

CHAPTER 431—H.F.No. 2263

An act relating to corporations; regulating control share acquisitions; providing for solicitations of proxies and meetings of shareholders; amending Minnesota Statutes 1984, section 302A.751; Minnesota Statutes 1985 Supplement, sections 302A.449, subdivision 7; and 302A.671, subdivision 3; and Laws 1985, First Special Session chapter 5, section 21.

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

Section 1. Minnesota Statutes 1985 Supplement, section 302A.449, subdivision 7, is amended to read:

Subd. 7. **PROXY IN CONTROL SHARE ACQUISITION.** Notwithstanding any contrary provision of this chapter, a proxy relating to a meeting of shareholders required under section 302A.671, subdivision 3, must be solicited separately from the offer to purchase or solicitation of an offer to sell shares of the issuing public corporation and ~~must not be solicited less than 30 days before the meeting unless otherwise agreed in writing by the acquiring person and the issuing public corporation.~~ Except for irrevocable proxies appointed in the regular course of business and not in connection with a control share acquisition, all proxies appointed for or in connection with the shareholder authorization of a control share acquisition pursuant to section 302A.671 shall be at all times terminable at will prior to the obtaining of the shareholder authorization, whether or not the proxy is coupled with an interest. Without affecting any vote previously taken, the proxy may be terminated in any manner permitted by subdivision 3, or by giving oral notice of the termination in the open meeting of shareholders held pursuant to section 302A.671, subdivision 3. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

Sec. 2. Minnesota Statutes 1985 Supplement, section 302A.671, subdivision 3, is amended to read:

Subd. 3. **MEETING OF SHAREHOLDERS.** Within five days after receipt of an information statement pursuant to subdivision 2, a special meeting of the shareholders of the issuing public corporation shall be called pursuant to section 302A.433, subdivision 1, to vote on the proposed control share acquisition. The meeting shall be held no later than 55 20 business days after receipt of the information statement, unless the acquiring person agrees to a later date, ~~and no sooner than 30 days after receipt of the information statement, if the acquiring person so requests in writing when delivering the information statement.~~ The notice of the meeting shall at a minimum be accompanied by a copy of the information statement and a statement disclosing that the board of directors of the issuing public corporation recommends acceptance of, expresses no opinion and is remaining neutral toward, recommends rejection of, or is unable to take a position with respect to the proposed control share acquisition. The notice of meeting shall be given ~~within 25 days after receipt of the information statement~~ at least ten days prior to the meeting.

Sec. 3. Minnesota Statutes 1984, section 302A.751, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

302A.751 INVOLUNTARY DISSOLUTION JUDICIAL INTERVENTION; EQUITABLE REMEDIES OR DISSOLUTION.

Subdivision 1. **WHEN PERMITTED.** A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

(a) In a supervised voluntary dissolution pursuant to section 302A.741;

(b) In an action by a shareholder when it is established that:

(1) the directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;

(2) the directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;

(3) the shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) the corporate assets are being misapplied or wasted; or

(5) the period of duration as provided in the articles has expired and has not been extended as provided in section 302A.801;

(c) In an action by a creditor when:

(1) the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

(d) In an action by the attorney general to dissolve the corporation in accordance with section 302A.757 when it is established that a decree of dissolution is appropriate.

Subd. 2. **BUY-OUT ON MOTION.** In an action under subdivision 1, clause (b), involving a closely held corporation at the time the action is commenced and in which one or more of the circumstances described in that clause is established, the court may, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the

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motion, if the court determines in its discretion that an order would be fair and equitable to all parties under all of the circumstances of the case.

The purchase price of any shares so sold shall be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court, provided that, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms set forth in them, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under section 302A.473, subdivision 5, paragraph (a).

If the parties are unable to agree on fair value within 40 days of entry of the order, the court shall determine the fair value of the shares under the provisions of section 302A.473, subdivision 7, and may allow interest or costs as provided in section 302A.473, subdivisions 1 and 8.

The purchase price shall be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within 40 days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subdivision and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus such additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as might be awarded.

Subd. 3. CONDITION OF CORPORATION. In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the financial condition of the corporation but shall not refuse to order equitable relief, dissolution, or a buy-out solely on the ground that the corporation has accumulated or current operating profits.

Subd. 3a. CONSIDERATIONS IN GRANTING RELIEF INVOLVING CLOSELY HELD CORPORATIONS. In determining whether to order equitable relief, dissolution, or a buy-out, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.

Subd. 3b. DISSOLUTION AS REMEDY. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buy-out, or a partial liquidation, would be adequate to permanently relieve the circumstances established

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under subdivision 1, clause (b) or (c). Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

Subd. 4. **EXPENSES.** If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

Subd. 5. **VENUE; PARTIES.** Proceedings under this section shall be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

Sec. 4. Laws 1985, First Special Session chapter 5, section 21, is amended to read:

Sec. 21. **EFFECTIVE DATE.**

The amendments to Minnesota Statutes, section 302A.671, subdivision 1, paragraph (a), made by this act are effective August 1, ~~1986~~ 1987.

Approved March 24, 1986

CHAPTER 432—H.F.No. 2466

An act relating to natural resources; authorizing additions to and deletions from certain state parks and recreation areas; providing for the maintenance of roads; providing access to Forestville state park; amending Laws 1984, chapter 599, section 3.

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

Section 1. **NATURAL RESOURCES; ADDITIONS TO AND DELETIONS FROM CERTAIN STATE PARKS.**

Subdivision 1. The lands described in this section are, as specified in this section, added to or deleted from the boundaries of the state parks designated in this section. The commissioner of natural resources is authorized to acquire by gift, purchase, or, if authorized by law, by condemnation proceedings the lands as described which are added. Any land which now is or hereafter becomes tax-forfeited land and is located within the described park boundaries is withdrawn from sale and is transferred from the custody, control, and supervision of the county board of the county to the commissioner of natural resources, free from any trust in favor of the interested taxing districts. The commissioner shall execute a certificate of acceptance of the lands on behalf of the state for these purposes and transmit it to the county auditor of the county for record as provided by law in the case of tax-forfeited land transferred to the commissioner by resolution of the county board for conservation purposes. Any land within

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