DEMAND BY SHAREHOLDER.] If a regular meeting of
 33 shareholders has not been held during the immediately preceding
 34 15 months, a shareholder or shareholders holding one percent or
 35 more of all voting shares may demand a regular meeting of
 36 shareholders by written notice of demand given to the chief
 37 executive officer or the chief financial officer of the

1 corporation. Within 30 days after receipt of the demand by one
 2 of those officers, the board shall cause a regular meeting of
 3 shareholders to be called and held on notice no later than 90
 4 days after receipt of the demand, all at the expense of the
 5 corporation. If the board fails to cause a regular meeting to
 6 be called and held as required by this subdivision, the
 7 shareholder or shareholders making the demand may call the
 8 meeting by giving notice as required by section 67, all at the
 9 expense of the corporation.

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

16 Subd. 4. [ELECTIONS REQUIRED; OTHER BUSINESS.] At each
 17 regular meeting of shareholders there shall be an election of
 18 qualified successors for directors who serve for an indefinite
 19 term or whose terms have expired or are due to expire within six
 20 months after the date of the meeting. No other particular
 21 business is required to be transacted at a regular meeting. Any
 22 business appropriate for action by the shareholders may be
 23 transacted at a regular meeting.

24 Sec. 66. [302A.433] [SPECIAL MEETINGS OF SHAREHOLDERS.]

25 Subdivision 1. [WHO MAY CALL.] Special meetings of the
 26 shareholders may be called for any purpose or purposes at any
 27 time, by:

- 28 (a) The chief executive officer;
- 29 (b) The chief financial officer;
- 30 (c) Two or more directors;
- 31 (d) A person authorized in the articles or bylaws to call
- 32 special meetings; or
- 33 (e) A shareholder or shareholders holding ten percent or
- 34 more of the voting shares.

35 Subd. 2. [DEMAND BY SHAREHOLDERS.] A shareholder or
 36 shareholders holding ten percent or more of the voting shares
 37 may demand a special meeting of shareholders by written notice

1 of demand given to the chief executive officer or chief
 2 financial officer of the corporation and containing the purposes
 3 of the meeting. Within 30 days after receipt of the demand by
 4 one of those officers, the board shall cause a special meeting
 5 of shareholders to be called and held on notice no later than 90
 6 days after receipt of the demand, all at the expense of the
 7 corporation. If the board fails to cause a special meeting to be
 8 called and held as required by this subdivision, the shareholder
 9 or shareholders making the demand may call the meeting by giving
 10 notice as required by section 67, all at the expense of the
 11 corporation.

12 Subd. 3. [TIME; PLACE.] Special meetings shall be held on
 13 the date and at the time and place fixed by the chief executive
 14 officer, the board, or a person authorized by the articles or
 15 bylaws to call a meeting, except that a special meeting called
 16 by or at the demand of a shareholder or shareholders pursuant to
 17 subdivision 2 shall be held in the county where the principal
 18 executive office is located.

19 Subd. 4. [BUSINESS LIMITED.] The business transacted at a
 20 special meeting is limited to the purposes stated in the notice
 21 of the meeting. Any business transacted at a special meeting
 22 that is not included in those stated purposes is voidable by or
 23 on behalf of the corporation, unless all of the shareholders
 24 have waived notice of the meeting in accordance with section 67,
 25 subdivision 4.

26 Sec. 67. [302A.435] [NOTICE.]

27 Subdivision 1. [TO WHOM GIVEN.] Notice of all meetings of
 28 shareholders shall be given to every holder of voting shares,
 29 except where the meeting is an adjourned meeting and the date,
 30 time, and place of the meeting were announced at the time of
 31 adjournment.

32 Subd. 2. [WHEN GIVEN.] The notice shall be given at least
 33 ten days before the date of the meeting, or a shorter time
 34 provided in the articles or bylaws, and not more than 60 days
 35 before the date of the meeting.

36 Subd. 3. [CONTENTS.] The notice shall contain the date,
 37 time, and place of the meeting, and any other information

1 required by sections 1 to 125. In the case of a special
 2 meeting, the notice shall contain a statement of the purposes of
 3 the meeting. The notice may also contain any other information
 4 required by the articles or bylaws or deemed necessary or
 5 desirable by the board or by any other person or persons calling
 6 the meeting.

7 Subd. 4. [WAIVER; OBJECTIONS.] A shareholder may waive
 8 notice of a meeting of shareholders. A waiver of notice by a
 9 shareholder entitled to notice is effective whether given
 10 before, at, or after the meeting, and whether given in writing,
 11 orally, or by attendance. Attendance by a shareholder at a
 12 meeting is a waiver of notice of that meeting, except where the
 13 shareholder objects at the beginning of the meeting to the
 14 transaction of business because the meeting is not lawfully
 15 called or convened, or objects before a vote on an item of
 16 business because the item may not lawfully be considered at that
 17 meeting and does not participate in the consideration of the
 18 item at that meeting.

19 Sec. 68. [302A.437] [ACT OF THE SHAREHOLDERS.]

20 Subdivision 1. [MAJORITY REQUIRED.] The shareholders shall
 21 take action by the affirmative vote of the holders of a majority
 22 of the voting shares present, except where sections 1 to 125 or
 23 the articles require a larger proportion or number. If the
 24 articles require a larger proportion or number than is required
 25 by sections 1 to 125 for a particular action, the articles
 26 control.

27 Subd. 2. [VOTING BY CLASS.] In any case where a class or
 28 series of shares is entitled by sections 1 to 125, the articles,
 29 the bylaws, or the terms of the shares to vote as a class or
 30 series, the matter being voted upon must also receive the
 31 affirmative vote of the holders of the same proportion of the
 32 shares of that class or series as is required pursuant to
 33 subdivision 1.

34 Sec. 69. [302A.441] [ACTION WITHOUT A MEETING.]

35 An action required or permitted to be taken at a meeting of
 36 the shareholders may be taken without a meeting by written
 37 action signed by all of the shareholders entitled to vote on

1 that action. The written action is effective when it has been
 2 signed by all of those shareholders, unless a different
 3 effective time is provided in the written action.

4 Sec. 70. [302A.443] [QUORUM.]

5 The holders of a majority of the shares entitled to vote at
 6 a meeting present in person or by proxy at the meeting are a
 7 quorum for the transaction of business, unless a larger or
 8 smaller proportion or number is provided in the articles or
 9 bylaws. If a quorum is present when a duly called or held
 10 meeting is convened, the shareholders present may continue to
 11 transact business until adjournment, even though the withdrawal
 12 of a number of shareholders originally present leaves less than
 13 the proportion or number otherwise required for a quorum.

14 Sec. 71. [302A.445] [VOTING RIGHTS.]

15 Subdivision 1. [DETERMINATION.] The board may fix a date
 16 not more than 50 days, or a shorter time period provided in the
 17 articles or bylaws, before the date of a meeting of shareholders
 18 as the date for the determination of the holders of voting
 19 shares entitled to notice of and to vote at the meeting. When a
 20 date is so fixed, only shareholders on that date are entitled to
 21 notice of and permitted to vote at that meeting of shareholders.

22 Subd. 2. [CERTIFICATION OF BENEFICIAL OWNER.] A resolution
 23 approved by the affirmative vote of a majority of the directors
 24 present may establish procedure whereby a shareholder may
 25 certify in writing to the corporation that all or a portion of
 26 the shares registered in the name of the shareholder are held
 27 for the account of one or more beneficial owners. Upon receipt
 28 by the corporation of the writing, the persons specified as
 29 beneficial owners, rather than the actual shareholder, are
 30 deemed the shareholders for the purposes specified in the
 31 writing.

32 Subd. 3. [ONE VOTE PER SHARE.] Unless otherwise provided
 33 in the articles or bylaws or in the terms of the shares, a
 34 shareholder has one vote for each share held.

35 Subd. 4. [NON-SHAREHOLDERS.] The articles may give or
 36 prescribe the manner of giving a creditor, security holder, or
 37 other person a right to vote under this section.

1 Subd. 5. [JOINTLY OWNED SHARES.] Shares owned by two or
 2 more shareholders may be voted by any one of them unless the
 3 corporation receives written notice from any one of them denying
 4 the authority of that person to vote those shares.

5 Subd. 6. [MANNER OF VOTING; PRESUMPTION.] Except as
 6 provided in subdivision 5, a holder of voting shares may vote
 7 any portion of the shares in any way the shareholder chooses. If
 8 a shareholder votes without designating the proportion or number
 9 of shares voted in a particular way, the shareholder is deemed
 10 to have voted all of the shares in that way.

11 Sec. 72. [302A.447] [VOTING OF SHARES BY ORGANIZATIONS AND
 12 LEGAL REPRESENTATIVES.]

13 Subdivision 1. [SHARES HELD BY OTHER CORPORATION.] Shares
 14 of a corporation registered in the name of another domestic or
 15 foreign corporation may be voted by the chief executive officer
 16 or another legal representative of that corporation.

17 Subd. 2. [SHARES HELD BY SUBSIDIARY.] Except as provided
 18 in subdivision 3, shares of a corporation registered in the name
 19 of a subsidiary are not entitled to vote on any matter.

20 Subd. 3. [SHARES CONTROLLED IN FIDUCIARY CAPACITY.] Shares
 21 of a corporation in the name of or under the control of the
 22 corporation or a subsidiary in a fiduciary capacity are not
 23 entitled to vote on any matter, except to the extent that the
 24 settlor or beneficial owner possesses and exercises a right to
 25 vote or gives the corporation binding instructions on how to
 26 vote the shares.

27 Subd. 4. [VOTING BY CERTAIN REPRESENTATIVES.] Shares under
 28 the control of a person in a capacity as a personal
 29 representative, an administrator, executor, guardian,
 30 conservator, or attorney-in-fact may be voted by the person,
 31 either in person or by proxy, without registration of those
 32 shares in the name of the person. Shares registered in the name
 33 of a trustee of a trust or in the name of a custodian may be
 34 voted by the person, either in person or by proxy, but a trustee
 35 of a trust or a custodian shall not vote shares held by the
 36 person unless they are registered in the name of the person.

37 Subd. 5. [VOTING BY TRUSTEE IN BANKRUPTCY OR RECEIVER.]

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

9 Subd. 6. [SHARES HELD BY OTHER ORGANIZATIONS.] Shares
 10 registered in the name of an organization not described in
 11 subdivisions 1 to 5 may be voted either in person or by proxy by
 12 the legal representative of that organization.

13 Subd. 7. [PLEGGED SHARES.] A shareholder whose shares are
 14 pledged may vote those shares until the shares are registered in
 15 the name of the pledgee.

16 Sec. 73. [302A.449] [PROXIES.]

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

26 Subd. 2. [DURATION.] The appointment of a proxy is valid
 27 for 11 months, unless a longer period is expressly provided in
 28 the appointment. No appointment is irrevocable unless the
 29 appointment is coupled with an interest in the shares or in the
 30 corporation.

31 Subd. 3. [TERMINATION.] An appointment may be terminated
 32 at will, unless the appointment is coupled with an interest, in
 33 which case it shall not be terminated except in accordance with
 34 the terms of an agreement, if any, between the parties to the
 35 appointment. Termination may be made by filing written notice
 36 of the termination of the appointment with an officer of the
 37 corporation, or by filing a new written appointment of a proxy

1 with an officer of the corporation. Termination in either
 2 manner revokes all prior proxy appointments and is effective
 3 when filed with an officer of the corporation.

4 Subd. 4. [REVOCATION BY DEATH, INCAPACITY.] The death or
 5 incapacity of a person appointing a proxy does not revoke the
 6 authority of the proxy, unless written notice of the death or
 7 incapacity is received by an officer of the corporation before
 8 the proxy exercises the authority under that appointment.

9 Subd. 5. [MULTIPLE PROXIES.] Unless the appointment
 10 specifically provides otherwise, if two or more persons are
 11 appointed as proxies for a shareholder:

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

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

20 Subd. 6. [VOTE OF PROXY ACCEPTED; LIABILITY.] Unless the
 21 appointment of a proxy contains a restriction, limitation, or
 22 specific reservation of authority, the corporation may accept a
 23 vote or action taken by a person named in the appointment. The
 24 vote of a proxy is final, binding, and not subject to challenge,
 25 but the proxy is liable to the shareholder or beneficial owner
 26 for damages resulting from a failure to exercise the proxy or
 27 from an exercise of the proxy in violation of the authority
 28 granted in the appointment.

29 Sec. 74. [302A.453] [VOTING TRUSTS.]

30 Subdivision 1. [AUTHORIZATION; PERIOD; TERMINATION.]
 31 Shares in a corporation may be transferred to a trustee pursuant
 32 to written agreement, for the purpose of conferring on the
 33 trustee the right to vote and otherwise represent the beneficial
 34 owner of those shares for a period not exceeding 15 years,
 35 except that if the agreement is made in connection with an
 36 indebtedness of the corporation, the voting trust may extend
 37 until the indebtedness is discharged. Unless otherwise

1 specified in the agreement, the voting trust may be terminated
 2 at any time by the beneficial owners of a majority of the shares
 3 held by the trustee. A copy of the agreement shall be filed
 4 with the corporation.

5 Subd. 2. [VOTING BY TRUSTEES.] Unless otherwise provided
 6 in the trust agreement, if there are two or more trustees, the
 7 manner of voting is determined as provided in section 71,
 8 subdivision 5.

9 Sec. 75. [302A.455] [SHAREHOLDER VOTING AGREEMENTS.]

10 A written agreement among any or all shareholders, or any
 11 or all subscribers for shares in the event no shares have been
 12 issued, relating to the voting of their shares is valid and
 13 specifically enforceable by and against the parties to the
 14 agreement. The agreement may override the provisions of section
 15 73 regarding proxies and is not subject to the provisions of
 16 section 74 regarding voting trusts.

17 Sec. 76. [302A.457] [SHAREHOLDER CONTROL AGREEMENTS.]

18 Subdivision 1. [AUTHORIZED.] The shareholders of a
 19 corporation, or the subscribers for its shares in the event no
 20 shares have been issued, may enter into a written agreement
 21 relating to the control of any phase of the business and affairs
 22 of the corporation, its liquidation and dissolution, or the
 23 relations among shareholders of or subscribers to shares of the
 24 corporation.

25 Subd. 2. [METHOD OF APPROVAL; ENFORCEABILITY; COPIES.] (a)

26 A written agreement among persons described in subdivision 1
 27 that relates to the control of the liquidation and dissolution
 28 of the corporation, the relations among them, or any phase of
 29 the business and affairs of the corporation, including, without
 30 limitation, the management of its business, the declaration and
 31 payment of distributions, the election of directors or officers,
 32 the employment of shareholders by the corporation, or the
 33 arbitration of disputes, is valid and specifically enforceable
 34 by and against the parties to it, if the agreement is signed by
 35 all the shareholders of the corporation, whether or not the
 36 shareholders all have voting shares, or by all the subscribers
 37 for shares in the event no shares have been issued at the time

1 the agreement is signed.

2 (b) The agreement is binding upon and enforceable against
 3 only the parties to the agreement and other persons having
 4 knowledge of the existence of the agreement. A copy of the
 5 agreement shall be filed with the corporation. The existence
 6 and location of a copy of the agreement shall be noted
 7 conspicuously on the face or back of each certificate for shares
 8 issued by the corporation and on each transaction statement.

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

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

24 Subd. 4. [OTHER AGREEMENTS.] This section does not apply
 25 to, limit, or restrict agreements otherwise valid, nor is the
 26 procedure set forth in this section the exclusive method of
 27 agreement among shareholders or between the shareholders and the
 28 corporation with respect to any of the matters described in this
 29 section.

30 Sec. 77. [302A.461] [BOOKS AND RECORDS; INSPECTION.]

31 Subdivision 1. [SHARE REGISTER; DATES OF ISSUANCE.] (a) A
 32 corporation shall keep at its principal executive office, or at
 33 another place or places within the United States determined by
 34 the board, a share register not more than one year old,
 35 containing the names and addresses of the shareholders and the
 36 number and classes of shares held by each shareholder.

37 (b) A corporation shall also keep, at its principal

1 executive office, or at another place or places within the
 2 United States determined by the board, a record of the dates on
 3 which certificates or transaction statements representing shares
 4 were issued.

5 Subd. 2. [OTHER DOCUMENTS REQUIRED.] A corporation shall
 6 keep at its principal executive office, or, if its principal
 7 executive office is outside of this state, shall make available
 8 at its registered office within ten days after receipt by an
 9 officer of the corporation of a written demand for them made by
 10 a person described in subdivision 4, originals or copies of:

11 (a) Records of all proceedings of shareholders for the last
 12 three years;

13 (b) Records of all proceedings of the board for the last
 14 three years;

15 (c) Its articles and all amendments currently in effect;

16 (d) Its bylaws and all amendments currently in effect;

17 (e) Financial statements required by section 76 and the
 18 financial statement for the most recent interim period prepared
 19 in the course of the operation of the corporation for
 20 distribution to the shareholders or to a governmental agency as
 21 a matter of public record;

22 (f) Reports made to shareholders generally within the last
 23 three years;

24 (g) A statement of the names and usual business addresses
 25 of its directors and principal officers;

26 (h) Voting trust agreements described in section 71; and

27 (i) Shareholder control agreements described in section 76.

28 Subd. 3. [FINANCIAL RECORDS.] A corporation shall keep
 29 appropriate and complete financial records.

30 Subd. 4. [RIGHT TO INSPECT.] (a) A shareholder or a holder
 31 of a voting trust certificate has an absolute right, upon
 32 written demand, to examine and copy, in person or by a legal
 33 representative, at any reasonable time:

34 (1) The share register; and

35 (2) All documents referred to in subdivision 2.

36 (b) A shareholder or a holder of a voting trust certificate
 37 has a right, upon written demand, to examine and copy, in person

1 or by a legal representative, other corporate records at any
 2 reasonable time only if the shareholder or holder of a voting
 3 trust certificate demonstrates a proper purpose for the
 4 examination. A "proper purpose" is one reasonably related to the
 5 person's interest as a shareholder or holder of a voting trust
 6 certificate of the corporation.

7 Subd. 5. [COST OF COPIES.] Copies of all documents
 8 referred to in subdivision 2 shall be furnished at the expense
 9 of the corporation. A copy of the most recently generated share
 10 register shall be furnished at the expense of the corporation if
 11 the requesting party shows a proper purpose. In all other
 12 cases, the corporation may charge the requesting party a
 13 reasonable fee to cover the expenses of providing the copy.

14 Subd. 6. [COMPUTERIZED RECORDS.] The records maintained by
 15 a corporation, including its share register, financial records,
 16 and minute books, may utilize any information storage technique,
 17 including, for example, punched holes, printed or magnetized
 18 spots, or micro-images, even though that makes them illegible
 19 visually, if the records can be converted, by machine and within
 20 a reasonable time, into a form that is legible visually and
 21 whose contents are assembled by related subject matter to permit
 22 convenient use by people in the normal course of business. A
 23 corporation shall convert any of the records referred to in
 24 subdivision 4 upon the request of a person entitled to inspect
 25 them, and the expense of the conversion shall be borne by the
 26 person who bears the expense of copying pursuant to subdivision
 27 5. A copy of the conversion is admissible in evidence, and
 28 shall be accepted for all other purposes, to the same extent as
 29 the existing or original records would be if they were legible
 30 visually.

31 Sec. 78. [302A.463] [FINANCIAL STATEMENTS.]

32 A corporation shall furnish to its shareholders annual
 33 financial statements, including at least a balance sheet as of
 34 the end of each fiscal year and a statement of income for the
 35 fiscal year, which shall be prepared on the basis of accounting
 36 methods reasonable in the circumstances and may be consolidated
 37 statements of the corporation and one or more of its

1 subsidiaries. The financial statements shall be distributed by
 2 the corporation to each of its shareholders within 120 days
 3 after the close of each fiscal year, unless the financial
 4 statements are audited by a public accountant, in which case the
 5 statements shall be distributed as soon as the audited financial
 6 statements are available. Each shareholder or holder of a
 7 voting trust certificate to whom a copy of the most recent
 8 annual financial statements has not previously been distributed
 9 shall be furnished a copy by the corporation upon written
 10 request. In the case of statements audited by a public
 11 accountant, each copy shall be accompanied by a report setting
 12 forth the opinion of the accountant on the statements; in other
 13 cases, each copy shall be accompanied by a statement of the
 14 chief executive officer or other person in charge of the
 15 corporation's financial records stating the reasonable belief of
 16 the person that the financial statements were prepared in
 17 accordance with accounting methods reasonable in the
 18 circumstances and describing the basis of presentation and any
 19 respects in which the financial statements were not prepared on
 20 a basis consistent with those prepared for the previous year.

21 **Sec. 79. [302A.467] [EQUITABLE REMEDIES.]**

22 **If a corporation or an officer or director of the**
 23 **corporation violates a provision of sections 1 to 125, a court**
 24 **in this state may grant any equitable relief it deems just and**
 25 **reasonable in the circumstances and award expenses, including**
 26 **attorneys' fees and disbursements, to a complaining shareholder.**

27 **Sec. 80. [302A.471] [RIGHTS OF DISSENTING SHAREHOLDERS.]**

28 **Subdivision 1. [ACTIONS CREATING RIGHTS.] A shareholder of**
 29 **a corporation may dissent from, and obtain payment for the fair**
 30 **value of the shareholder's shares in the event of, any of the**
 31 **following corporate actions:**

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

- 35 **(1) Alters or abolishes a preferential right of the shares;**
 36 **(2) Creates, alters, or abolishes a right in respect of the**
 37 **redemption of the shares, including a provision respecting a**

1 sinking fund for the redemption or repurchase of the shares;
 2 (3) Alters or abolishes a preemptive right of the holder of
 3 the shares to acquire shares, securities other than shares, or
 4 rights to purchase shares or securities other than shares;
 5 (4) Excludes or limits the right of a shareholder to vote
 6 on a matter, or to cumulate votes, except as the right may be
 7 limited by dilution through the issuance of securities with
 8 similar voting rights;
 9 (b) A sale, lease, transfer, or other disposition of all or
 10 substantially all of the property and assets of the corporation
 11 not made in the usual or regular course of its business, but not
 12 including a disposition in dissolution described in section 102,
 13 subdivision 2, or a disposition pursuant to an order of a court,
 14 or a disposition for cash on terms requiring that all or
 15 substantially all of the net proceeds of disposition be
 16 distributed to the shareholders in accordance with their
 17 respective interests within one year after the date of
 18 disposition;
 19 (c) A plan of merger to which the corporation is a party,
 20 except as provided in subdivision 3;
 21 (d) A plan of exchange pursuant to which the shares of the
 22 corporation are to be acquired; or
 23 (e) Any other corporate action taken pursuant to a
 24 shareholder vote with respect to which the articles, the bylaws,
 25 or a resolution approved by the board directs that dissenting
 26 shareholders may obtain payment for their shares.
 27 Subd. 2. [BENEFICIAL OWNERS.] (a) A shareholder shall not
 28 assert dissenters' rights as to less than all of the shares
 29 registered in the name of the shareholder, unless the
 30 shareholder dissents with respect to all the shares that are
 31 beneficially owned by another person but registered in the name
 32 of the shareholder and discloses the name and address of each
 33 beneficial owner on whose behalf the shareholder dissents. In
 34 that event, the rights of the dissenter shall be determined as
 35 if the shares as to which the shareholder has dissented and the
 36 other shares were registered in the names of different
 37 shareholders.

1 (b) A beneficial owner of shares who is not the shareholder
 2 may assert dissenters' rights with respect to shares held on
 3 behalf of the beneficial owner, and shall be treated as a
 4 dissenting shareholder under the terms of this section and
 5 section 81, if the beneficial owner submits to the corporation
 6 at the time of or before the assertion of the rights a written
 7 consent of the shareholder.

8 Subd. 3. [RIGHTS NOT TO APPLY.] The right to obtain
 9 payment under this section does not apply to the shareholders of
 10 the surviving corporation in a merger or of the acquiring
 11 corporation in an exchange, if a vote of the shareholders of the
 12 corporation is not necessary to authorize the merger or exchange.

13 Subd. 4. [OTHER RIGHTS.] The shareholders of a corporation
 14 who have a right under this section to obtain payment for their
 15 shares do not have a right at law or in equity to have a
 16 corporate action described in subdivision 1 set aside or
 17 rescinded, except when the corporate action is fraudulent with
 18 regard to the complaining shareholder or the corporation.

19 Sec. 81. [302A.473] [PROCEDURES FOR ASSERTING DISSENTERS'
 20 RIGHTS.]

21 Subdivision 1. [DEFINITIONS.] (a) For purposes of this
 22 section, the terms defined in this subdivision have the meanings
 23 given them.

24 (b) "Corporation" means the issuer of the shares held by a
 25 dissenter before the corporate action referred to in section 80,
 26 subdivision 1 or the successor by merger of that issuer.

27 (c) "Fair value of the shares" means the value of the
 28 shares of a corporation immediately before the effective date of
 29 the corporate action referred to in section 80, subdivision 1.

30 (d) "Interest" means interest from the effective date of
 31 the corporate action referred to in section 80, subdivision 1
 32 until the date of payment, calculated either at the rate
 33 currently paid by the corporation on its most recent unsecured
 34 commercial borrowing, or, if none, at a rate that is fair and
 35 equitable under all the circumstances.

36 Subd. 2. [NOTICE OF ACTION.] If a corporation calls a
 37 shareholder meeting at which any action described in section 80,

1 subdivision 1 is to be voted upon, the notice of the meeting
2 shall inform each shareholder of the right to dissent and shall
3 include a copy of section 80 and this section and a brief
4 description of the procedure to be followed under these sections.

5 Subd. 3. [NOTICE OF DISSENT.] If the proposed action must
6 be approved by the shareholders, a shareholder who wishes to
7 exercise dissenters' rights must file with the corporation
8 before the vote on the proposed action a written notice of
9 intent to demand the fair value of the shares owned by the
10 shareholder and must not vote the shares in favor of the
11 proposed action.

12 Subd. 4. [NOTICE OF PROCEDURE; DEPOSIT OF SHARES.] (a)
13 After the proposed action has been approved by the board and, if
14 necessary, the shareholders, the corporation shall send to all
15 shareholders who have complied with subdivision 3 and to all
16 shareholders entitled to dissent if no shareholder vote was
17 required, a notice that contains:

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

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

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

27 (4) A copy of section 80 and this section and a brief
28 description of the procedures to be followed under these
29 sections.

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

36 Subd. 5. [PAYMENT; RETURN OF SHARES.] (a) After the
37 corporate action takes effect, or after the corporation receives

1 a valid demand for payment, whichever is later, the corporation
 2 shall remit to each dissenting shareholder who has complied with
 3 subdivisions 3 and 4 the amount the corporation estimates to be
 4 the fair value of the shares, with interest, if any, accompanied
 5 by:

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

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

13 (3) A copy of section 80 and this section, and a brief
 14 description of the procedure to be followed in demanding
 15 supplemental payment.

16 (b) The corporation may withhold the remittance described
 17 in paragraph (a) from a person who was not a shareholder on the
 18 date the action dissented from was first announced to the public
 19 or who is dissenting on behalf of a person who was not a
 20 beneficial owner on that date. If the dissenter has complied
 21 with subdivisions 3 and 4, the corporation shall forward to the
 22 dissenter the materials described in paragraph (a), a statement
 23 of the reason for withholding the remittance, and an offer to
 24 pay to the dissenter the amount listed in the materials if the
 25 dissenter agrees to accept that amount in full satisfaction. The
 26 dissenter may decline the offer and demand payment under
 27 subdivision 6. Failure to do so entitles the dissenter only to
 28 the amount offered. If the dissenter makes demand, subdivisions
 29 7 and 8 apply.

30 (c) If the corporation fails to remit payment within 60
 31 days of the deposit of certificates or the imposition of
 32 transfer restrictions on uncertificated shares, it shall return
 33 all deposited certificates and cancel all transfer
 34 restrictions. However, the corporation may again give notice
 35 under subdivision 4 and require deposit or restrict transfer at
 36 a later time.

37 Subd. 6. [SUPPLEMENTAL PAYMENT: DEMAND.] If a dissenter

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

9 Subd. 7. [PETITION; DETERMINATION.] If the corporation
 10 receives a demand under subdivision 6, it shall, within 60 days
 11 after receiving the demand, either pay to the dissenter the
 12 amount demanded or agreed to by the dissenter after discussion
 13 with the corporation or file in court a petition requesting that
 14 the court determine the fair value of the shares, with interest,
 15 if any. The petition shall be filed in the county in which the
 16 registered office of the corporation is located, except that a
 17 surviving foreign corporation that receives a demand relating to
 18 the shares of a constituent domestic corporation shall file the
 19 petition in the county in this state in which the last
 20 registered office of the constituent corporation was located.
 21 The petition shall name as parties all dissenters who have
 22 demanded payment under subdivision 6 and who have not reached
 23 agreement with the corporation. The jurisdiction of the court is
 24 plenary and exclusive. The court may appoint appraisers, with
 25 powers and authorities the court deems proper, to receive
 26 evidence on and recommend the amount of the fair value of the
 27 shares. The court shall determine the fair value of the shares,
 28 taking into account any and all factors the court finds
 29 relevant, computed by any method or combination of methods that
 30 the court, in its discretion, sees fit to use, whether or not
 31 used by the corporation or by a dissenter. The fair value of
 32 the shares as determined by the court is binding on all
 33 shareholders, wherever located. A dissenter is entitled to
 34 judgment for the amount by which the fair value of the shares as
 35 determined by the court exceeds the amount, if any, remitted
 36 under subdivision 5.

37 Subd. 8. [COSTS; FEES; EXPENSES.] (a) The court shall

1 determine the costs and expenses of a proceeding under
 2 subdivision 7, including the reasonable expenses and
 3 compensation of any appraisers appointed by the court, and shall
 4 assess those costs and expenses against the corporation, except
 5 that the court may assess part or all of those costs and
 6 expenses against a dissenter whose action in demanding payment
 7 under subdivision 6 is found to be arbitrary, vexatious or not
 8 in good faith.

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

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

19 LOANS; OBLIGATIONS; DISTRIBUTIONS

20 Sec. 82. [302A.501] [LOANS; GUARANTEES; SURETYSHIP.]

21 Subdivision 1. [PREREQUISITES.] A corporation may lend
 22 money to, guarantee an obligation of, become a surety for, or
 23 otherwise financially assist a person, if the transaction, or a
 24 class of transactions to which the transaction belongs, is
 25 approved by the affirmative vote of a majority of the directors
 26 present and:

27 (a) Is in the usual and regular course of business of the
 28 corporation;

29 (b) Is with, or for the benefit of, a related corporation,
 30 an organization in which the corporation has a financial
 31 interest, an organization with which the corporation has a
 32 business relationship, or an organization to which the
 33 corporation has the power to make donations;

34 (c) Is with, or for the benefit of, an officer or other
 35 employee of the corporation or a subsidiary, including an
 36 officer or employee who is a director of the corporation or a
 37 subsidiary, and may reasonably be expected, in the judgment of

1 the board, to benefit the corporation; or

2 (d) Has been approved by the affirmative vote of the
3 holders of two-thirds of the outstanding shares.

4 Subd. 2. [INTEREST; SECURITY.] A loan, guaranty, surety
5 contract, or other financial assistance under subdivision 1 may
6 be with or without interest and may be unsecured or may be
7 secured in any manner, including, without limitation, a grant of
8 a security interest in shares of the corporation.

9 Sec. 83. [302A.505] [ADVANCES.]

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

15 Sec. 84. [302A.521] [INDEMNIFICATION.]

16 Subdivision 1. [DEFINITIONS.] (a) For purposes of this
17 section, the terms defined in this subdivision have the meanings
18 given them.

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

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

1 employee benefit plan.

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

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

10 Subd. 2. [INDEMNIFICATION MANDATORY; STANDARD.] (a)

11 Subject to the provisions of subdivision 4, a corporation shall
12 indemnify a person made or threatened to be made a party to a
13 proceeding by reason of the former or present official capacity
14 of the person against judgments, penalties, fines including,
15 without limitation, excise taxes assessed against the person
16 with respect to an employee benefit plan, settlements, and
17 reasonable expenses, including attorneys' fees and
18 disbursements, incurred by the person in connection with the
19 proceeding, if, with respect to the acts or omissions of the
20 person complained of in the proceeding, the person:

21 (1) Has not been indemnified by another organization or
22 employee benefit plan for the same expenses with respect to the
23 same acts or omissions;

24 (2) Conducted himself in good faith;

25 (3) Received no improper personal benefit and section 45,
26 if applicable, has been satisfied;

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

29 (5) In the case of acts or omissions occurring in the
30 official capacity described in subdivision 1, paragraph (c),
31 clause (1) or (2), reasonably believed that the conduct was in
32 the best interests of the corporation, or in the case of acts or
33 omissions occurring in the official capacity described in
34 subdivision 1, paragraph (c), clause (3), reasonably believed
35 that the conduct was not opposed to the best interests of the
36 corporation. If the person's acts or omissions complained of in
37 the proceeding relate to conduct as a director, officer,

1 trustee, employee, or agent of an employee benefit plan, the
 2 conduct is not considered to be opposed to the best interests of
 3 the corporation if the person reasonably believed that the
 4 conduct was in the best interests of the participants or
 5 beneficiaries of the employee benefit plan.

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

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

29 Subd. 4. [PROHIBITION OR LIMIT ON INDEMNIFICATION OR
 30 ADVANCES.] The articles or bylaws either may prohibit
 31 indemnification or advances of expenses otherwise required by
 32 this section or may impose conditions on indemnification or
 33 advances of expenses in addition to the conditions contained in
 34 subdivisions 2 and 3 including, without limitation, monetary
 35 limits on indemnification or advances of expenses, if the
 36 conditions apply equally to all persons or to all persons within
 37 a given class.

1 Subd. 5. [REIMBURSEMENT TO WITNESSES.] This section does
 2 not require, or limit the ability of, a corporation to reimburse
 3 expenses, including attorneys' fees and disbursements, incurred
 4 by a person in connection with an appearance as a witness in a
 5 proceeding at a time when the person has not been made or
 6 threatened to be made a party to a proceeding.

7 Subd. 6. [DETERMINATION OF ELIGIBILITY.] All
 8 determinations whether indemnification of a person is required
 9 because the criteria set forth in subdivision 2 have been
 10 satisfied and whether a person is entitled to payment or
 11 reimbursement of expenses in advance of the final disposition of
 12 a proceeding as provided in subdivision 3 shall be made:

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

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

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

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

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

37 Subd. 7. [INSURANCE.] A corporation may purchase and

1 maintain insurance on behalf of a person in that person's
 2 official capacity against any liability asserted against and
 3 incurred by the person in or arising from that capacity, whether
 4 or not the corporation would have been required to indemnify the
 5 person against the liability under the provisions of this
 6 section.

7 Subd. 8. [DISCLOSURE.] A corporation that indemnifies or
 8 advances expenses to a person in accordance with this section in
 9 connection with a proceeding by or on behalf of the corporation
 10 shall report the amount of the indemnification or advance and to
 11 whom and on whose behalf it was paid as part of the annual
 12 financial statements furnished to shareholders pursuant to
 13 section 78 covering the period when the indemnification or
 14 advance was paid or accrued under the accounting method of the
 15 corporation reflected in the financial statements.

16 Sec. 85. [302A.551] [DISTRIBUTIONS.]

17 Subdivision 1. [WHEN PERMITTED.] The board may authorize,
 18 and the corporation may make, a distribution only if the
 19 corporation will be able to pay its debts in the ordinary course
 20 of business after making the distribution. The right of the
 21 board to authorize, and the corporation to make, distributions
 22 may be prohibited, limited, or restricted by, or the rights and
 23 priorities of persons to receive distributions may be
 24 established by, the articles or bylaws or an agreement.

25 Subd. 2. [DETERMINATION PRESUMED PROPER.] A determination
 26 that the corporation will be able to pay its debts in the
 27 ordinary course of business after the distribution is presumed
 28 to be proper if the determination is made in compliance with the
 29 standard of conduct provided in section 44 on the basis of
 30 financial information prepared in accordance with accounting
 31 methods, or a fair valuation or other method, reasonable in the
 32 circumstances.

33 Subd. 3. [EFFECT MEASURED.] (a) In the case of a
 34 distribution made by a corporation in connection with a
 35 purchase, redemption, or other acquisition of its shares, the
 36 effect of the distribution shall be measured as of the date on
 37 which money or other property is transferred, or indebtedness

1 payable in installments or otherwise is incurred, by the
 2 corporation, or as of the date on which the shareholder ceases
 3 to be a shareholder of the corporation with respect to the
 4 shares, whichever is the earliest.

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

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

18 (d) Sections 65 to 88 supersede all other statutes of this
 19 state with respect to distributions, and the provisions of
 20 Minnesota Statutes, Sections 513.20 to 513.32 do not apply to
 21 distributions made by a corporation governed by sections 1 to
 22 125.

23 Subd. 4. [RESTRICTIONS.] (a) A distribution may be made to
 24 the holders of a class or series of shares only if:

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

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

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

1 Sec. 86. [302A.553] [POWER TO ACQUIRE SHARES.]

2 Subdivision 1. [WHEN PERMITTED; STATUS OF SHARES.] A

3 corporation may acquire its own shares, subject to section 85.
 4 Shares so acquired constitute authorized but unissued shares of
 5 the corporation, unless the articles provide that they shall not
 6 be reissued, in which case the number of authorized shares is
 7 reduced by the number of shares acquired.

8 Subd. 2. [STATEMENT OF CANCELLATION.] If the number of

9 authorized shares of a corporation is reduced by an acquisition
 10 of its shares, the corporation shall, no later than the time it
 11 makes its next annual report to shareholders or, if no report is
 12 made, no later than three months after the end of the fiscal
 13 year in which the acquisition occurs, file with the secretary of
 14 state a statement of cancellation showing the reduction in the
 15 authorized shares. The statement shall contain:

16 (a) The name of the corporation;

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

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

21 Sec. 87. [302A.557] [LIABILITY OF SHAREHOLDERS FOR ILLEGAL
 22 DISTRIBUTIONS.]

23 Subdivision 1. [LIABILITY.] A shareholder who receives a
 24 distribution made in violation of the provisions of section 85
 25 is liable to the corporation, its receiver or other person
 26 winding up its affairs, or a director under section 88,
 27 subdivision 2, but only to the extent that the distribution
 28 received by the shareholder exceeded the amount that properly
 29 could have been paid under section 85.

30 Subd. 2. [STATUTE OF LIMITATIONS.] An action shall not be
 31 commenced under this section more than two years from the date
 32 of the distribution.

33 Sec. 88. [302A.559] [LIABILITY OF DIRECTORS FOR ILLEGAL
 34 DISTRIBUTIONS.]

35 Subdivision 1. [LIABILITY.] In addition to any other
 36 liabilities, a director who is present and votes for or fails to
 37 vote against, or who consents in writing to a distribution made

1 in violation of section 85 or a restriction contained in the
 2 articles or bylaws or an agreement, and who fails to comply with
 3 the standard of conduct provided in section 44, is liable to the
 4 corporation jointly and severally with all other directors so
 5 liable and to other directors under subdivision 3, but only to
 6 the extent that the distribution exceeded the amount that
 7 properly could have been paid under section 85.

8 Subd. 2. [CONTRIBUTION FROM SHAREHOLDERS.] A director
 9 against whom an action is brought under this section with
 10 respect to a distribution may implead in that action all
 11 shareholders who received the distribution and may compel pro
 12 rata contribution from them in that action to the extent
 13 provided in section 87, subdivision 1.

14 Subd. 3. [IMPLEADER; CONTRIBUTION FROM DIRECTORS.] A
 15 director against whom an action is brought under this section
 16 with respect to a distribution may implead in that action all
 17 other directors who voted for or consented in writing to the
 18 distribution and may compel pro rata contribution from them in
 19 that action.

20 Subd. 4. [STATUTE OF LIMITATIONS.] An action shall not be
 21 commenced under this section more than two years from the date
 22 of the distribution.

23 MERGER, EXCHANGE, TRANSFER

24 Sec. 89. [302A.601] [MERGER, EXCHANGE, TRANSFER.]

25 Subdivision 1. [MERGER.] Any two or more corporations may
 26 merge, resulting in a single corporation, with or without a
 27 business purpose, pursuant to a plan of merger approved in the
 28 manner provided in sections 90 to 96.

29 Subd. 2. [EXCHANGE.] The shares of one or more classes or
 30 series of a corporation may be exchanged for shares of the same
 31 or a different class or series of one or more other corporations
 32 pursuant to a plan of exchange approved in the manner provided
 33 in sections 90, 91, and 94 to 96.

34 Subd. 3. [TRANSFER.] A corporation may sell, lease,
 35 transfer, or otherwise dispose of all or substantially all of
 36 its property and assets in the manner provided in section 97.

37 Sec. 90. [302A.611] [PLAN OF MERGER OR EXCHANGE.]

1 Subdivision 1. [CONTENTS OF PLAN.] A plan of merger or
 2 exchange shall contain:

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

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

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

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

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

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

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

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

24 Subd. 2. [OTHER AGREEMENTS.] The procedure authorized by
 25 this section does not limit the power of a corporation to
 26 acquire for money or property other than its shares all or part
 27 of the shares of a class or series of another corporation by a
 28 negotiated agreement with the shareholders of the other
 29 corporation.

30 Sec. 91. [302A.613] [PLAN APPROVAL.]

31 Subdivision 1. [BOARD APPROVAL; NOTICE TO SHAREHOLDERS.] A
 32 resolution containing the plan of merger or exchange shall be
 33 approved by the affirmative vote of a majority of the directors
 34 present at a meeting of the board of each constituent
 35 corporation and shall then be submitted to the shareholders of
 36 each constituent corporation at a regular or a special meeting.
 37 Written notice shall be given to every shareholder, whether or

1 not entitled to vote at the meeting, not less than 14 days
 2 before the meeting, in the manner provided in section 67 for
 3 notice of meetings of shareholders. The written notice shall
 4 state that a purpose of the meeting is to consider the proposed
 5 plan of merger or exchange. A copy or short description of the
 6 plan of merger or exchange shall be included in or enclosed with
 7 the notice.

8 Subd. 2. [APPROVAL BY SHAREHOLDERS.] At the meeting a vote
 9 of the shareholders shall be taken on the proposed plan. The
 10 plan of merger or exchange is adopted when approved by the
 11 affirmative vote of the holders of a majority of all voting
 12 shares. A class or series of shares of the corporation is
 13 entitled to vote as a class or series if any provision of the
 14 plan would, if contained in a proposed amendment to the
 15 articles, entitle the class or series of shares to vote as a
 16 class or series and, in the case of an exchange, if the class or
 17 series is included in the exchange.

18 Subd. 3. [WHEN APPROVAL BY SHAREHOLDERS NOT REQUIRED.]
 19 Notwithstanding the provisions of subdivisions 1 and 2,
 20 submission of a plan of merger or exchange to a vote at a
 21 meeting of shareholders of a surviving or acquiring corporation
 22 is not required if:

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

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

29 (c) The number of voting shares of the corporation
 30 immediately after the merger or exchange, plus the number of
 31 voting shares of the corporation issuable on conversion or
 32 exchange of securities other than shares or on the exercise of
 33 rights to purchase securities issued by virtue of the terms of
 34 the transaction, will not exceed by more than 20 percent the
 35 number of voting shares of the corporation immediately before
 36 the transaction; and

37 (d) The number of participating shares of the corporation

1 immediately after the transaction, plus the number of
 2 participating shares of the corporation issuable on conversion
 3 or exchange of, or on the exercise of rights to purchase,
 4 securities issued in the transaction, will not exceed by more
 5 than 20 percent the number of participating shares of the
 6 corporation immediately before the transaction. "Participating
 7 shares" are outstanding shares of the corporation that entitle
 8 their holders to participate without limitation in distributions
 9 by the corporation.

10 Sec. 92. [302A.615] [ARTICLES OF MERGER; CERTIFICATE.]

11 Subdivision 1. [CONTENTS OF ARTICLES.] Upon receiving the
 12 approval required by section 91, articles of merger shall be
 13 prepared that contain:

- 14 (a) The plan of merger;
- 15 (b) For each corporation, either:
 - 16 (1) A statement that the plan has been approved by a vote
 - 17 of the shareholders pursuant to section 91, subdivision 2; or
 - 18 (2) A statement that a vote of the shareholders is not
 - 19 required by virtue of section 91, subdivision 3.

20 Subd. 2. [ARTICLES SIGNED, FILED.] The articles of merger
 21 shall be signed on behalf of each constituent corporation and
 22 filed with the secretary of state.

23 Subd. 3. [CERTIFICATE.] The secretary of state shall issue
 24 a certificate of merger to the surviving corporation or its
 25 legal representative.

26 Sec. 93. [302A.621] [MERGER OF SUBSIDIARY INTO PARENT.]

27 Subdivision 1. [WHEN AUTHORIZED; CONTENTS OF PLAN.] A
 28 parent owning at least 90 percent of the outstanding shares of
 29 each class and series of a subsidiary may merge the subsidiary
 30 into itself without a vote of the shareholders of either
 31 corporation. A resolution approved by the affirmative vote of a
 32 majority of the directors of the parent present shall set forth
 33 a plan of merger that contains:

- 34 (a) The name of the subsidiary and the name of the parent;
- 35 and
- 36 (b) The manner and basis of converting the shares of the
- 37 subsidiary into securities of the parent or of another

1 corporation or, in whole or in part, into money or other
 2 property.

3 Subd. 2. [NOTICE TO SHAREHOLDERS.] A copy of the plan of
 4 merger shall be mailed to each shareholder, other than the
 5 parent, of the subsidiary.

6 Subd. 3. [ARTICLES OF MERGER; CONTENTS OF ARTICLES.]
 7 Articles of merger shall be prepared that contain:

8 (a) The plan of merger;

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

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

14 Subd. 4. [ARTICLES SIGNED, FILED.] Within 30 days after a
 15 copy of the plan of merger is mailed to shareholders of the
 16 subsidiary, or upon waiver of the mailing by the holders of all
 17 outstanding shares, the articles of merger shall be signed on
 18 behalf of the parent and filed with the secretary of state.

19 Subd. 5. [CERTIFICATE.] The secretary of state shall issue
 20 a certificate of merger to the parent or its legal
 21 representative.

22 Sec. 94. [302A.631] [ABANDONMENT.]

23 Subdivision 1. [BY SHAREHOLDERS OR PLAN.] After a plan of
 24 merger or exchange has been approved at a meeting by the
 25 affirmative vote of the holders of a majority of all voting
 26 shares of each constituent corporation and before the effective
 27 date of the plan, it may be abandoned:

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

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

35 (c) Pursuant to subdivision 2.

36 Subd. 2. [BY BOARD; ARTICLES OF ABANDONMENT.] If articles
 37 of merger have not been filed with the secretary of state and

1 the plan is to be abandoned, or if a plan of exchange is to be
 2 abandoned, a resolution abandoning the plan of merger or
 3 exchange may be approved by the affirmative vote of a majority
 4 of the directors present, subject to the contract rights of any
 5 other person under the plan. If articles of merger have been
 6 filed with the secretary of state, the board shall file with the
 7 secretary of state articles of abandonment that contain:

8 (a) The name of the corporation;

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

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

13 Sec. 95. [302A.641] [EFFECTIVE DATE OF MERGER OR EXCHANGE;
 14 EFFECT.]

15 Subdivision 1. [EFFECTIVE DATE.] A merger is effective
 16 when the articles of merger are filed with the secretary of
 17 state or on a later date specified in the articles of merger. An
 18 exchange is effective on the date specified in the plan of
 19 exchange.

20 Subd. 2. [EFFECT ON CORPORATION.] When a merger becomes
 21 effective:

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

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

26 (c) The surviving corporation has all the rights,
 27 privileges, immunities, and powers, and is subject to all the
 28 duties and liabilities, of a corporation incorporated under
 29 sections 1 to 125;

30 (d) The surviving corporation possesses all the rights,
 31 privileges, immunities, and franchises, of a public as well as
 32 of a private nature, of each of the constituent corporations.
 33 All property, real, personal, and mixed, and all debts due on
 34 any account, including subscriptions to shares, and all other
 35 choses in action, and every other interest of or belonging to or
 36 due to each of the constituent corporations vests in the
 37 surviving corporation without any further act or deed.

1 Confirmatory deeds, assignments, or similar instruments to
 2 accomplish that vesting may be signed and delivered at any time
 3 in the name of a constituent corporation by its current officers
 4 or, if the corporation no longer exists, by its last officers.
 5 The title to any real estate or any interest therein vested in
 6 any of the constituent corporations does not revert nor in any
 7 way become impaired by reason of the merger;

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

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

19 Subd. 3. [EFFECT ON SHAREHOLDERS.] When a merger or
 20 exchange becomes effective, the shares of the corporation or
 21 corporations to be converted or exchanged under the terms of the
 22 plan cease to exist in the case of a merger, or are deemed to be
 23 exchanged in the case of an exchange. The holders of those
 24 shares are entitled only to the securities, money, or other
 25 property into which those shares have been converted or for
 26 which those shares have been exchanged in accordance with the
 27 plan, subject to any dissenter's rights under section 80.

28 Sec. 96. [302A.651] MERGER OR EXCHANGE WITH FOREIGN
 29 CORPORATION.]

30 Subdivision 1. [WHEN PERMITTED.] A domestic corporation
 31 may merge with or participate in an exchange with a foreign
 32 corporation by following the procedures set forth in this
 33 section, if the merger or exchange is permitted by the laws of
 34 the state under which the foreign corporation is incorporated.

35 Subd. 2. [LAWS APPLICABLE BEFORE TRANSACTION.] Each
 36 domestic corporation shall comply with the provisions of
 37 sections 89 to 96 with respect to the merger or exchange of

1 shares of corporations and each foreign corporation shall comply
 2 with the applicable provisions of the laws under which it was
 3 incorporated or by which it is governed.

4 Subd. 3. [DOMESTIC SURVIVING CORPORATION.] If the
 5 surviving corporation in a merger will be a domestic
 6 corporation, it shall comply with all the provisions of sections
 7 1 to 125.

8 Subd. 4. [FOREIGN SURVIVING CORPORATION.] If the surviving
 9 corporation in a merger will be a foreign corporation and will
 10 transact business in this state, it shall comply with the
 11 provisions of Minnesota Statutes, Chapter 303 with respect to
 12 foreign corporations. In every case the surviving corporation
 13 shall file with the secretary of state:

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

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

22 (c) An agreement that it will promptly pay to the
 23 dissenting shareholders of each domestic constituent corporation
 24 the amount, if any, to which they are entitled under section 81.

25 Sec. 97. [302A.661] [TRANSFER OF ASSETS; WHEN PERMITTED.]

26 Subdivision 1. [SHAREHOLDER APPROVAL: WHEN NOT REQUIRED.]
 27 A corporation, by affirmative vote of a majority of the
 28 directors present, may sell, lease, transfer, or otherwise
 29 dispose of all or substantially all of its property and assets
 30 in the usual and regular course of its business and grant a
 31 security interest in all or substantially all of its property
 32 and assets whether or not in the usual and regular course of its
 33 business, upon those terms and conditions and for those
 34 considerations, which may be money, securities, or other
 35 instruments for the payment of money or other property, as the
 36 board deems expedient, in which case no shareholder approval is
 37 required.

1 Subd. 2. [SHAREHOLDER APPROVAL: WHEN REQUIRED.] A
2 corporation, by affirmative vote of a majority of the directors
3 present, may sell, lease, transfer, or otherwise dispose of all
4 or substantially all of its property and assets, including its
5 good will, not in the usual and regular course of its business,
6 upon those terms and conditions and for those considerations,
7 which may be money, securities, or other instruments for the
8 payment of money or other property, as the board deems
9 expedient, when approved by the affirmative vote of the holders
10 of a majority of all voting shares at a regular or special
11 meeting of the shareholders. Notice of the meeting shall be
12 given to all shareholders whether or not they are entitled to
13 vote at the meeting.

14 Subd. 3. [SIGNING OF DOCUMENTS.] Confirmatory deeds,
15 assignments, or similar instruments to evidence a sale, lease,
16 transfer, or other disposition may be signed and delivered at
17 any time in the name of the transferor by its current officers
18 or, if the corporation no longer exists, by its last officers.

19 Subd. 4. [TRANSFEREE LIABILITY.] The transferee is liable
20 for the debts, obligations, and liabilities of the transferor
21 only to the extent provided in the contract or agreement between
22 the transferee and the transferor or to the extent provided by
23 sections 1 to 125 or other statutes of this state.

DISSOLUTION

25 Sec. 98. [302A.701] [METHODS OF DISSOLUTION.]

26 A corporation may be dissolved:

- 27 (a) By the incorporators pursuant to section 99;
- 28 (b) By the shareholders pursuant to sections 100 to 106; or
- 29 (c) By order of a court pursuant to sections 107 to 115.

30 Sec. 99. [302A.711] [VOLUNTARY DISSOLUTION BY

31 INCORPORATORS.]

32 Subdivision 1. [MANNER.] A corporation that has not issued
33 shares may be dissolved by the incorporators in the manner set
34 forth in this section.

35 Subd. 2. [ARTICLES OF DISSOLUTION.] (a) A majority of the
36 incorporators shall sign articles of dissolution containing:

- 37 (1) The name of the corporation;

- 1 (2) The date of incorporation;
- 2 (3) A statement that shares have not been issued;
- 3 (4) A statement that all consideration received from
- 4 subscribers for shares to be issued, less expenses incurred in
- 5 the organization of the corporation, has been returned to the
- 6 subscribers; and
- 7 (5) A statement that no debts remain unpaid.
- 8 (b) The articles of dissolution shall be filed with the
- 9 secretary of state.

10 Subd. 3. [EFFECTIVE DATE.] When the articles of

11 dissolution have been filed with the secretary of state, the

12 corporation is dissolved.

13 Subd. 4. [CERTIFICATE.] The secretary of state shall issue

14 to the dissolved corporation or its legal representative a

15 certificate of dissolution that contains:

- 16 (a) The name of the corporation;
- 17 (b) The date and time the articles of dissolution were
- 18 filed with the secretary of state; and
- 19 (c) A statement that the corporation is dissolved.

20 Sec. 100. [302A.721] [VOLUNTARY DISSOLUTION BY

21 SHAREHOLDERS.]

22 Subdivision 1. [MANNER.] A corporation may be dissolved by

23 the shareholders when authorized in the manner set forth in this

24 section.

25 Subd. 2. [NOTICE; APPROVAL.] (a) Written notice shall be

26 given to each shareholder entitled to vote at a meeting of

27 shareholders within the time and in the manner provided in

28 section 67 for notice of meetings of shareholders and, whether

29 the meeting is a regular or a special meeting, shall state that

30 a purpose of the meeting is to consider the advisability of

31 dissolving the corporation.

32 (b) The proposed dissolution shall be submitted for

33 approval at a meeting of shareholders. If the proposed

34 dissolution is approved at a meeting by the affirmative vote of

35 the holders of a majority of all voting shares, the dissolution

36 shall be commenced.

37 Sec. 101. [302A.723] [FILING NOTICE OF INTENT TO DISSOLVE;

1 EFFECT.]

2 Subdivision 1. [CONTENTS.] If dissolution of the
3 corporation is approved pursuant to section 100, subdivision 2,
4 the corporation shall file with the secretary of state a notice
5 of intent to dissolve. The notice shall contain:

6 (a) The name of the corporation;

7 (b) The date and place of the meeting at which the
8 resolution was approved pursuant to section 100, subdivision 2;
9 and

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

12 Subd. 2. [WINDING UP.] When the notice of intent to
13 dissolve has been filed with the secretary of state, and subject
14 to section 105, the corporation shall cease to carry on its
15 business, except to the extent necessary for the winding up of
16 the corporation. The shareholders shall retain the right to
17 revoke the dissolution proceedings in accordance with section
18 105 and the right to remove directors or fill vacancies on the
19 board. The corporate existence continues to the extent
20 necessary to wind up the affairs of the corporation until the
21 dissolution proceedings are revoked or articles of dissolution
22 are filed with the secretary of state.

23 Subd. 3. [REMEDIES CONTINUED.] The filing with the
24 secretary of state of a notice of intent to dissolve does not
25 affect any remedy in favor of the corporation or any remedy
26 against it or its directors, officers, or shareholders in those
27 capacities, except as provided in section 117.

28 Sec. 102. [302A.725] [PROCEDURE IN DISSOLUTION.]

29 Subdivision 1. [COLLECTION; PAYMENT.] When a notice of
30 intent to dissolve has been filed with the secretary of state,
31 the board, or the officers acting under the direction of the
32 board, shall proceed as soon as possible:

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

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

1 their priorities.

2 Subd. 2. [TRANSFER OF ASSETS.] Notwithstanding the
 3 provisions of section 97, when a notice of intent to dissolve
 4 has been filed with the secretary of state, the directors may
 5 sell, lease, transfer, or otherwise dispose of all or
 6 substantially all of the property and assets of a dissolving
 7 corporation without a vote of the shareholders.

8 Subd. 3. [DISTRIBUTION TO SHAREHOLDERS.] All tangible or
 9 intangible property, including money, remaining after the
 10 discharge of the debts, obligations, and liabilities of the
 11 corporation shall be distributed to the shareholders in
 12 accordance with section 95, subdivision 4.

13 Sec. 103. [302A.727] [NOTICE TO CREDITORS AND CLAIMANTS.]

14 Subdivision 1. [WHEN PERMITTED; HOW GIVEN.] When a notice
 15 of intent to dissolve has been filed with the secretary of
 16 state, the corporation may give notice of the filing to each
 17 known creditor of and claimant against the corporation at the
 18 last known address of each known present, future, or contingent
 19 creditor and claimant. The corporation may give published
 20 notice to known creditors or claimants whose address is unknown
 21 and to unknown present, future, or contingent creditors and
 22 claimants, by publishing the notice once each week for four
 23 successive weeks in a legal newspaper as defined in Minnesota
 24 Statutes, Section 331.02 in the county or counties where the
 25 registered office and the principal executive office of the
 26 corporation are located.

27 Subd. 2. [CONTENTS.] The notice to creditors and
 28 claimants shall contain:

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

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

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

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

36 (e) The date by which all the claims must be received,
 37 which shall be the later of 90 days after the notice of intent

1 to dissolve was filed with the secretary of state or 90 days
 2 after the last date on which notice to creditors and claimants
 3 was given.

4 Sec. 104. [302A.729] [CLAIMS IN DISSOLUTION.]

5 Subdivision 1. [PROCEDURE.] If the corporation gives
 6 proper notice to creditors and claimants pursuant to section 103:

7 (a) The claim of a creditor or claimant to whom notice is
 8 given who fails to file a claim according to the procedures set
 9 forth by the corporation on or before the date set forth in the
 10 notice is subject to the provisions of section 117;

11 (b) The corporation has 30 days from the receipt of each
 12 claim to accept or reject the claim; a claim not expressly
 13 rejected is deemed accepted; and

14 (c) A creditor or claimant to whom notice is given and
 15 whose claim is rejected by the corporation has 60 days from the
 16 date of rejection, or 180 days from the date the corporation
 17 filed with the secretary of state the notice of intent to
 18 dissolve, whichever is longer, to pursue any other remedies with
 19 respect to the claim. If the creditor or claimant does not
 20 initiate legal, administrative, or arbitration proceedings with
 21 respect to the claim during that period, the claim is subject to
 22 the provisions of section 117.

23 Subd. 2. [STATUTE OF LIMITATIONS.] The claim of a creditor
 24 or claimant to whom notice is not given and who does not
 25 initiate legal, administrative, or arbitration proceedings
 26 concerning the claim within two years after the date of filing
 27 the notice of intent to dissolve is thereafter subject to the
 28 provisions of 117.

29 Sec. 105. [302A.731] [REVOCATION OF DISSOLUTION
 30 PROCEEDINGS.]

31 Subdivision 1. [GENERALLY.] Dissolution proceedings
 32 commenced pursuant to section 100 may be revoked prior to filing
 33 of articles of dissolution.

34 Subd. 2. [NOTICE TO SHAREHOLDERS; APPROVAL.] Written
 35 notice shall be given to every shareholder entitled to vote at a
 36 shareholders' meeting within the time and in the manner provided
 37 in section 67 for notice of meetings of shareholders and shall

1 state that a purpose of the meeting is to consider the
 2 advisability of revoking the dissolution proceedings. The
 3 proposed revocation shall be submitted to the shareholders at
 4 the meeting. If the proposed revocation is approved at a
 5 meeting by the affirmative vote of the holders of a majority of
 6 all voting shares, the dissolution proceedings are revoked.

7 Subd. 3. [EFFECTIVE DATE; EFFECT.] Revocation of
 8 dissolution proceedings is effective when a notice of revocation
 9 is filed with the secretary of state. The corporation may
 10 thereafter resume business.

11 Sec. 106. [302A.733] [ARTICLES OF DISSOLUTION; CERTIFICATE
 12 OF DISSOLUTION; EFFECT.]

13 Subdivision 1. [ARTICLES; WHEN FILED.] Articles of
 14 dissolution for a corporation dissolving pursuant to section 100
 15 shall be filed with the secretary of state after:

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

18 (b) The 180 day period described in section 104,
 19 subdivision 1, clause (c) has expired, if the corporation has
 20 given notice to creditors and claimants of the corporation in
 21 the manner described in section 103; or, in all other cases,

22 (c) The two year period described in section 104,
 23 subdivision 2 has expired.

24 Subd. 2. [CONTENTS OF ARTICLES.] The articles of
 25 dissolution shall state:

26 (a) Whether or not notice has been given to all creditors
 27 and claimants of the corporation in the manner provided in
 28 section 103, and, if notice has been given, the last date on
 29 which the notice was given and the date on which the longer of
 30 the periods described in section 104, subdivision 1, clause (c)
 31 expired;

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

35 (c) That the remaining property, assets, and claims of the
 36 corporation have been distributed among its shareholders in
 37 accordance with section 95, subdivision 4, or that adequate

1 provision has been made for that distribution; and

2 (d) That there are no pending legal, administrative, or
3 arbitration proceedings by or against the corporation, or that
4 adequate provision has been made for the satisfaction of any
5 judgment, order, or decree that may be entered against it in a
6 pending proceeding, and that all other claims are barred under
7 section 117.

8 Subd. 3. [EFFECTIVE DATE.] When the articles of
9 dissolution have been filed with the secretary of state, the
10 corporation is dissolved.

11 Subd. 4. [CERTIFICATE.] The secretary of state shall issue
12 to the dissolved corporation or its legal representative a
13 certificate of dissolution that contains:

14 (a) The name of the corporation;

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

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

18 Sec. 107. [302A.741] [SUPERVISED VOLUNTARY DISSOLUTION.]

19 After the notice of intent to dissolve has been filed with
20 the secretary of state and before a certificate of dissolution
21 has been issued, the corporation, or for good cause shown, a
22 shareholder or creditor may apply to a court within the county
23 in which the registered office of the corporation is situated to
24 have the dissolution conducted or continued under the
25 supervision of the court as provided in sections 108 to 117.

26 Sec. 108. [302A.751] [INVOLUNTARY DISSOLUTION.]

27 Subdivision 1. [WHEN PERMITTED.] A court may grant any
28 equitable relief it deems just and reasonable in the
29 circumstances or may dissolve a corporation and liquidate its
30 assets and business:

31 (a) In a supervised voluntary dissolution pursuant to
32 section 107;

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

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

1 break the deadlock;

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

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

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

12 (5) The period of duration as provided in the articles has
13 expired and has not been extended as provided in section 120;

14 (c) In an action by a creditor when:

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

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

21 (d) In an action by the attorney general to dissolve the
22 corporation in accordance with section 111 when it is
23 established that a decree of dissolution is appropriate.

24 Subd. 2. [CONDITION OF CORPORATION.] In determining
25 whether to order dissolution, the court shall take into
26 consideration the financial condition of the corporation but
27 shall not refuse to order dissolution solely on the ground that
28 the corporation has accumulated or current operating profits.

29 Subd. 3. [EXPENSES.] If the court finds that a party to a
30 proceeding brought under this section has acted arbitrarily,
31 vexatiously, or otherwise not in good faith, it may in its
32 discretion award reasonable expenses, including attorneys' fees
33 and disbursements, to any of the other parties.

34 Subd. 4. [VENUE; PARTIES.] Proceedings under this section
35 shall be brought in a court within the county in which the
36 registered office of the corporation is located. It is not
37 necessary to make shareholders parties to the action or

1 proceeding unless relief is sought against them personally.

2 Sec. 109. [302A.753] [PROCEDURE IN INVOLUNTARY OR
3 SUPERVISED VOLUNTARY DISSOLUTION.]

4 Subdivision 1. [ACTION BEFORE HEARING.] In dissolution
5 proceedings the court may issue injunctions, appoint receivers
6 with all powers and duties the court directs, take other actions
7 required to preserve the corporate assets wherever situated, and
8 carry on the business of the corporation until a full hearing
9 can be held.

10 Subd. 2. [ACTION AFTER HEARING.] After a full hearing has
11 been held, upon whatever notice the court directs to be given to
12 all parties to the proceedings and to any other parties in
13 interest designated by the court, the court may appoint a
14 receiver to collect the corporate assets, including all amounts
15 owing to the corporation by subscribers on account of any unpaid
16 portion of the consideration for the issuance of shares. A
17 receiver has authority, subject to the order of the court, to
18 continue the business of the corporation and to sell, lease,
19 transfer, or otherwise dispose of all or any of the property and
20 assets of the corporation either at public or private sale.

21 Subd. 3. [DISCHARGE OF OBLIGATIONS.] The assets of the
22 corporation or the proceeds resulting from a sale, lease,
23 transfer, or other disposition shall be applied in the following
24 order of priority to the payment and discharge of:

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

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

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

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

1 the appointment of the receiver, if any; and

2 (e) Other claims duly proved and allowed.

3 Subd. 4. [REMAINDER TO SHAREHOLDERS.] After payment of the
4 expenses of receivership and claims of creditors duly proved,
5 the remaining assets, if any, shall be distributed to the
6 shareholders in accordance with section 85, subdivision 4.

7 Sec. 110. [302A.755] [QUALIFICATIONS OF RECEIVERS;
8 POWERS.]

9 Subdivision 1. [QUALIFICATIONS.] A receiver shall be a
10 natural person or a domestic corporation or a foreign
11 corporation authorized to transact business in this state. A
12 receiver shall give bond as directed by the court with the
13 sureties required by the court.

14 Subd. 2. [POWERS.] A receiver may sue and defend in all
15 courts as receiver of the corporation. The court appointing the
16 receiver has exclusive jurisdiction of the corporation and its
17 property.

18 Sec. 111. [302A.757] [ACTION BY ATTORNEY GENERAL.]

19 Subdivision 1. [WHEN PERMITTED.] A corporation may be
20 dissolved involuntarily by a decree of a court in this state in
21 an action filed by the attorney general when it is established
22 that:

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

25 (b) The corporation was incorporated for a purpose not
26 permitted by section 5;

27 (c) The corporation failed to comply with the requirements
28 of sections 2 to 20 essential to incorporation under or election
29 to become governed by sections 1 to 125;

30 (d) The corporation has flagrantly violated a provision of
31 sections 1 to 125, or has violated a provision of sections 1 to
32 125 more than once, or has violated more than one provision of
33 sections 1 to 125; or

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

37 Subd. 2. [NOTICE TO CORPORATION; CORRECTION.] An action

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

10 Sec. 112. [302A.759] [FILING CLAIMS IN PROCEEDINGS TO
 11 DISSOLVE.]

12 Subdivision 1. In proceedings referred to in section 108
 13 to dissolve a corporation, the court may require all creditors
 14 and claimants of the corporation to file their claims under oath
 15 with the clerk of court or with the receiver in a form
 16 prescribed by the court.

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

27 Sec. 113. [302A.761] [DISCONTINUANCE OF DISSOLUTION
 28 PROCEEDINGS.]

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

36 Sec. 114. [302A.763] [DECREE OF DISSOLUTION.]

37 Subdivision 1. [WHEN ENTERED.] In an involuntary or

1 supervised voluntary dissolution after the costs and expenses of
 2 the proceedings and all debts, obligations, and liabilities of
 3 the corporation have been paid or discharged and all of its
 4 remaining property and assets have been distributed to its
 5 shareholders or, if its property and assets are not sufficient
 6 to satisfy and discharge the costs, expenses, debts,
 7 obligations, and liabilities, when all the property and assets
 8 have been applied so far as they will go to their payment
 9 according to the priorities set forth in section 109, the court
 10 shall enter a decree dissolving the corporation.

11 Subd. 2. [EFFECTIVE DATE.] When the decree dissolving the
 12 corporation has been entered, the corporation is dissolved.

13 Sec. 115. [302A.765] [FILING DECREE.]

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

18 Sec. 116. [302A.771] [DEPOSIT WITH STATE TREASURER OF
 19 AMOUNT DUE CERTAIN SHAREHOLDERS.]

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

29 Sec. 117. [302A.761] [CLAIMS BARRED; EXCEPTIONS.]

30 Subdivision 1. [CLAIMS BARRED.] A creditor or claimant who
 31 does not file a claim or pursue a remedy in a legal,
 32 administrative, or arbitration proceeding under sections 104,
 33 107, 108, or 112, or in some other legal, administrative, or
 34 arbitration proceeding pending on the date of dissolution, and
 35 all those claiming through or under the creditor or claimant,
 36 are forever barred from suing on that claim or otherwise
 37 realizing upon or enforcing it, except as provided in this

1 section.

2 Subd. 2. [CLAIMS REOPENED.] At any time within one year
3 after articles of dissolution have been filed with the secretary
4 of state, or a decree of dissolution has been entered, a
5 creditor or claimant who shows good cause for not having
6 previously filed the claim may apply to a court in this state to
7 allow a claim:

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

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

15 Subd. 3. [CLAIMS PERMITTED.] All debts, obligations, and
16 liabilities incurred during dissolution proceedings shall be
17 paid by the corporation before the distribution of assets to a
18 shareholder. A person to whom this kind of debt, obligation, or
19 liability is owed but not paid may pursue any remedy against the
20 officers, directors, and shareholders of the corporation before
21 the expiration of the applicable statute of limitations. This
22 subdivision does not apply to dissolution under the supervision
23 or order of a court.

24 Sec. 118. [302A.783] [RIGHT TO SUE OR DEFEND AFTER
25 DISSOLUTION.]

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

30 Sec. 119. [302A.791] [OMITTED ASSETS.]

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

34 EXTENSION

35 Sec. 120. [302A.801] [EXTENSION AFTER DURATION EXPIRED.]

36 Subdivision 1. [EXTENSION BY AMENDMENT.] A corporation
37 whose period of duration as provided in the articles has expired

1 and which has continued to do business despite that expiration
 2 may reinstate its articles and extend the period of corporate
 3 duration, including making the duration perpetual, at any time
 4 after the date of expiration by filing an amendment to the
 5 articles as set forth in this section.

6 Subd. 2. [CONTENTS OF AMENDMENT.] An amendment to the
 7 articles shall be approved by the affirmative vote of a majority
 8 of the directors present and shall include:

9 (a) The date the period of duration expired under the
 10 articles;

11 (b) A statement that the period of duration will be
 12 perpetual or, if some shorter period is to be provided, the date
 13 to which the period of duration is extended; and

14 (c) A statement that the corporation has been in continuous
 15 operation since before the date of expiration of its original
 16 period of duration.

17 Subd. 3. [APPROVAL BY SHAREHOLDERS.] The amendment to the
 18 articles shall be presented, after notice, to a meeting of the
 19 shareholders. The amendment is adopted when approved by the
 20 shareholders pursuant to section 14.

21 Subd. 4. [FILING.] Articles of amendment conforming to
 22 section 16 shall be filed with the secretary of state.

23 Sec. 121. [302A.805] [EFFECT OF EXTENSION.]

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

26 (a) Relates back to the date of expiration of the original
 27 period of duration of the corporation as provided in the
 28 articles;

29 (b) Validates contracts or other acts within the authority
 30 of the articles, and the corporation is liable for those
 31 contracts or acts; and

32 (c) Restores to the corporation all the assets and rights
 33 of the corporation to the extent they were held by the
 34 corporation before expiration of its original period of
 35 duration, except those sold or otherwise distributed after that
 36 time.

1 Sec. 122. [302A.021] [ANNUAL REPORT.]

2 Subdivision 1. [FORM.] By January 15 each year, the
3 secretary of state shall mail to every corporation at its
4 registered office an annual report form. By July 1 of the same
5 year, the officers of each corporation shall cause the form to
6 be completed and filed with the secretary of state. The report
7 shall contain:

8 (a) The name of the corporation;

9 (b) The address of its registered office; and

10 (c) The name of its registered agent, if any.

11 Subd. 2. [FILING; RETURN FOR CORRECTION.] If the annual
12 report conforms to the requirements of subdivision 1, the
13 secretary of state shall file it; in all other cases, the
14 secretary of state shall return the report to the corporation.
15 If the report is made to conform to the requirements of
16 subdivision 1 and is filed with the secretary of state within 30
17 days from the return of the report to the corporation, the
18 provisions of subdivisions 3 and 4 do not apply.

19 Subd. 3. [LOSS OF GOOD STANDING.] A corporation that fails
20 to file an annual report conforming to the requirements of
21 subdivision 1 loses its good standing in this state. The
22 corporation may regain its good standing in this state by filing
23 the annual report.

24 Subd. 4. [NOTICE OF REPEATED VIOLATION; PENALTY.] If a
25 corporation fails for two successive years to file an annual
26 report conforming to the requirements of subdivision 1, the
27 secretary of state shall give notice by registered mail to the
28 corporation at its registered office that it has violated this
29 section. If the corporation does not return an annual report
30 conforming to the requirements of subdivision 1 within 30 days
31 after the mailing of the notice, the corporation shall forfeit
32 to the state \$25.

33 ACTIONS AGAINST CORPORATIONS

34 Sec. 123. [302A.901] [SERVICE OF PROCESS ON CORPORATION.]

35 Subdivision 1. [WHO MAY BE SERVED.] A process, notice, or
36 demand required or permitted by law to be served upon a
37 corporation may be served either upon the registered agent, if

1 any, of the corporation named in the articles, or upon an
 2 officer of the corporation, or upon the secretary of state as
 3 provided in this section.

4 Subd. 2. [SERVICE ON SECRETARY OF STATE: WHEN PERMITTED.]

5 If a corporation has appointed and maintained a registered agent
 6 in this state but neither its registered agent nor an officer of
 7 the corporation can be found at the registered office, or if a
 8 corporation fails to appoint or maintain a registered agent in
 9 this state and an officer of the corporation cannot be found at
 10 the registered office, then the secretary of state is the agent
 11 of the corporation upon whom the process, notice, or demand may
 12 be served. The return of the sheriff that no registered agent
 13 or officer can be found at the registered office in a county is
 14 conclusive evidence that the corporation has no registered agent
 15 or officer at its registered office. Service on the secretary
 16 of state of any process, notice, or demand is deemed personal
 17 service upon the corporation and shall be made by filing with
 18 the secretary of state duplicate copies of the process, notice,
 19 or demand. The secretary of state shall immediately forward, by
 20 registered mail, addressed to the corporation at its registered
 21 office, a copy of the process, notice, or demand. Service on
 22 the secretary of state is returnable in not less than 30 days
 23 notwithstanding a shorter period specified in the process,
 24 notice, or demand.

25 Subd. 3. [RECORD OF SERVICE.] There shall be maintained in
 26 the office of the secretary of state a record of all processes,
 27 notices, and demands served upon the secretary of state under
 28 this section, including the date and time of service and the
 29 action taken with reference to it.

30 Subd. 4. [OTHER METHODS OF SERVICE.] Nothing in this
 31 section limits the right of a person to serve any process,
 32 notice, or demand required or permitted by law to be served upon
 33 a corporation in any other manner now or hereafter permitted by
 34 law.

35 Sec. 124. [302A.917] [STATE INTERESTED; PROCEEDINGS.]

36 If it appears at any stage of a proceeding in a court in
 37 this state that the state is, or is likely to be, interested

1 therein, or that it is a matter of general public interest, the
 2 court shall order that a copy of the complaint or petition be
 3 served upon the attorney general in the same manner prescribed
 4 for serving a summons in a civil action. The attorney general
 5 shall intervene in a proceeding when the attorney general
 6 determines that the public interest requires it, whether or not
 7 the attorney general has been served.

8 Sec. 125. [302A.001] [CITATION.]

9 Sections 1 to 125 may be cited as the "Minnesota Business
 10 Corporation Act."

11 Sec. 126. Minnesota Statutes 1980, Section 53.01, is
 12 amended to read:

13 53.01 [ORGANIZATION.]

14 It is lawful for three or more persons, who desire to form
 15 a corporation for the purpose of carrying on primarily the
 16 business of loaning money in small amounts to persons within the
 17 conditions set forth in this chapter, to organize, under this
 18 chapter, an industrial loan and thrift company, by filing with
 19 the secretary of state and the county recorder in the county in
 20 which the place of business of the corporation is located, a
 21 certificate of incorporation, and upon paying the fees
 22 prescribed by sections ~~301.07 and 301.071~~ 1 to 125 and upon
 23 compliance with the procedure provided for the organization and
 24 government of ordinary corporations under the laws of this
 25 state, and upon compliance with the additional requirements of
 26 this chapter prior to receiving authorization to do business.

27 Sec. 127. Minnesota Statutes 1980, Section 303.05,
 28 Subdivision 1, is amended to read:

29 Subdivision 1. [CERTIFICATE OF AUTHORITY, WHEN NOT
 30 ISSUED.] No certificate of authority shall be issued to a
 31 foreign corporation the name of which would be prohibited to a
 32 corporation which might then be formed under the provisions of
 33 sections 301.01 to 301.61, under the provisions of sections 1 to
 34 125, or under the Minnesota Nonprofit Corporation Act; provided,
 35 that, if the name of such corporation does not end with the word
 36 "corporation," or the word "incorporated," or the abbreviation
 37 "Inc.," or does not contain the word "company" or the

1 abbreviation "Co." not immediately preceded by the word "and" or
 2 the character "&," a certificate of authority may be issued to
 3 it if it agrees in its application for a certificate of
 4 authority to add at the end of its name the word "incorporated"
 5 or the abbreviation "Inc." in transacting business within this
 6 state. The name of such corporation may contain the word
 7 "cooperative" if it is a cooperative corporation generally
 8 similar to the kind which might then be organized under the laws
 9 of this state. If such corporation is a corporation obtaining a
 10 certificate of authority pursuant to the provisions of section
 11 303.04, the name of such corporation may contain the words
 12 "bank," "trust," "building and loan," or "savings" and such
 13 corporation shall not be required to add the word "incorporated"
 14 or the abbreviation "Inc." to its corporate name.

15 Sec. 128. Minnesota Statutes 1980, Section 308.341, is
 16 amended to read:

17 308.341 [COOPERATIVE RURAL TELEPHONE COMPANIES,
 18 DISSOLUTION.]

19 Any cooperative rural telephone company organized under
 20 Revised Statutes 1905, Chapter 58, or the general laws of
 21 Minnesota 1905, Chapters 276 and 313, may dissolve by voluntary
 22 proceedings as provided by Minnesota Statutes, Sections 301.47
 23 and 301.48, or sections 100 to 106, whenever a resolution
 24 therefor, is adopted by a majority of the voting power of all
 25 stockholders or shareholders at a meeting duly called for that
 26 purpose.

27 Sec. 129. Minnesota Statutes 1980, Section 319A.03, is
 28 amended to read:

29 319A.03 [FORMATION OF CORPORATION.]

30 One or more natural professional persons may form a
 31 corporation pursuant to ~~chapters 301 or~~ sections 301.01 to
 32 301.67, sections 1 to 125, or chapter 317 for the purposes
 33 hereinafter set forth.

34 Sec. 130. Minnesota Statutes 1980, Section 319A.05, is
 35 amended to read:

36 319A.05 [APPLICABILITY OF CORPORATION ACTS.]

37 A corporation incorporating under sections 319A.01 to

1 319A.22 and ~~chapters 301 or~~ sections 301.01 to 301.67, sections
 2 1 to 125, or chapter 317 shall proceed in the manner specified
 3 in ~~chapters 301 or~~ sections 301.01 to 301.67, sections 1 to 125,
 4 or chapter 317. After incorporation a professional corporation
 5 shall enjoy the powers and privileges and shall be subject to
 6 the duties and liabilities of other corporations organized under
 7 ~~chapters 301 or~~ sections 301.01 to 301.67, sections 1 to 125, or
 8 chapter 317, except insofar as the same may be limited or
 9 enlarged by sections 319A.01 to 319A.22. If any provision of
 10 sections 319A.01 to 319A.22 conflicts with the provisions of
 11 ~~chapters 301 or~~ sections 301.01 to 301.67, sections 1 to 125, or
 12 chapter 317, sections 319A.01 to 319A.22 ~~takes~~ take precedence.

13 Sec. 131. Minnesota Statutes 1980, Section 319A.12,
 14 Subdivision 1a, is amended to read:

15 Subd. 1a. A professional corporation may at any time by
 16 amendment to its articles of incorporation relinquish the powers
 17 and privileges conferred upon it by this chapter and elect to be
 18 governed thereafter solely by the provisions of ~~either chapter~~
 19 ~~301 or~~ sections 301.01 to 301.67, sections 1 to 125, or chapter
 20 317. Notwithstanding any provision of this chapter, the
 21 representative of a deceased or incompetent shareholder of a
 22 professional corporation shall have authority to vote the
 23 deceased or incompetent shareholder's shares on the question of
 24 adopting such an amendment.

25 Sec. 132. Minnesota Statutes 1980, Section 319A.12,
 26 Subdivision 2, is amended to read:

27 Subd. 2. If within 90 days following the date of death of
 28 a shareholder or member of a professional corporation or the
 29 loss of his license to render professional service all of the
 30 shares or membership owned by the deceased or disqualified
 31 shareholder or member have not been transferred to and acquired
 32 by the corporation or persons qualified to own the shares or
 33 membership, the corporation shall thereafter be governed solely
 34 by the provisions of ~~chapters 301 or~~ sections 301.01 to 301.67,
 35 sections 1 to 125, or chapter 317 and shall not enjoy any of the
 36 powers and privileges conferred by sections 319A.01 to 319A.22.
 37 When the corporation ceases to be authorized to render

1 professional service, its corporate name must be changed to
 2 comply with the corporate name provision of ~~chapters 301-01~~
 3 sections 301.01 to 301.67, sections 1 to 125, or chapter 317,
 4 and any words, phrases or abbreviations contained therein to
 5 comply with the provisions of sections 319A.01 to 319A.22 shall
 6 be eliminated.

7 Sec. 133. Minnesota Statutes 1980, Section 391A.20, is
 8 amended to read:

9 319A.20 [SUSPENSION OR REVOCATION.]

10 The corporate charter of a professional corporation or the
 11 certificate of authority of a foreign professional corporation
 12 may be suspended or revoked pursuant to sections 301.57, 111, or
 13 317.62 for the reasons enumerated therein or for failure to
 14 comply with the provisions of sections 319A.01 to 319A.22 or the
 15 rules and regulations of any board. A board through the
 16 attorney general may institute such suspension or revocation
 17 proceedings.

18 Sec. 134. Minnesota Statutes 1980, Section 367.42,
 19 Subdivision 1, is amended to read:

20 367.42 [DUTIES OF DEPUTY CONSTABLES.]

21 Subdivision 1. Notwithstanding any general or local law or
 22 charter to the contrary, any deputy constable employed or
 23 elected on or after July 1, 1979 by a political subdivision of
 24 the state of Minnesota shall have the following powers and
 25 duties:

26 (a) To have the powers of arrest of a private person;

27 (b) To perform the duties of a constable prescribed by law
 28 relative to election procedure;

29 (c) To perform the following duties at the direction of the
 30 county sheriff or constable:

31 ~~(i) To conduct foreclosure sales on corporation shares~~
 32 ~~pursuant to section 301.17;~~

33 ~~(i)~~ (i) To inspect communication wire and cable or records
 34 of such wire and cable pursuant to section 325E.21;

35 ~~(ii)~~ (ii) To conduct hotel lien sales pursuant to section
 36 327.06; and

37 ~~(iii)~~ (iii) To conduct public auction sales of unclaimed

1 property pursuant to sections 345.04 and 345.05.

2 (d) To arrest any individual who, in the deputy constable's
3 presence, commits a violation of the intoxicating liquor act,
4 chapter 340;

5 (e) To provide general administrative or clerical
6 assistance to county sheriffs, local police departments or
7 constables; and

8 (f) To provide traffic or crowd control assistance to
9 county sheriffs, local police departments or constables.

10 Sec. 135. [REPEALER.]

11 Minnesota Statutes 1980, Sections 301.01; 301.02 301.03;

12 301.04; 301.05; 301.06; 301.07; 301.071; 301.08; 301.09;

13 301.095; 301.10; 301.11; 301.12; 301.13; 301.14; 301.15;

14 301.16; 301.17; 301.18; 301.19; 301.20; 301.21; 301.22; 301.23;

15 301.24; 301.25; 301.26; 301.27; 301.28; 301.29; 301.30; 301.31;

16 301.32; 301.33; 301.34; 301.35; 301.36; 301.37; 301.371; 301.38;

17 301.39; 301.40; 301.41; 301.42; 301.421; 301.43; 301.44; 301.45;

18 301.46; 301.47; 301.48; 301.49; 301.50; 301.51; 301.511; 301.52;

19 301.53; 301.54; 301.55; 301.56; 301.57; 301.58; 301.59; 301.60;

20 301.61; 301.62; 301.63; 301.64; 301.65; 301.66; and 301.67 are

21 repealed.

22 Sec. 136. [APPROPRIATION.]

23 The sum of \$..... is appropriated from the general
24 fund to the secretary of state to carry out the additional
25 duties imposed by this act as indicated in this section, to be
26 available for the fiscal year ending June 30 in the years
27 indicated.

	1982	1983
28		
29 (a) Preparation, mailing, and		
30 filing of annual reports	\$.....	\$.....
31 (b) Other duties	\$.....	\$.....

32 Sec. 137. [EFFECTIVE DATES.]

33 Sections 1 to 124, 126 to 133, and 136 are effective July
34 1, 1981. Sections 125, 134, and 135 are effective January 1,
35 1983.

REPORT OF THE COMMITTEE ON CLOSE CORPORATIONS

While reading this report, members of the Task Force and of committees of the Task Force should keep in mind the fact that it is highly possible that some of the provisions suggested here will be adopted by the Task Force as proposals which should apply to all corporations under the general business corporation law. Obviously, if such provisions are so enacted, they would apply to all corporations, and need not be stated in a separate subtitle. If this happens to enough of the proposals embodied in this report, the separate nature of the close corporation subtitle should be reconsidered. It may turn out that we can achieve the same purpose without resort to a separate subtitle. However, we cannot and do not rely upon the enactment of any particular provision by the Task Force.

Therefore, the report speaks to all of the areas where the committee felt that some protection was necessary. You should note that many of the proposals may resemble proposals which appear in the reports of other committees.

The Committee on Close Corporations has, after careful consideration by its members, has made policy decisions and findings in regard to the special conditions under which close corporations operate.

The Committee met eight times to consider whether close corporations should have a separate statute, and if so, what that statute should contain. The Committee decided that close corporations should have a separate sub-title in the new statute for several reasons. First, by separating those provisions applicable only to close corporations into such a subtitle, the subtitle may give close corporations freedoms (or give shareholders of a close corporation protection) that we might find objectionable if applied to the public corporation. Second, by grouping these provisions together, we achieve an ease of reference lacking in those statutes in which provisions relating to close corporations are spread throughout the statute (e.g., California). Finally, by grouping these provisions together we make it possible for the incorporator to take advantage of the statutory presumptions of these special provisions merely by filing a "postcard" form of articles of incorporation.

POSTCARD INCORPORATION

Many of the corporations incorporated in this state are incorporated without benefit of counsel, using forms, frequently those supplied by the Secretary of State. Very few of these corporations deviate from the statutory presumptions of Chapter 301. In order to simplify the process of incorporation, we propose that the incorporators be permitted to incorporate merely by filing a postcard-sized form (hence the term 'postcard incorporation') bearing upon it the name and address of the incorporator, the names of the first directors, if any, the

name of the corporation, the office of the corporation and other relatively basic information. The corporation would not have articles of incorporation, but would be governed by the statutory presumptions set forth under the close corporation law and the general corporation laws. Any deviation from the statutory presumption, however, would require the incorporator to file full articles of incorporation. This is designed to increase the likelihood that such special provisions will be drafted by an attorney. Those statutory presumptions applicable will be listed in a section of this subtitle. It may be that that section will also contain the actual text of the articles that such corporations will operate under.

It has been suggested that this method of incorporation be expanded to the general business corporation; such corporations would also operate under the statutory presumptions. The committee did not decide this matter due to the fact that it is outside the jurisdiction of the committee.

APPLICATION

Many of the provisions of the general business corporation law should also apply, for various reasons, to the small corporation. Therefore, those provisions do apply except where and to the extent that they conflict with the proposals of this subtitle. This permits the protections afforded to shareholders of general business corporations in the areas of preemptive rights,

Report of the Committee on Close Corporations

election and tenure of directors, action without meetings, notice of meetings, amendment of articles, adoption of by-laws, mergers, dissenters rights, involuntary dissolution and other areas too numerous to mention, except where this subtitle provides otherwise. Of course, this also means that

, shareholders of close corporations will also be subjected to the duties and liabilities of shareholders in terms of liabilities for unpaid subscriptions, distributions, and personal liability for acts of the shareholders in lieu of a board of directors. The committee saw nothing objectionable in this.

DEFINITION

The committee struggled over this question for some time before reaching the conclusion that any corporation stating in its articles of incorporation, in its name and on its stock certificates or, in the case of uncertificated shares, on its transaction confirmation slips that it is a closely-held corporation. Numerical limits such as those imposed by Arizona (10 or fewer shareholders) or Texas (35 or fewer) were rejected after some debate, especially with respect to the imposition of such limits on the simple or "postcard" incorporator. The qualities that justifies the special treatment of close corporations are the close-knit, personal relationship between the shareholders, directors (if any), and employees, and the overlap of the roles of shareholder, director or employee. It is not possible to pick a number beyond which those qualities are deemed not to exist. The only accurate guide as to whether such an attitude exists within the corporation essentially to the shareholder-investor agrees to it as part of the investment contract under the articles, or can withhold his investment if he feels the statutes to be a handicap.

Page Three

Report of the Committee on the Close Corporation

Similarly, the shareholders may vote to end the close-corporation status. If a significant fraction of the shareholders wish to end the status, it is not unreasonable to assume that the mutual trust and close-knit nature of the business no longer exists, but rather is being replaced by an "arm's-length" attitude which the general business corporation is much better suited to meet.

Although the committee recommended a numerical limit for shareholders of the postcard corporation, the change in amalgamation of the postcard concept into the close corporation law makes this unnecessary.

However, the committee did feel that the size of the corporation is relevant to whether or not certain internal governance techniques should be relaxed, see discussion of Board of Directors, *infra*. It should be noted that we have not finally decided what the definition of a close corporation should be,

and we welcome any comments you may have.

MAXIMUM NUMBER OF SHAREHOLDERS

For reasons discussed in the Definition section, there is no maximum number of shareholders, although the committee at one time considered an upper limit for postcard incorporations, possibly tied to some Federal securities or blue-sky exemptions.

NAME

In the opinion of the committee, the procedures under which a closely-held corporation operates will be sufficiently different from the general business corporation law to justify the identification of the entity as a close corporation to all parties dealing with the entity. Therefore, the committee decided to require closely-held corporations to include the words "closely-held" indirectly or after the corporate name.

Page Four
Report of the Committee on the Close Corporation

The corporate name would also have to meet the requirements imposed by the general business corporation law, which requires (and permits) the use of certain words associated with corporate status.

This added requirement may alert shareholders to the different rights they will have under this statute, inform creditors of the size and nature of the organization they are dealing with, and should guide the attorney for the corporation to the correct body of law. Of course, these objectives cannot be achieved without a knowledge of the implication of the term which can be achieved only through education of our colleagues and interested members of the public.

It is possible, however, that confusion between corporations usually termed 'close' under common-law, but not electing 'closely-held corporation' status could result. An alternate name for the statutory entity could be "private".

DURATION

The committee agreed that the close corporation should exist in perpetuity unless the shareholders provide, in the articles of incorporation, for some other period. A proposal for a fixed term for postcard incorporations was rejected because the difference in treatment created a trap--those corporations that would be subject to a fixed term of thirty years duration could at the expiration of that term elect close corporation status but in the absence of an election would become a general business corporation) would be the ones least likely to pay attention to the expiration of the term or the change to the general business corporation law. Obviously, this indifference could create problems at some later time.

INCORPORATORS

The committee originally envisioned a requirement that postcard corporations be formed only by natural persons, in order to protect the users of postcard corporations from the problems which might arise from the incorporation of and investment in a corporation by another corporation. However, with the collapse of the postcard corporation into the close corporation, this rule is impossible to apply only to postcard incorporations and was rejected in favor of a liberal provision which would permit either natural persons or entities to be incorporators. All incorporators are required to sign the articles of incorporation, the postcard) and list their names and addresses; entities would be required to list the names and addresses of their registered office and agent in this state. Note: The committee decided, in light of the merging of the laws governing postcard and close corporations that a statutory requirement on the identity of shareholders would be inappropriate in the close corporation and a trap in the postcard corporation, and it was therefore rejected. This does not, however, stop the shareholders from adopting such restrictions in other documents, see discussion of Shareholder Qualifications, infra.

ELECTION OF STATUS AFTER INCORPORATION

A corporation formed under the new general business corporation law or coming under the new law by virtue of status as an existing business corporation, whether formed under chapter 300 or chapter 301, ought to be able to elect the close corporation treatment. However, because the

Report of the Committee on Close Corporations

election is a fundamental change in the form of the corporation, the committee decided that it should be made either with the affirmative vote of all shareholders or at the very least without the objection of any shareholder. (An alternative to this requirement would be to set a lower requirement but to make the election an event that would create dissenters rights). Unanimity is desirable because of the unique personal interaction that a successful small corporation requires. The presence of even a small number of dissonant voices should be sufficient reason not to impose the special status of a close corporation on non-consenting, ~~pre~~ existing shareholders, the election would be made under the provisions governing the amendment of the articles, with the exception of the number required for approval. Whether this provision appears in the Close Corporation title or in the general business corporation law is a matter that can be discussed later. Such a provision should be referred to, however, in both the general and the close corporation law.

PURPOSES

The committee originally considered a restriction on post-card incorporation prohibiting such corporations from entering any industry or business under governmental regulation. However, the problems encountered in defining such industries were too numerous. Instead, the committee opted for a purposes clause similar to that used in the general business corporation law, except that the reference to 500.24 governing family farm corporations is more explicit than in the general law and there is a prohibition upon investment companies as defined in §3 of the Investment Companies Act of 1940

POWERS

The committee looked into a simplified definition of the powers of a close corporation, and decided that the use of the California "catch-all" phrase would be sufficient. The committee did consider restricting the powers of the postcard corporation by prohibiting them from guarantying obligations or making loans. This position was rejected by the committee because close corporations are 1) probably not going to be able to guaranty any obligations; and 2) may make loans to officers and/or directors anyway, thus the provision would be unnecessary or unenforcable and would cause more trouble than it was worth. The general business corporation law section on powers should be reviewed to determine whether it is sufficiently inclusive to permit its application, without more, to the close corporation, keeping in mind the different goals of the two powers sections - in the close corporation, we wish to validate the acts of the corporation; in the general business corporation, we wish to restrict certain activities, but validate others.

BOARD OF DIRECTORS

The committee decided that the size of the corporation and the number of shareholders of the corporation should determine whether a board of directors will be required. In a corporation with a very few shareholders, it is fairly safe to assume that a board is not necessary because all or most shareholders are actively involved in the corporation and see each other frequently. At this level the requirement of a separate board only adds another needless formality. Corporations with more shareholders may or may not need to delegate the day-to-day management of the corporation to a

Page Eight
Report of the Committee on Close Corporations

board, while corporations with even greater numbers of shareholders cannot function properly without resorting to the use of a board.

The committee decided that those corporations with 10 or fewer shareholders should be presumed not to have a board unless the articles of incorporation provide for a board. This would exempt most newly formed Minnesota corporations from the requirement. Corporations with more than 10 and fewer than some number between 35 and 50 would be presumed to have a board of directors unless their articles stated otherwise. This category of corporation corresponds to the second category discussed in the previous paragraph. Corporations with more than 50 shareholders are deemed to be unmanagable without a board, and will be required to have a board. [Note: There is a good possibility that the general business corporation law may not require any corporation to have a board, in which case this provision ought to be reviewed]

Directors of a corporation need not be shareholders of the corporation. The presence of outside directors will, presumably, stimulate the discussion of more options by the board.

In those corporations where there is not board of directors the functions of the board will be performed by the shareholders.

However, the point has been raised that outsiders will have no way of knowing whether there is a board or directors or not. One way of avoiding this problem would be to statutorily prescribe that if no board of directors is elected by the shareholders, that there will be no penalty for that failure and that no act of the corporation will be void or voidable because of a failure to elect directors. Moreover, those persons who are making the

managerial decisions will be treated as directors for all purposes. In this way, the third party will be protected in his dealings with the corporation.

MEETINGS

In a small corporation, the need for formal meetings of the shareholders (or for that matter, its directors) is low: in many small corporations a consensus of the shareholders is available almost continuously. Therefore, the committee decided that the need for an annual meeting of the shareholders is not sufficient to warrant a statutory mandate. However, if any shareholder feels that a meeting is necessary, he should be able to have a meeting pursuant to a statutory right. The committee's final decision is patterned after the New York statute. If a meeting is not held during a twelve-month period, a shareholder may, on thirty days notice, call such a meeting. The committee considered making each meeting of the directors of a postcard corporation a meeting of the shareholders, and requiring at least on such meeting a year, but rejected the latter requirement as a trap which some corporations might fall into. The committee's ultimate decision permits any corporation to miss annual meetings, if no shareholder objects, without penalty.

OFFICERS

One aspect of most corporation laws which sometimes poses problems to close corporations is the provision mandating that each corporation have several officers, each with a specific label and, presumably, a specific role. Many small corporations have no real need for each and every one of those officers, and, more frequently the activities of their officers do not fit neatly into the pigeonholes which general business corporation law has developed over the years. Another problem is the provision frequently found in corporation laws which prohibits one person from holding two particular offices, coupled with the requirement that two particular officers sign

documents. The latter has already been eliminated by the Task Force, and there seems no logical reason to require more than one officer in the close corporation. However, there should

be some person (at least one) responsible for filling all the roles and carrying out all the duties that officers normally fulfill. At one time, the committee thought that for the "postcard" corporation, if no formal designation was made, that the statute would deem the largest shareholder (or the person who appeared to be filling the officers' roles, if no one person had a plurality of the shares) to be the "officer". However, it seems clear that there will always be at least one person who wants to be the head of the corporation, so such a statutory presumption is unnecessary. Consequently, the committee has determined that there shall be a chief executive officer and a chief financial officer, and any other officers provided for in the articles of incorporation. Any person may hold any or all offices required in the articles.

The authority of the officers in a close corporation may often be bound by a shareholder's agreement. However, those without actual knowledge of this restriction may rely on the usual powers of the chief executive officer and incur damages due to that reliance. There is no reason that the injured party should be forced either to prove authority or to sue the officer. Therefore, the committee will recommend that the close corporation law has a provision providing that the chief executive officer has full authority to bind the corporation in the ordinary course of business unless the third party has actual knowledge of any restrictions imposed upon the authority of the chief executive officer by the board of directors or by a ~~control~~ agreement. Other officers will continue to be bound by agency law; their titles should indicate to a third party that the authority they have may be less than total.

PRE-EMPTIVE RIGHTS

One of the most crucial rights a shareholder in a closely-held corporation has is the right to maintain his interest in the corporation at the same percentage of the outstanding shares by pre-emptive rights. In this manner a minority shareholder owning almost half the shares in a corporation where two-thirds of the shares must approve corporate transactions or amendments to the articles can prevent his veto power from being sold out from under him through dilution of the shares. Please note that the statutory presumption runs in favor of pre-emptive rights; in the general business corporation law, it runs against pre-emptive rights.

RIGHT OF INSPECTION

The need to make information available to shareholders is greater in a small corporation than it is in a large corporation. The shareholders play a much greater role in the day-to-day management of the business and may indeed be fulfilling the roles of directors. Of course in the latter case, the shareholders should have all the rights of directors to inspect at any time; that follows from the provision of the general law which delegates those rights to shareholders. But the shareholder should have a broader general right of inspection. Therefore, the committee has decided that the bylaws, minutes, stock ledgers, books of account and annual statements of the corporation shall be open for inspection by any shareholder during business hours at the principal place of business.

The committee is not unaware of the abuses which such a provision could conceivably foster. Trade secrets might be lost;

Report of the Committee on Close Corporations

competitors might obtain information which could lead to an unfair advantage: The parade of horrors is persuasive; persuasive enough to justify the explicit endorsement of equitable restraints upon this right in those cases where the act of inspection might create a cause of action under federal or state law.

STATEMENT OF AFFAIRS

The need for information extends beyond the active pursuit of such information by the shareholder to the passive shareholder who still needs information to make informed business decision. In a small enterprise, the need for informed decision making is no smaller. The committee proposes to require a statement of affairs in order to solve this problem. This statement of affairs would be a fairly complete description of the fiscal events of the preceding year. Such a statement will not be required to be prepared according to generally accepted accounting principles (GAAP) nor will the opinion or services of an independent accounting firm be required. Such requirements might make the cost of this statement prohibitive. Instead, the statement need only set forth the assets and liabilities of the corporation in a reasonable manner, and need only describe the accounting basis used by the corporation in the preparation of the statement. The statement will be required to include a balance sheet and an income statement. In order to reduce duplication of effort, the statement need not be distributed until ten days after the corporation has filed its Federal corporate tax return. Of course, the statement would be distributed to all shareholders.

CONSIDERATION FOR STOCK

In the opinion of the committee, there was and is no reason why promissory notes could not be valid consideration for shares in light of the fact that future services are valid consideration, especially because a promissory note can be more easily enforced. Therefore, for the purposes of the close corporation, notes are valid consideration for stock.

SHAREHOLDER QUALIFICATIONS

A closely-held corporation resembles an incorporated partnership in many ways. There is no reason why, if the shareholders agree, qualifications cannot be imposed on future purchasers of stock in the corporation, just as a partnership need not admit an assignee of a partner's interest into the partnership.

SHARE TRANSFER RESTRICTIONS

This concept deserves the same treatment as shareholder qualifications: if the affected shareholders agree to a restriction, then that restriction ought to be enforceable in court. The committee first tried listing certain acceptable kinds of share transfer restrictions, in the manner of Delaware §202, but such a listing can not truly validate every restriction. A more general validation was necessary. Therefore, any restriction imposed by the articles or bylaws or by the amendment of articles or by laws will be effective if all affected shareholders approve. Any restriction on transfer embodied in a shareholders' agreement will be effective as to those shareholders parties to the agreement. All stock certificates subject to such restrictions will have such restrictions

noted on them. Uncertificated shares will carry the notation on the transaction certificate, if any. You will note that the committee has made these restrictions optional rather than mandatory. In this way postcard incorporators will not be bound by any transfer restrictions which might be required if we were to follow the Delaware pattern, nor will they lose their status as close corporations for failure to include such restrictions. The Model Act, see §54(h) and proposed new §54, is very careful to validate almost any restriction which is otherwise lawful. To insert a transfer restriction, the incorporator would have to draft one himself or see an attorney. The use of counsel should insure that traps are avoided when this provision is used.

SHARE REPURCHASE AND INVOLUNTARY DISSOLUTION

These are options that should be bargained for among the shareholders, due to the drastic nature of these remedies. No majority shareholder should have to live in fear that a minority shareholder may tie up all of the liquid assets of the corporation, or destroy the entity without having bargained in the course of granting such a right in the articles, because such a fear could drastically affect the confidence of the officers and the ability to take swift, effective advantage of a corporate opportunity. Similarly, there is no reason why a shareholder who is unaware of this provision should have it used on him without prior notice and find that all reasonable expectations have been destroyed. This is not to imply that minority shareholders do not deserve some fair way to recoup their investment in those

cases where a real problem exists. It is to say, however, that the committee feels that a statutory right of involuntary dissolution which gives any shareholder the right to dissolve gives minority shareholders power disproportionate to the power to which they are entitled. Of course, if all parties agree to be governed by such a provision, then they should be bound by that agreement, whether it be part of the articles of incorporation or a separate shareholders' agreement.

VOLUNTARY TERMINATION OF STATUS

Just as the creation of close corporation status is a matter between the shareholders, the termination of that status is also a matter to be decided by them. However, the general business corporation law changes the status of shareholders sufficiently to justify the statutory accrual of dissenters' rights. Such a termination shall be effected by appropriate amendments to the articles of incorporation, and the amendment process shall be governed by the provision of the general corporation law. However, if there are fifty or fewer shareholders a vote of two-thirds of all outstanding shares shall be required to approve such amendments. The rights of dissenting shareholders shall be governed by the provisions of the general corporation law.

MERGERS AND OTHER FUNDAMENTAL CHANGES

Although the close corporation law is designed for small corporations, it is conceivable that a close corporation might wish to merge with another close corporation or, more likely, it may merge with or sell its assets to general business corporation. Obviously, in those cases where the close corporation is the disappearing corporation, there is no problem. The surviving corporation will be a general business

corporation. In a consolidation or in those rare cases in where the close corporation is the surviving corporation it should be clear that the transaction should take the new corporation out of close corporation status. This will also, of course, be an event giving rise to dissenters' rights. In the case where a close corporation merges or consolidates with another close corporation, the product should be a close corporation, and the transaction should be covered by the applicable provisions of the general business corporation law.

SHAREHOLDER AGREEMENTS

Shareholders ought to be able to make private arrangements governing the internal governance of the corporation, embodying buy-sell arrangements, providing for voting trusts and dealing with any other matter in a manner not inconsistent with law. No agreement should be struck down because it contravenes older concepts of the authority of various corporate units, such as the board of directors. No agreement should be invalidated because it permits the corporation to be run as a partnership.

However, shareholder agreements ought to bind those who agree to them, and those who take, with notice, from one who is bound by the agreement if the agreement provides that successors shall also be bound.

MANDATORY BUY-OUT

The Committee has struggled with the question of whether a shareholder should have the right to extract his investment from a small corporation pursuant to a statutory provision. The problem is complicated by the fact that there is usually no ready market for the stock of such corporations, due to

the fact that such shares are not traded on stock markets and have, at best, a "thin" market on the over-the-counter market, if any market at all exists. And, of course the presence of stock transfer restrictions makes it harder to realize the value of the shares. Combine all this with the likelihood that no dividends are paid by the corporation, and you have a situation that is ripe for the oppression of minority shareholders.

On the other hand, a good argument can be made that the mandatory repurchase of the shares of a shareholder could easily impose an equally severe hardship on those investors who elect to remain in the venture. The key is to find a way to permit the recoupment of the objecting shareholder's capital while not crippling the entity.

There should be no provision explicitly providing a mandatory buy-out mechanism. Instead, the focus of efforts to extricate the non-controlling shareholder should be on the power of the courts to order corporations to end oppressive and unfair practices. The courts should be given broad discretion, to be employed liberally, to order the repurchase, by the corporation, shareholders or any combination thereof, with the threat of a decree of dissolution on the incentive for repurchase, if such a repurchase is necessary.

Courts should also be guardians of the rights of the majority shareholder to continue the business, if at all possible to do so without infringing the rights of the complaining shareholders. A statutory scheme could not permit a discretionary judgment; to be effective, it would have to grant an unconditional right. The judgment of a court of equity could take all factors into account when deciding whether (and what kind of) relief should be granted on such a petition. A court of equity could also grant some intermediate or lesser form of relief. Even if a mandatory buy-out were part of the statute, it would be wise to permit a majority shareholder to petition a court for an injunction providing for some lesser relief.

EQUITABLE RELIEF

It is clear that, at least with respect to close corporations, the reluctance of the courts to interfere with the internal governance mechanisms of the corporation should be ended. A remedy should be available, for good cause shown, for violations or near violations of the fiduciary relationship of shareholders, in the discretion of the court. Due to the failure of courts

to apply their equitable jurisdiction liberally to corporations, it seems that a list of possible types of relief is necessary in the statute as a clear guide to judicial action. Such relief ought also to be available in a preventive form as well. Section 18 of the proposed Model Act is a fine example of a wide-ranging provision.

In fact, it was suggested that we apply Section 18 to some corporations that are not "closely-held" under the statute. The committee was split on this and could not decide which corporations should be subject to the equitable relief section.

FIDUCIARY DUTY

A close corporation is an incorporated partnership; it is much different than the standard public corporation. For that reason, the usual standard of fiduciary duty ought to be strengthened. Instead of having the duty to perform as reasonable prudent person would, shareholders should have the same fiduciary duty to each other as partners would, regardless of whether the shareholders happen to be acting as directors, officers, or shareholders. This is the minimum that can be permitted, since most people who own shares of close corporations depend upon the great trust between shareholders, essential to smooth operations, when they invest in the corporation.

If we are going to expand the equitable jurisdiction of courts in the manner proposed in Section 18 of the Model

Act, it will be necessary to insure that the courts which decide these questions are conversant with with and experienced in corporation law. A court consisting of individuals who understand the flow of power in the corporate structure not only in the large publicly held corporation but also in the closely held corporate entity would have the understanding of corporate internal transactions similar to that shown by the Chancery Courts of Delaware. Specifically we propose that we have a part-time corporation court consisting of three members who should be experienced corporate practitioners. We define experienced corporate practitioners as those who have spent over 50% of their professional time in the last five years dealing with corporation law and the problems of corporations both large and small. We would not see the membership of this court as consisting of litigators but rather of counsel experienced in advising corporations and shareholders. The court would operate on a part-time basis, at least initially, with the members holding staggered terms of two years. We would also suggest that the membership be limited to one reappointment so that the court would gain new membership and new prospective from time to time. The court would

generally sit in panels of one member; there would be an appeal to the court in banc. Review would be available in the Supreme Court by certiorari, not as a matter of right. The jurisdiction of the court would cover, in expanding scope, (1) disputes arising under Section 18 or its counterpart in our new statute, (2) all disputes arising under Chapter 301 or the new General Corporation Act and (3) full equity jurisdiction with respect to intra-corporate disputes along the lines of that held by the Equity Courts in Delaware. The court would be that of a judge alone and all matters requiring a jury trial would be referred to the District Courts. Probably it would be advantageous to split the issues so that the jury trial issues were tried in District Court and the issues purely of internal corporate policy were tried before the Corporation Court.

Obviously, this will be a hot issue politically because inherent in it is the suggestion that the makeup of the Supreme Court and District Courts has been such that corporate disputes have not been tried before judges experienced in these matters and that the decisions frequently do not reflect the best result from the point of view of corporate law. It seems to me that, especially when the jurisdiction and powers of the courts are expanded and when the courts are encouraged, to be much more bold in providing a remedy for internal corporate disputes that the judges deciding these matters should have the appropriate experience base.