

House File 2277 - Introduced

HOUSE FILE 2277
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 608)

A BILL FOR

1 An Act relating to the Iowa business corporation Act by
2 removing limitations imposed on shareholders making
3 long-term arrangements affecting the affairs of the
4 corporation, and by providing for the delivery of financial
5 information to shareholders.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I
VOTING TRUSTS AND
SHAREHOLDER AGREEMENTS

Section 1. Section 490.730, Code 2014, is amended to read as follows:

490.730 Voting trusts.

1. One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust, which may include anything consistent with its purpose, and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee ~~shall~~ must prepare a list of the names and addresses of all voting trust beneficial owners ~~of beneficial interests in the trust~~, together with the number and class of shares each transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

2. A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. ~~A voting trust is valid for not more than ten years after its effective date unless extended under subsection 3.~~

3. ~~All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it. Limits, if any, on the duration of a voting trust shall be as set forth in the voting trust. A voting trust that became effective between December 31, 1989, and June 30, 2014, both dates inclusive, remains governed by the provisions of this section then in effect, unless the voting trust is amended to provide otherwise by~~

1 unanimous agreement of the parties to the voting trust.

2 Sec. 2. Section 490.732, subsection 2, paragraph c, Code
3 2014, is amended by striking the paragraph.

4 Sec. 3. Section 490.732, Code 2014, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 8. Limits, if any, on the duration of an
7 agreement authorized by this section shall be as set forth in
8 the agreement. An agreement that became effective between
9 January 1, 2003, and June 30, 2014, both dates inclusive,
10 unless the agreement provided otherwise, remains governed by
11 the provisions of this section then in effect.

12 DIVISION II

13 FINANCIAL STATEMENTS FOR SHAREHOLDERS

14 Sec. 4. Section 490.1620, subsection 3, Code 2014, is
15 amended to read as follows:

16 3. a. Within one hundred twenty days after the close
17 of each fiscal year, the corporation shall send the annual
18 financial statements to each shareholder. Thereafter, on
19 written request from a shareholder to whom the statements were
20 not sent, the corporation shall send the shareholder the latest
21 financial statements.

22 b. A public corporation may fulfill its responsibilities
23 under ~~this section~~ paragraph "a" by delivering the specified
24 financial statements, or otherwise making them available, in
25 any manner permitted by the applicable rules and regulations of
26 the United States securities and exchange commission.

27 Sec. 5. Section 490.1620, Code 2014, is amended by adding
28 the following new subsection:

29 NEW SUBSECTION. 3A. A corporation that is not a public
30 corporation may fulfill its responsibilities under this section
31 by filing annual financial reports in compliance with state or
32 federal law, provided that such reports meet all the following
33 requirements:

34 a. Contain a balance sheet as of the end of the fiscal year
35 and an income statement for that year.

1 *b.* Are required by state or federal law to be filed with a
2 state or federal agency within one hundred twenty days after
3 the close of each fiscal year.

4 *c.* Are available to the public, including via internet
5 access, without charge.

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EXPLANATION

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The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

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BILL'S PROVISIONS — VOTING TRUSTS AND SHAREHOLDER

10 AGREEMENTS. This bill amends provisions which govern voting
11 trusts and shareholder agreements. Through these arrangements,
12 shareholders may fundamentally affect how a corporation is
13 controlled, the management of its assets, and the rights and
14 duties of its shareholders and officers by entering into
15 certain arrangements (Code sections 490.730 and 490.732). This
16 bill eliminates a 10-year term restriction imposed on a voting
17 trust or shareholder agreement. However, a voting trust or
18 shareholder agreement formed prior to the effective date of the
19 bill continues to be subject to the 10-year term restriction.

20 BILL'S PROVISIONS — FINANCIAL STATEMENTS FOR SHAREHOLDERS.

21 The bill provides that a corporation other than a public
22 corporation (e.g., closed corporation), is not required to
23 deliver financial statements to shareholders if the corporation
24 files certain reports with a state or federal agency. The
25 reports must include a balance sheet as of the end of the
26 fiscal year and an income statement for that year. The reports
27 must be filed with a state or federal agency within 120 days
28 after the close of the fiscal year. Finally, the records must
29 be available to the public without charge.

30 CURRENT LAW — VOTING TRUSTS. A voting trust is a special
31 arrangement between one or more shareholders and a trustee
32 (either through a single agreement or many separate agreements
33 made between a number of shareholders and a trustee) in which
34 the shareholder or shareholders surrenders legal ownership of
35 their respective shares of common stock and the trustee acts

1 on their behalf as a principal rather than a proxy. A voting
2 trust becomes effective on the date the first shares subject to
3 the trust are registered in the trustee's name, and continues
4 for a term not to exceed 10 years but which may be extended
5 for additional terms each not to exceed 10 years (Code section
6 490.730).

7 CURRENT LAW — SHAREHOLDER AGREEMENTS. The shareholders
8 of a closed corporation (whose stock is not publicly traded)
9 may execute a shareholder agreement that governs the exercise
10 of the corporate powers or the management of its business
11 and affairs (Code section 490.732). This includes how it is
12 controlled; how distributions are made; the management by a
13 board of directors or offices; the rights and duties of its
14 shareholders, including voting rights; the management of its
15 property, assets, and contracts; and its dissolution. It
16 must be approved or signed by all shareholders. There is no
17 requirement that a shareholder agreement be filed with the
18 secretary of state. Purchasers of shares take subject to the
19 agreement only if they are notified of the agreement (printed
20 on the share certificates or on an information statement).
21 The shareholder agreement may be inconsistent with another
22 provision of the Code chapter, but presumably cannot conflict
23 with the corporation's articles of incorporation.

24 CURRENT LAW — FINANCIAL STATEMENTS FOR SHAREHOLDERS. A
25 corporation is required to prepare and submit to shareholders
26 various financial statements at the end of the corporation's
27 fiscal year, including a balance sheet, an income statement,
28 and a statement of changes in shareholders' equity. The
29 financial statements are to be sent to each shareholder within
30 120 days after the close of the fiscal year (Code section
31 490.1620(3)). In 2013, the general assembly enacted HF 469
32 (2013 Iowa Acts, chapter 31) which allows a public corporation
33 to fulfill these requirements by delivering or making the
34 financial statements available in accordance with rules and
35 regulations of the United States securities and exchange

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1 commission. A public corporation has a class of voting stock
2 listed on a national securities exchange or is held of record
3 by more than 2,000 shareholders (Code section 490.140(27)).