

HOUSE RESEARCH

Bill Summary

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Overview

Sections 1 to 22 amend the Business Corporation Act with both substantive and technical changes. Section 23 to the end of the bill (with exceptions) amend provisions relating to Limited Liability Companies (LLCs). Sections 30 to 35 amend the Nonprofit Corporation Act.

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- 1 **Definitions; parent.** Amends the Business Corporation Act definitions of "parent" to include foreign parent corporations.
- 2 **Definitions; subsidiary.** The definition of "subsidiary" is broadened to include foreign subsidiary corporations.
- 3 **Definitions; interested shareholder.** Adds an exception to the definitions of "interested shareholder," which is used in the business combination statute, 302A.673. Licensed broker-dealers and underwriters that acquire shares for resale are excluded, so long as they are not working with an interested shareholder. Parallels an existing exception to the control share acquisition statute, section 302A.671.
- 4 **Definitions; share acquisition date.** Adds an exception to the definition of "share acquisition date," another definition that is used in the business combination statute. This exception applies to shareholders owning ten percent or more of a corporation's outstanding shares at the time the corporation becomes an issuing public corporation and thus becomes subject to the business combination statute. These shareholders would be allowed to "tack" their share-holding period before the corporation became an issuing public corporation to their holding period after that event for purposes of the four-year moratorium under the

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business combination act.

- 5** **Definitions; converted organization.** Definition for "converted organization" is added for purposes of the law on converting a corporation to an LLC and vice versa.
- 6** **Definitions; converting organization.** Same as section 5. Adds "converting organization."
- 7** **Statutory provisions that may be modified only in the articles.** Section 302A.011, subd. 2, lists a number of statutory default rules that a corporation may modify, but only in its articles. The presumptive vote required to elect directors is changed from a majority to a plurality. Unless otherwise provided in the articles, a written action of shareholders must be unanimous.
- 8** **Class or series voting on article amendments.** Amends section 302A.137 to delete current paragraph (a), which mandates a class or series vote to increase or decrease the aggregate number of shares of the class or series. Conforms to the laws of many other states, which have concluded that such a change does not necessarily have an adverse effect on any particular class or series sufficient to create a separate voting group.
- Two other changes conform the section more closely to the Model Business Corporation Act. Current paragraph (e) is deleted because of overlap with current paragraph (b). Current paragraph (b) is amended to provide that a class or series vote will arise pursuant to a reverse stock split or series only if all other classes and series are not similarly affected.
- 9** **Vote required to elect directors.** Clarifies current law by specifying that directors may be elected by a plurality rather than a majority vote.
- 10** **Notice of board meetings.** Permits notice to be given to a director by means of electronic communication if the director has consented to receive notice in that manner. Similar to the law on giving notice to shareholders.
- 11** **Waiver.** Would also allow a director to waive notice by means of an authenticated electronic communication.
- 12** **Amendment to certificates of designation.** Section 302A.401, subd. 3, permits the board of directors to establish a class or series of shares, to set forth its designation, and to fix its relative rights and preferences, all by board resolution. A statement including the board resolution (commonly called a certificate of designation) then must be filed with the secretary of state. The section clarifies a concept currently stated in the reporter's notes to section 302A.401. Although the filing of the initial statement is not considered an amendment to the articles for purposes of shareholder approval or dissenters' rights, the amendment of such a statement is.
- 13** **Share divisions and combinations.** Technical change that goes with section 8.
- 14** **Act of the shareholders.** Technical change that goes with section 9.
- 15** **Shareholder action without a meeting.** Lets nonpublic corporations, in their articles, permit shareholders to act by less-than-unanimous written consent. Also allows such a provision in an amendment to the articles that was approved by all voting shareholders. If action was taken by less-than-unanimous written consent, the corporation must notify all of the shareholders within five days of the text and effective time of the action. Shareholders who did not sign the consent have dissenters' rights to the extent that they would have had them if the action had been taken at a shareholders' meeting.
- 16** **Actions creating dissenters' rights.** Lets a corporation include a provision in its articles opting out of the default provision that various articles amendments trigger for dissenters' rights. If no such provision is included in the articles, then the default rule would continue to provide for dissenters' rights. Clause (a)(5) clarifies that an amendment to the articles

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electing to opt out of paragraph (a) is itself an amendment that triggers dissenters' rights.

Proposed new paragraph (c) to subdivision 3 of section 302A.471 is modeled on the Delaware statute and would exclude from dissenters' rights shares that are listed on an exchange or interdealer quotation system (e.g., Nasdaq). Certain transactions (e.g., cash mergers) would not be covered by the exclusion.

- 17** **Procedures for asserting dissenters' rights.** Section 302A.473 sets forth procedures for shareholders to assert dissenters' rights. Adds procedures that must be taken when the action giving rise to dissenters' rights was approved by less-than-unanimous written consent rather than a shareholders' meeting. If a written consent is less than unanimous, the corporation must send each shareholder that did not sign the written consent a notice setting forth the procedures to assert dissenters' rights. Similar to the requirement to send such a notice following a shareholders' meeting, no time period for the procedures notice is required.
- 18** Technical; goes with section 17.
- 19** Technical; goes with section 17.
- 20** **Indemnification.** Under section 302A.521, a person serving in an official capacity of another organization is entitled to be indemnified by a corporation in certain circumstances. Recognizing the increased prevalence of limited liability companies, the proposed amendment adds "governor" and "manager" to the list of positions that constitute an official capacity.
- 21** **Mergers with foreign corporations.** Amends section 302A.651 to clarify that a merger between a domestic corporation and a foreign corporation is permitted under the short-form merger statute (§ 302A.621) in addition to the long-form merger statutes (§§ 302A.611-302A.615) if certain conditions are met.
- 22** **Asset sales.** Section 302A.661 covers when shareholders must approve a sale of assets by a corporation. The current statute provides that the shareholder approval is only required when the corporation intends to sell all or substantially all of its property and assets outside the ordinary course of its business. Similar to the Model Business Corporation Act, the proposed amendment provides that shareholder approval is not required if the corporation retains a "significant continuing business activity." If the corporation retains a business activity that represented at least 25% of its total consolidated assets and at least 25% of its income or revenues on a consolidated basis, measured in each case as of the corporation's most recently completed fiscal year, then it will conclusively be deemed to have retained a significant continuing business activity.
- 23** **Corporate/LLC conversion.** Proposes new section 302A.681, which authorizes conversions between domestic corporations and domestic limited liability companies. The substance of the conversion requirements and procedures for both corporations and limited liability companies are to be contained in chapter 302A (see sections 16-20). Chapter 322B on LLCs will only cross reference chapter 302A (see sections 22-23).
- 24** **Plan of conversion.** Proposes new section with requirements for a plan of conversion, generally following the requirements for a plan of merger in section 302A.611.
- 25** **Approval of plan of conversion.** Proposes a new section with the approval requirements for a plan of conversion, generally following the requirements for the approval of a plan of merger in section 302A.613. Unlike the merger context, however, voting by class or series of ownership interests is required for all conversions under chapter 302A.
- 26** **Articles of conversion.** Proposes a new section with the requirements for articles of conversion, generally following the requirements for articles of merger in section 302A.615.

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- 27** **Abandonment of conversion.** Proposes a new section 302A.689 with the procedure for the abandonment of a conversion, generally following the requirements for the abandonment of a merger in section 302A.631.
- 28** **Effect of conversion.** Proposes a new section on the effects of conversion. If the converted entity is a corporation, it will be governed by chapter 302A; if it is a limited liability company, it will be governed by chapter 322B. No new entity is created by the conversion- the converted organization is for all purposes the same entity as the converting entity, having been organized on the same date as the converting organization.
- 29** **Notice of intent to dissolve.** Technical.
- 30** **Ballot.** Amends the Nonprofit Corporation Act to provide that electronic transmission can be used for voting.
- 31** **Notice.** Allows electronic notice as a permitted form of notice under the Nonprofit Corporation Act.
- 32** **Notice.** Allows use of electronic notice for nonprofit corporation director meetings.
- 33** Goes with section 32.
- 34** Goes with section 32.
- 35** Goes with section 32.
- 36** Goes with section 1.
- 37** Goes with section 2
- 38** Clarifies a cross-reference.
- 39** **Class or series voting.** Amends the limited liability company law to add a new instance where class or series voting on article amendments is provided.
- 40** **Majority required.** Specifies that election of LLC governors is governed by its own statute.
- 41** **Actions creating dissenters' rights.** Allows LLC articles to provide that article amendments do not give rise to dissenters' rights.
- 42** **Notice of dissent.** Technical.
- 43** **Notice of procedure.** Amends LLC act to specify members who receive notice of right to dissent.
- 44** Amends the LLC law parallel with section 12.
- 45** **Voting for governors.** Amends the LLC law parallel with section 9.
- 46** **Calling meetings and notice.** Makes LLC law parallel to Business Corporations Act and Nonprofit Corporations Act on accepted ways of giving notice.
- 47** Same as section 46.
- 48** Amends the LLC law parallel to section 22.
- 49** Cross-reference.