

**CHAPTER 417—H.F.No. 1934**

*An act relating to corporations; modifying provisions for the organization and operation of business corporations; amending Minnesota Statutes 1992, sections 302A.135, subdivision 4; 302A.405, subdivision 1; 302A.471, subdivision 1; 302A.661, subdivision 1; 302A.725, subdivision 3; and 302A.751, subdivisions 1, 2, and 3a; Minnesota Statutes 1993 Supplement, sections 302A.401, subdivision 1; 302A.435, subdivision 1; and 302A.673, subdivision 3.*

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

Section 1. Minnesota Statutes 1992, section 302A.135, subdivision 4, is amended to read:

Subd. 4. **APPROVAL BY SHAREHOLDERS.** (a) The proposed amendment is adopted when approved by the affirmative vote of the ~~holders of a majority of the voting power of the shares present and entitled to vote~~ shareholders required by section 302A.437, except as provided in paragraphs (b) and (c) and subdivision 5.

(b) For a closely held corporation, if the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:

(1) the specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

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

(c) For corporations other than closely held corporations, if the articles provide for a larger proportion or number to transact a specified type of business at a meeting, the affirmative vote of that larger proportion or number is necessary to amend the articles to decrease the proportion or number necessary to transact the business.

Sec. 2. Minnesota Statutes 1993 Supplement, section 302A.401, subdivision 1, is amended to read:

Subdivision 1. **BOARD OR SHAREHOLDER MAY AUTHORIZE.** Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board ~~or by the shareholders~~.

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Sec. 3. Minnesota Statutes 1992, section 302A.405, subdivision 1, is amended to read:

Subdivision 1. **CONSIDERATION; PROCEDURE.** Subject to any restrictions in the articles:

(a) Shares may be issued for any consideration, including, without limitation, money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or to be rendered to the corporation under a written agreement, as authorized by resolution approved by the affirmative vote of a majority of the directors present, or, if provided for in the articles, approved by the affirmative vote of the holders of a majority of the voting power of the shares present, ~~valuing all nonmonetary consideration and~~ establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined; and

(b) Upon authorization in accordance with section 302A.402, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. No shares of a class or series, shares of which are then outstanding, shall be issued to the holders of shares of another class or series (except in exchange for or in conversion of outstanding shares of the other class or series), unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

Sec. 4. Minnesota Statutes 1993 Supplement, section 302A.435, subdivision 1, is amended to read:

Subdivision 1. **TO WHOM GIVEN.** Except as otherwise provided in this chapter, notice of all meetings of shareholders shall be given to every holder of shares entitled to vote, unless:

(1) the meeting is an adjourned meeting to be held not more than 120 days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or

(2) the following have been mailed by first class mail to a shareholder at the address in the corporate records and returned undeliverable:

(i) two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

(ii) all payments of dividends sent during a 12-month period, provided there are at least two sent during the 12-month period.

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If notice of an adjourned meeting is required under clause (1), then the date for determination of shares entitled to notice of and entitled to vote at the adjourned meeting must comply with section 302A.445, subdivision 1, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

An action or meeting that is taken or held without notice under clause (2) has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

Sec. 5. Minnesota Statutes 1992, section 302A.471, subdivision 1, is amended to read:

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

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

(1) alters or abolishes a preferential right of the shares;

(2) creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of the shares;

(3) alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;

(4) excludes or limits the right of a shareholder to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; except that an amendment to the articles of an issuing public corporation that provides that section 302A.671 does not apply to a control share acquisition does not give rise to the right to obtain payment under this section;

(b) A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation ~~not made in the usual or regular course of its business~~, but not including a transaction permitted without shareholder approval in section 302A.661, subdivision 1, or a disposition in dissolution described in section 302A.725, subdivision 2, or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

(c) A plan of merger, whether under this chapter or under chapter 322B, to which the corporation is a party, except as provided in subdivision 3;

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(d) A plan of exchange, whether under this chapter or under chapter 322B, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to be voted on the plan; or

(e) Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

Sec. 6. Minnesota Statutes 1992, section 302A.661, subdivision 1, is amended to read:

Subdivision 1. **SHAREHOLDER APPROVAL; WHEN NOT REQUIRED.** A corporation may, by affirmative vote of a majority of the directors present, ~~may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;~~ upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, ~~in which case no~~ and without shareholder approval ~~is required.~~

(1) sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

(2) grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

(3) transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

Sec. 7. Minnesota Statutes 1993 Supplement, section 302A.673, subdivision 3, is amended to read:

Subd. 3. **APPLICATION.** (a) Unless by express provision electing to be subject to this section contained in the articles or in bylaws approved by the shareholders of an issuing public corporation, this section does not apply to any business combination of an issuing public corporation, that is not, at any time during the period from June 1, 1987, until adoption of the article or bylaw provision, a publicly held corporation. ~~This section shall not apply to any business combination with an interested shareholder whose share acquisition date is either before the effective date of the article or bylaw provision or on the effective date, but prior to the effective time of the article or bylaw provision.~~

(b) Except as provided in paragraph (c), this section does not apply to any business combination of an issuing public corporation:

(1) if, prior to the time the issuing public corporation becomes a publicly held corporation or becomes subject to this section by virtue of an election

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under paragraph (a), including any time prior to the time that the corporation becomes an issuing public corporation, articles or bylaws of the corporation contain a provision expressly electing not to be subject to this section;

(2) if the board of the issuing public corporation adopts, prior to September 1, 1987, an amendment to the issuing public corporation's bylaws expressly electing not to be subject to this section;

(3) if an amendment to the articles or bylaws of the issuing public corporation is approved by the shareholders, other than interested shareholders and their affiliates and associates, holding a majority of the outstanding voting power of all shares entitled to vote, excluding the shares of interested shareholders and their affiliates and associates, expressly electing not to be subject to this section and the amendment provides that it is not to be effective until 18 months after the vote of shareholders and provides that, except as provided in paragraph (c), it does not apply to any business combination of the issuing public corporation with an interested shareholder whose share acquisition date is on or before the effective date of the amendment; or

(4) if the business combination was consummated before, or if a binding agreement for the business combination was entered into before, the day following June 1, 1987.

(c) This section does not apply to any business combination of an issuing public corporation with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with:

(1) any person that would have been an interested shareholder on June 1, 1987, had this section been in effect on this date and had the issuing public corporation been an issuing public corporation on this date;

(2) any interested shareholder whose share acquisition date is either before the effective date of the article or bylaw provision by which an issuing public corporation that was not subject to this section immediately prior to the election elected to be subject to this section, or on the effective date, but prior to the effective time of the article or bylaw provision; or

(3) in the case of a corporation that was not subject to this section immediately prior to becoming a publicly held corporation, any interested shareholder whose share acquisition date is either before the date on which the corporation becomes a publicly held corporation or on that date, but prior to the time the corporation becomes a publicly held corporation, and to whom the application of this section is expressly excluded by an amendment to the articles or bylaws of the corporation approved by the shareholders before the corporation becomes a publicly held corporation.

This section applies to any business combination of an issuing public corporation to which it previously did not apply because of provisions in articles or

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bylaws adopted or approved under paragraph (b), clause (1), (2), or (3), upon an amendment to the articles or bylaws approved by shareholders holding a majority of the outstanding voting power of all shares entitled to vote expressly electing to be subject to this section becoming effective. Also, this section does not apply to any business combination of the corporation with, with respect to, proposed by or on behalf of, or pursuant to any written or oral agreement, arrangement, relationship, understanding, or otherwise with any person that would have been an interested shareholder at the effective time of the amendment if this section had been applicable.

Sec. 8. Minnesota Statutes 1992, section 302A.725, subdivision 3, is amended to read:

Subd. 3. **DISTRIBUTION TO SHAREHOLDERS.** All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the corporation shall be distributed to the shareholders in accordance with section 302A.551, subdivision 4.

Sec. 9. Minnesota Statutes 1992, section 302A.751, subdivision 1, is amended to read:

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, or illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, or directors, or as officers, or as employees of a closely held corporation;

(3) the directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation, or as officers or employees of a closely held corporation;

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

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~~(5)~~ (6) 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.

Sec. 10. Minnesota Statutes 1992, section 302A.751, subdivision 2, is amended to read:

Subd. 2. **BUY-OUT ON MOTION.** In an action under subdivision 1, clause (b), involving a ~~closely~~ corporation that is not a publicly 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 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

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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.

Sec. 11. Minnesota Statutes 1992, section 302A.751, subdivision 3a, is amended to read:

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 all shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements, between or among shareholders or between or among one or more shareholders and the corporation are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.

Presented to the governor April 11, 1994

Signed by the governor April 13, 1994, 1:04 p.m.

#### CHAPTER 418—H.F.No. 2187

*An act relating to state lands; authorizing the sale of certain lands in Mille Lacs county to resolve a trespass situation.*

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

#### Section 1. SALE OF TAX FORFEITED LAND; MILLE LACS COUNTY.

(a) Notwithstanding Minnesota Statutes, sections 92.45 and 282.018, the public sale requirements of section 282.01, and any other law to the contrary, Mille Lacs county may sell by private sale the tax forfeited land which is described in paragraph (c), under the remaining provisions of Minnesota Statutes, chapter 282.

(b) The conveyance must be in a form approved by the attorney general.

(c) The land that may be sold is described as that part of the North 406 feet of Government Lot 7 of Section 25, Township 42 North, Range 27 West, Mille Lacs County, Minnesota, lying westerly of the westerly right-of-way line of County Road #26, containing 1.38 acres.

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