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State of Minnesota HOUSE OF REPRESENTATIVES

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HOUSE FILE No. **398**

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The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act
1.2 relating to corporations; providing for incorporation of socially responsible
1.3 for-profit business corporations; proposing coding for new law as Minnesota
1.4 Statutes, chapter 304A.

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

1.6 Section 1. **[304A.01] CITATION.**

1.7 This chapter may be cited as the "Minnesota Responsible Business Corporation Act."

1.8 Sec. 2. **[304A.02] DEFINITIONS.**

1.9 Subdivision 1. **Applicability.** For purposes of this chapter, the terms defined in this
1.10 section have the meanings given.

1.11 Subd. 2. **Public interest.** The "public interest" means the general public well-being
1.12 of present and future generations including, but not limited to, the economy, natural
1.13 environment, public health, public safety, human rights, educational and other human
1.14 developmental opportunities, and the general well-being of the local, state, national, or
1.15 world community.

1.16 Subd. 3. **Stakeholder.** "Stakeholder" means:

1.17 (1) a shareholder;

1.18 (2) an employee;

1.19 (3) a customer;

1.20 (4) a supplier; or

1.21 (5) a creditor.

1.22 Sec. 3. **[304A.03] RELATIONSHIP TO OTHER LAW.**

2.1 Chapter 302A, including its definitions, applies to corporations incorporated or
2.2 governed under this chapter, except as otherwise provided in this chapter, or where chapter
2.3 302A conflicts with this chapter.

2.4 Sec. 4. **[304A.04] INCORPORATION.**

2.5 (a) A corporation may be incorporated under this chapter for any business purpose
2.6 or purposes, unless some other statute of this state requires incorporation for any of those
2.7 purposes under a different law. Unless otherwise provided in its articles, a corporation
2.8 has general business purposes.

2.9 (b) The corporation's articles must provide that its business purpose or purposes
2.10 must be carried out in compliance with this chapter and with the corporation's social
2.11 responsibility purpose to which it commits itself under paragraph (e).

2.12 (c) The secretary of state shall maintain its incorporation records in a manner that
2.13 clearly distinguishes corporations incorporated under this chapter.

2.14 (d) A corporation incorporated under this chapter shall include as part of its
2.15 corporate name the phrase "socially responsible corporation," or its abbreviation "SRC."

2.16 (e) The articles of incorporation of a corporation incorporated under this chapter
2.17 must state either:

2.18 (1) the corporation's specific social responsibility goals or values regarding
2.19 promotion of either the public interest or the well-being of stakeholders other than
2.20 shareholders, or both;

2.21 (2) one or more components of the public interest or of stakeholder interests other
2.22 than shareholders, to which the corporation will give special consideration; or

2.23 (3) that the corporation will act in accordance with section 304A.05, subdivision 5.

2.24 Sec. 5. **[304A.05] STANDARD OF CONDUCT; DIRECTORS.**

2.25 Subdivision 1. **Standard; liability.** (a) A director shall discharge the duties of
2.26 the position of director:

2.27 (1) in good faith;

2.28 (2) in a manner the director reasonably believes to be in the best interests of the
2.29 corporation, consistent with the considerations of subdivision 5; and

2.30 (3) with the care an ordinarily prudent person in a like position would exercise
2.31 under similar circumstances.

2.32 (b) A person who so performs those duties is not liable by reason of being or having
2.33 been a director of the corporation.

3.1 (c) Nothing in this chapter creates liability to, or a cause of action in favor of, a
3.2 person other than the corporation or a shareholder, except as provided in section 304A.10.

3.3 Subd. 2. **Reliance.** (a) A director is entitled to rely on information, opinions,
3.4 reports, or statements, including financial statements and other financial data, in each case
3.5 prepared or presented by:

3.6 (1) one or more officers or employees of the corporation whom the director
3.7 reasonably believes to be reliable and competent in the matters presented;

3.8 (2) counsel, public accountants, or other persons as to matters that the director
3.9 reasonably believes are within the person's professional or expert competence; or

3.10 (3) a committee of the board upon which the director does not serve, duly established
3.11 in accordance with section 302A.241, as to matters within its designated authority, if the
3.12 director reasonably believes the committee to merit confidence.

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

3.16 Subd. 3. **Presumption of assent; dissent.** A director who is present at a meeting of
3.17 the board when an action is approved by the affirmative vote of a majority of the directors
3.18 present is presumed to have assented to the action approved, unless the director:

3.19 (1) objects at the beginning of the meeting to the transaction of business because
3.20 the meeting is not lawfully called or convened and does not participate thereafter in the
3.21 meeting, in which case the director shall not be considered to be present at the meeting
3.22 for any purpose of this chapter;

3.23 (2) votes against the action at the meeting; or

3.24 (3) is prohibited by section 302A.255 from voting on the action.

3.25 Subd. 4. **Elimination or limitation of liability.** A director's personal liability to the
3.26 corporation or its shareholders for monetary damages for breach of fiduciary duty as a
3.27 director may be eliminated or limited in the articles. The articles shall not eliminate or
3.28 limit the liability of a director:

3.29 (1) for any breach of the director's duty of loyalty to the corporation or its
3.30 shareholders;

3.31 (2) for acts or omissions not in good faith or that involve intentional misconduct
3.32 or a knowing violation of law;

3.33 (3) under section 80A.76 or 302A.559;

3.34 (4) for any transaction from which the director derived an improper personal benefit;
3.35 or

(5) for any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

Subd. 5. **Considerations.** (a) In discharging the duties of the position of director, a director shall, in determining the best interests of the corporation, consider:

(1) the interests of the corporation's shareholders, employees, customers, suppliers, and creditors;

(2) the economy of the state and nation, community and societal considerations, including the public interest as defined in section 304A.02; and

(3) the long-term as well as short-term interests of the corporation and its stakeholders including the possibility that these interests may be best served by the continued independence of the corporation.

(b) A director is not required to give priority to any consideration referenced in paragraph (a) over any other such consideration.

Subd. 6. **Applicability.** This section, and not section 302A.251, applies under this chapter.

Sec. 6. [304A.06] DIRECTORS; REPRESENTATION OF STAKEHOLDER INTERESTS.

(a) The directors of a corporation operating under this chapter must include directors whose role as directors includes representation of, and advocacy for, the interests of the corporation's employees and of the public interest as defined in section 304A.02.

(b) At least 20 percent of the corporation's directors must represent and advocate for the corporation's employees. These directors must be nominated and elected by the employees, through a process specified in the bylaws.

(c) At least 20 percent of the corporation's directors must represent and advocate for the public interest. These directors must be elected by the other board members, after seeking input from persons or groups representing the public interest.

(d) If a corporation has only one or two directors, the director or directors may be elected solely by the shareholders, but must comply with section 304A.05, subdivision 5.

(e) If a corporation has three directors, the bylaws must provide that one director must be elected to represent the employees or the public interest. That director must be nominated and elected as provided in paragraph (b) or (c), whichever is relevant.

(f) The designation of certain directors as representatives of and advocates for employees or for the public interest does not affect the duty of other directors to consider those interests, or the duty of the designated directors to consider the interests of other stakeholders.

5.1 Sec. 7. **[304A.07] STANDARD OF CONDUCT; OFFICERS.**

5.2 (a) An officer shall discharge the duties of an office in good faith, in a manner the
5.3 officer reasonably believes to be in the best interests of the corporation, and with the care
5.4 an ordinarily prudent person in a like position would exercise under similar circumstances.

5.5 A person exercising the principal functions of an office or to whom some or all of the
5.6 duties and powers of an office are delegated pursuant to section 302A.351 is deemed an
5.7 officer for purposes of this section and sections 302A.467 and 302A.521.

5.8 (b) In determining the best interests of the corporation, an officer must consider the
5.9 factors in section 304A.05, subdivision 5.

5.10 (c) Nothing in this section creates liability to, or a cause of action in favor of, a
5.11 person other than the corporation or a shareholder, except as provided in section 304A.10.

5.12 (d) This section, and not section 302A.361, applies under this chapter.

5.13 Sec. 8. **[304A.08] LAW OF AGENCY; APPLICABILITY LIMITED.**

5.14 The common law of agency does not apply to a corporation under this chapter, to
5.15 the extent that the common law of agency requires that the officers and directors act
5.16 solely in the interests of shareholders by maximizing the corporation's long-term or
5.17 short-term profits.

5.18 Sec. 9. **[304A.09] INPUT AND ACCOUNTABILITY TO CONSIDERATIONS**
5.19 **OTHER THAN SHAREHOLDER INTERESTS.**

5.20 Subdivision 1. Stakeholder impact. The board shall provide opportunities for
5.21 advisory input from stakeholders other than shareholders, such as regular stakeholder
5.22 meetings scheduled by the board or a Web site or e-mail listserve provided by the
5.23 corporation for communication among those stakeholders and between those stakeholders
5.24 and the officers and directors.

5.25 Subd. 2. Public interest reports. If the corporation is a publicly held corporation,
5.26 as defined in section 302A.011, subdivision 40, the corporation shall produce and publish
5.27 an annual public interest report at the same time as it files its annual financial report
5.28 required under federal securities laws. The public interest report must summarize the
5.29 corporation's actions undertaken within the preceding year that benefit the public interest
5.30 and stakeholders other than shareholders and must describe how the corporation takes
5.31 into account those interests. A report that meets the requirements of the Global Reporting
5.32 Initiative satisfies this subdivision.

5.33 Subd. 3. Education of officers' and directors' duties under this chapter. The
5.34 corporation shall provide educational programs for its officers, directors, and other

6.1 employees regarding their special duties under this chapter to all of the corporation's
6.2 stakeholders and to the public interest. The corporation shall provide such education to
6.3 new officers, directors, and other employees at the earliest reasonable opportunity.

6.4 Sec. 10. **[304A.10] INTERVENTION OF ATTORNEY GENERAL.**

6.5 If a corporation organized under this chapter fails to comply with its self-designated
6.6 social responsibility commitment under section 304A.04, paragraph (e), or otherwise fails
6.7 to comply with this chapter, the attorney general may pursue remedies under either or both
6.8 of sections 8.31 and 316.02 against the corporation, its officers, or its directors.

6.9 Sec. 11. **EFFECTIVE DATE.**

6.10 Sections 1 to 10 are effective the day following final enactment.