

# House Research Act Summary

**CHAPTER:** 311

**SESSION:** 2002 Regular Session

**TOPIC:** Business Corporations and Limited Liability Companies

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## Overview

Article 1 makes various amendments to the Business Corporations Act on such issues as using remote communications and electronic signatures; corporate reorganization; and conversion of a corporation to a limited liability company and vice versa.

Article 2 makes some of the same changes in the Limited Liability Company Act and cross references the conversion provisions.

Article 3 makes some of the same changes in the nonprofit corporation law.

Article 4 makes miscellaneous changes in business statutes administered by the Secretary of State.

## Section

### Article 1

#### Business Corporations

- 1 **Notice.** Amends the definition of "notice" in the Business Corporations Act. Authorizes publicly held corporations to give notice to shareholders residing at the same address by means of a single mailing, but only if those shareholders have consented to the "household" notice.
- 2 **Parent.** Technical.
- 3 **Subsidiary.** Technical.
- 4 **Control.** Amends the definition of "control share acquisition". Changes the requirement that the disinterested committee required to exempt certain transactions from this definition be composed of all of the board's disinterested directors. Instead, requires that the committee be composed solely of one or more disinterested directors.

- 5 **Market value.** Technical.
- 6 **Electronic communication.** Provides a definition of this term.
- 7 **Remote communication.** Provides a definition that includes electronic communication, conference telephone, video conference, and similar means.
- 8 **Authenticated.** Provides a definition applicable to electronic communications.
- 9 **Legal recognition of electronic records and signatures.** Based on the Uniform Electronic Transactions Act (Minn. Stat. Ch. 325L). Provides that actions taken by remote communication following enactment of the proposed amendments will be given legal effect under chapter 302A.
- 10 **Use of name by successor corporation.** Technical.
- 11 **Investment companies.** Permits amendments to the articles of incorporation of registered open-end investment companies to increase or decrease the number of authorized shares in the aggregate or in any class or series by unilateral board action.
- 12 **Board meetings.** Prior law allowed corporate board meetings by telephone. The amendment authorizes use of other forms of remote communications as well.
- 13 **Method.** Prior law let some actions be taken in writing rather than at a meeting of the directors. The act lets these actions also be taken by electronic communication.
- 14 **Effective time.** Provides that an action is effective as of the time it is consented to by authenticated electronic communication.
- 15 **Time; place.** Lets the board of directors permit regular shareholder meetings to be held solely by means of a remote communication if the bylaws or articles allow.
- 16 **Time; place.** Lets the board of directors permit special meetings of shareholders to be held solely by means of a remote communication if the bylaws or articles allow.
- 17 **Remote communication for shareholder meetings.**  
**Subds 1 and 2.** Expand the possible means of communication beyond just conference telephone and expand the scope of the subdivision to include all corporations, not just closely held corporations.  
**Subd. 3.** Allows the board to permit shareholders not physically present in person at a meeting, or considered present by proxy, to participate in a meeting and be considered present in person or by proxy in order to vote at a meeting by means of remote communication, not just by telephone conference. The scope of this subdivision is also expanded beyond closely held corporations.  
` **Subd. 4.** Lists requirements for a corporation to take advantage of the above provisions:  
    have reasonable means to verify that those who participate by means of electronic communications are shareholders; and  
    have the opportunity for the shareholder to participate in the meeting.  
**Subd. 5.** Lets notice to shareholders of the corporation be in the form of an electronic communication if a shareholder has consented to receive communication in an electronic form. Specifies when each form of notice is deemed given.  
**Subd. 6.** Provides that any vote or authorization taken by electronic communication may be revoked by the shareholder as long as the revocation is received by the corporation before the effective time of the meeting.  
**Subd. 7.** Technical.
- 18 **Action without a meeting.** Prior law authorized taking some shareholder actions in writing without a meeting. This allows taking similar action by authenticated electronic communication.

- 19 **Authorization.** Makes shareholder proxy action consistent with the prior section.
- 20 **Actions creating rights.** Specifies that a plan of merger (see section 25) does not create shareholder's dissenters' rights.
- 21 **When authorized.** Prior law allowed certain parent-subsubsidiary or subsidiary-subsubsidiary mergers to occur without a shareholder vote. One instance is when the parent owns at least 90 percent of the outstanding shares of each class and series of the subsidiaries involved. The section makes the 90 percent standard apply only to shares of a class or series that would otherwise be entitled to vote on a merger.
- 22 **Notice to shareholders of subsidiary.** Prior law required shareholder notice of a merger. Because no shareholder vote is possible in this circumstance, the amendment lets notice be given before, or within ten days after, the effective date of the merger.
- 23 **Articles of merger.** See section 21.
- 24 **Articles signed, filed.** Goes with section 22.
- 25 **Holding company reorganization.** Adds a new section allowing a corporation to reorganize into a holding-company structure without a vote of the shareholders. After reorganization, the shareholders of the corporation become shareholders of the holding company, and the corporation becomes a wholly owned subsidiary of the holding company.
- 26 **Business combination with interested shareholder.** Goes with section 4.
- 27 **Effective date of dissolution; certificate.** Lets articles of dissolution provide for a delayed effective date, similar to existing law on articles of amendment and articles of merger.

## Article 2

### Limited Liability Companies

- 1 **Authenticated.** Amends the limited liability law identically to the changes in article 1, section 8.
- 2 **Electronic communication.** Identical to the changes in article 1, section 9.
- 3 **Parent.** Technical.
- 4 **Remote communication.** Provides a definition that includes electronic communication, conference telephone, video conference, and similar means.
- 5 **Subsidiary.** Technical.
- 6 **Legal recognition of electronic records and signatures.** Identical to the change in article 1, section 9.
- 7 **Use of name by a surviving organization.** Identical to the changes in article 1, section 10.
- 8-9 **Time and place.** Applies to limited liability company (LLC) board of governors meetings. Identical to changes in article 1, section 12.
- 10 **Remote communications for member meetings.** Same as changes in article 1, section 17 on shareholder meetings.
- 11-12 **Method.** Identical to changes in article 1, section 18.
- 13 **Authorization.** Similar to changes in article 1, section 19.
- 14 **Board of governors meetings.** Identical to changes in article 1, section 12.
- 15 **Method.** Identical to changes in article 1, section 13.
- 16 **Effective time.** Identical to changes in article 1, section 14.
- 17 **Effective date of termination.** Identical to changes in article 1, section 27.

## Article 3

### Nonprofit Corporations

- 1 **Authenticated.** Same as the changes in article 1, section 18.
- 2 **Electronic communication.** Same as the changes in article 1, section 6.
- 3 **Remote communication.** Same as the changes in article 1, section 7.
- 4 **Legal recognition of electronic records and signatures.** Same as the changes in article 1, section 9.
- 5 **Board meeting.** Same as the changes in article 1, section 12.
- 767 **Method.** Same as the changes in article 1, sections 13 and 14.
- 8 **Time; place.** Same as the changes in article 1, section 15.
- 9 **Time; place.** Same as the changes in article 1, section 16.
- 10 **Unanimous action without a meeting.** Same as the changes in article 1, section 18.
- 11 **Remote communications for member meetings.** Same as the changes in article 1, section 17.
- 12 **Authorization.** Same as the changes in article 1, section 19.
- **Effective date.** Same as the changes in article 1, section 27.
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- 15 **Repealer.** Repeals a provision on use of electronic communications for member meetings that is replaced by section 11.

## Article 4

### Miscellaneous Changes

- 1 **Notice of name changes; where filed.** Technical.
- 2 **Reservation of name.** Conforms the law on reserving a business name under the limited partnership act to the same law under the business corporation act.
- 3 **Statement of foreign qualification.** Amends the statute on foreign limited liability partnerships. Requires such an entity to file with the secretary of state the name of the jurisdiction where the limited liability partnership was originally registered.
- 4 **Amends the assumed names law.** Strikes a notice the secretary of state sends in cases of duplicate business names.