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ASSURING LONG-TERM EMPLOYMENT IN A MISSOURI CLOSE CORPORATION: THE NEED FOR LEGISLATIVE REFORM

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I. INTRODUCTION

The American Bar Association Committee on Corporate Law’s recent publication of the Proposed Statutory Close Corporation Supplement to the Model Business Corporation Act has resulted in a renewed awareness among members of the legal community of the special need for statutory provisions to accommodate closely held corporations. This need is especially acute in Missouri, where Professor O’Neal has chastised the state’s judiciary for its refusal to protect the reasonable expectations of persons who acquire an interest in a close corporation, including their expectations to participate in management or to be employed by the company.2

† The author expresses his gratitude to Professor George D. Hornstein of the New York University Graduate School of Law, who supplied valuable assistance and encouragement in the preparation of this Article.
2. 1 F. O’NEAL, CLOSE CORPORATIONS: LAW AND PRACTICE § 1.15, n.11

471

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Shareholders in a closely held corporation can normally expect to devote their full time to the management of the company. If the shareholder-employee's position in the new company can be terminated at any time by the board of directors, he may be unwilling to give up his present employment and risk investing his savings in the new enterprise. In addition, many close corporations distribute much of their profits as compensation rather than as dividends, primarily for income tax reasons. Thus, a minority shareholder, unless he can convince the majority to insert a mandatory dividend provision in the articles of incorporation, must somehow assure himself permanent employment by the corporation and protect himself against arbitrary reductions in his salary, if he expects to gain a fair return on his investment.

The power to assure its potential investors and key employees permanent or long-term employment in a managerial position is thus essential to the operation of a closely held corporation. "To withhold this power," according to Professor O'Neal, "will often make it difficult for a new corporation, especially a close corporation, to get the services of an executive or other skilled employee." Yet, despite this inherent need, the Missouri courts have consistently invalidated long-term employment arrangements for corporate officers on one or more of the following grounds: (1) the agreement violates Missouri's statute requiring the directors to manage the affairs of the corporation, (2) it violates the statute requiring the directors to select the corporate officers, or (3) it is at variance with the spirit of the statute authorizing

(2d ed. 1971). See also O’Neal, Close Corporations: Existing Legislation and Recommended Reform, 33 BUS. LAW. 873, 885 (1978). Missouri’s need for specific legislation dealing with the unique problems of close corporations was first articulated almost a decade ago in Comment, Missouri Corporation Statutes—Needed Changes for Close Corporations, 38 MO. L. REV. 460 (1973), in which the author proposed that the rigid shareholder-director-officer structure be modified in close corporations to allow for contractual arrangements fitting specific needs.

4. I.R.C. § 162 (1976) includes among the "ordinary and necessary" expenses deductible by a business a "reasonable allowance for salaries or other compensation for services actually rendered." Treas. Reg. § 1.162-7 (1958) provides that the test for deductibility of compensation payments is "whether they are reasonable and are in fact payments purely for services."
6. 1 F. O’NEAL, supra note 2, § 6.02.
7. Id. § 6.06.
EMPLOYMENT IN CLOSE CORPORATIONS

ing removal of corporate officers and agents at the pleasure of the board. Furthermore, because of the public policy against forcing unwilling parties into consensual relationships, the Missouri Supreme Court has held that it will not grant specific performance of a contract for personal services. Thus, the Missouri judiciary has indicated that it will declare void any agreement that deprives the directors of their statutory powers or tends to influence their judgment in corporate decisions. The Missouri courts are especially inclined to invalidate an agreement if it fixes the salary of a designated officer at a rather substantial amount and provides for permanent or long-term employment.

Nevertheless, numerous decisions outside Missouri, including many recent decisions, have held that unanimous shareholder agreements allocating positions and salaries among the shareholders are effective, despite curtailing of the future discretion of the directors. The rationale of these decisions appears to be that espoused by Professor Hornstein nearly a quarter-century ago:

[T]he shareholders being the real parties in interest and the complete owners of the corporation, it is difficult to find any basis for denying them the control which would be possessed by a non-corporate owner when they act as one by unanimously agreeing upon specific corporate action—unless some vital public interest be affected. The directors themselves have no personal interest (except their prestige).
Professor O’Neal concurs in the position that a unanimous vote of the shareholders should control or overrule directors:

Unanimous shareholders’ agreements which deprive the directors of some of their management powers are most often attacked on the grounds that they are against public policy and that they violate certain statutory norms, particularly the one conferring corporate management on the board of directors. If an agreement does not adversely affect creditors or other noncontracting persons, the public policy objection is (aside from statute) without any basis whatsoever.16

In order to respond to the objection that even a unanimous shareholder agreement should be ineffective if it violates mandatory norms in the corporation statute,17 the Missouri legislature must enact special statutory provisions designed to accommodate close corporations. These specially formulated provisions presently exist in at least half of the states.18 With this thesis, the objective of this Article is twofold: first, to demonstrate the futility of the various devices currently available in Missouri for assuring a minority shareholder long-term employment in a closely held corporation, and second, to propose statutory alternatives, the provisions of which may be incorporated into the existing Missouri statutes, to help protect the reasonable expectations of persons who acquire an interest in a Missouri close corporation.

II. CURRENT APPROACHES

Several approaches have been suggested to the problem of assuring long-term employment and status to a shareholder-employee in a Missouri close corporation. Among these are the following: (1) use of a long-term employment contract between the shareholder-employee and the corporation, (2) management, so long as they did not violate any law or interfere with public policy or the public good.


16. 1 F. O’NEAL, supra note 2, § 5.24. “[P]olicy considerations favor the enforcement of unanimous shareholders’ agreements. First, such agreements meet a widespread business need. Second, it is sound policy to recognize in shareholders the same freedom to contract concerning their own affairs that the law favors for other competent persons.” Id. (footnotes omitted).

17. Professor O’Neal maintains that this objection is technical. See 1 F. O’NEAL, supra note 2, § 5.24.

18. For a current, comprehensive list of these jurisdictions and the applicable sections of their statutes, see W. PAINTER, CORPORATE AND TAX ASPECTS OF CLOSELY HELD CORPORATIONS 159-63 (2d ed. 1981). For an excellent summary of the legislation applicable to close corporations, see O’Neal, supra note 2. See also 1 F. O’NEAL, supra note 2, §§ 1.14-.14b (1971 & Cum. Supp. 1981). The Proposed Statutory Close Corporation Supplement to the Model Business Corporation Act is an example of one such type of statute. See text accompanying notes 127-39 infra.
an agreement among all or some of the shareholders assuring the minority shareholder permanent or long-term employment, (3) granting an irrevocable proxy to the shareholder-employee to vote enough shares to protect his employment, (4) creation of a voting trust whereby shareholders transfer their shares to a trustee who, under the terms of the trust instrument, will vote the shares to elect specified persons as directors, who can be expected to maintain the desired persons in office, (5) issuance of a separate class of stock to the shareholder-employee, which class has the right to elect a specified number of directors, and (6) utilization of high vote and quorum requirements for the selection and removal of directors and officers and changes in their compensation or duties. As the following discussion will demonstrate, these devices, whether used singly or in combination, are grossly inefficient in assuring the minority shareholder-employee long-term employment and status.

A. The Long-Term Employment Contract

The long-term employment contract approach in Missouri is fraught with so many objections and uncertainties that it can hardly be considered a viable alternative for accomplishing long-term employment security. The first problem is that, in Missouri, the board of directors may not bind future boards to long-term employment of officers, at least of the corporation's president and secretary.19 This was first suggested by the Missouri Supreme Court in Streett v. Laclede-Christy Co.,20 and has been reaffirmed in several subsequent courts of appeals decisions.21 The rationale underlying these decisions

19. MO. REV. STAT. § 351.360 (Cum. Supp. 1981) provides, "Every corporation organized under this chapter shall have a president and a secretary, who shall be chosen by the directors, and such other officers and agents as shall be prescribed by the bylaws of the corporation." It could be argued that, under the statute, only the president and secretary must be elected by the board of directors, while any other officers or employees may be appointed by the president. Presumably, the president could enter into a contract to install the minority shareholder as an officer, other than secretary, or as an employee for life, unless the bylaws provided that such power could be exercised only by the board of directors. There are, however, serious objections to such contracts. See notes 21-37 and accompanying text infra.

20. 409 S.W.2d 691 (Mo. 1966).

Many courts outside Missouri, however, have sustained lifetime employment contracts, apparently recognizing that they are sometimes necessary for the corporation to obtain the type of executive and other key personnel it needs. See, e.g., Wasserman v. Rosengarden, 84 Ill. App. 3d 713, 406 N.E.2d 131 (1980) (dictum); Plasti-Drum Corp. v. Ferrell, 70 Ill. App. 3d 441, 388 N.E.2d 438 (1979). Professor O'Neal approves of these cases:

A corporation should have power to enter into contracts for lifetime or other long-term employment. To withhold this power will often make
seems to be that long-term employment contracts for corporate officers run afoul of the general maxim that management and control of the corporation is statutorily vested in the board of directors, as is the right to elect officers. It has also been suggested that such contracts are at variance with the Missouri statute authorizing removal of corporate officers at the pleasure of the board. Apparently, these same reasons account for the Missouri

... it difficult for a new corporation, especially a close corporation, to get the services of an executive or other skilled employee who ... often wants assurance of lifetime employment. Further, the arguments that long-term employment contracts deprive shareholders and directors of their statutory powers have been too strongly stated. After all, a long-term employment contract does not place any greater restrictions on future boards than does a long-term lease or other long-term agreement. Further, the existence of an employment contract does not mean that the board of directors must permit the employee to continue to manage or control any part of the affairs of the corporation. The directors can lay down rules to control his action or they can deprive him of all authority whatsoever to act for the corporation. They have the power to revoke his authority, although they may render the corporation liable for breach of contract in so doing. If an employee disregards reasonable regulations, that justifies his discharge.

1 F. O'Neal, supra note 2, § 6.06. At least one jurisdiction expressly authorizes corporations to enter into long-term employment contracts. The Texas Business Corporation Act provides that each corporation shall have the power "to elect or appoint officers and agents of the corporation for such period of time as the corporation may determine, and define their duties and fix their compensation." TEX. BUS. CORP. ACT ANN. art. 2.02(A) (12) (Vernon 1980).


This objection is easily avoided in states like New York, which permits the shareholders to elect the officers if the certificate of incorporation so provides. N.Y. BUS. CORP. LAW § 715(b) (McKinney 1963). The commentators agree that such a provision validates shareholder and certificate provisions guaranteeing continuation of office and set salaries. See R. Kessler, NEW YORK CLOSE CORPORATIONS § 10.05(27) (1968); Kessler, The New York Business Corporation Law, 36 ST. JOHN'S L. REV. 1, 54-55 (1961); Zammit, Assuring Executive Employment to a Shareholder in a Close Corporation Under New York Law, 44 N.Y. ST. B.J. 487, 489 (1972).


Although § 351.365 provides that "such removal shall be without prejudice to the contract rights, if any, of the person so removed," an officer removed under an invalid long-term contract probably would not have any contract rights. Thus, he probably could be removed from office without the payment of damages.

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judiciary's consistently narrow construction of agreements providing for "permanent" employment.25

Although the Missouri Supreme Court suggested in Streett that the board of directors could not validly bind future boards to long-term employment of officers, the court did hold that the board of directors could bind future boards to long-term employment of nonofficer employees.26 The court thus upheld a five-year contract employing a general manager because his additional employment as president had been included in a separate clause of the contract, to avoid making his employment as general manager dependent on his status as president.27 Presumably, such contracts are valid because they do not undercut the statutes conferring management duties and the right to elect officers on the board of directors.28 The authorities usually recommend reliance on contracts employing shareholders as nonofficers to achieve shareholder employment security in states with statutes similar to Missouri's.29

25. See, e.g., Minter v. Tootle-Campbell Dry Goods Co., 187 Mo. App. 16, 173 S.W. 4 (K.C. 1915) (arrangement under which employee was to report to work with the intention of working permanently held employment at will).
26. 409 S.W.2d at 695.
27. Id. at 694-95.
28. Although not discussed in Streett, it could be argued that if the bylaws of the corporation vest the directors with the exclusive power to elect the corporation's general manager, the board could not enter into any contract employing the general manager for life because to do so would impinge on the discretion of future boards of directors. This issue has not been resolved.
29. See, e.g., 1 F. O'Neal, supra note 2, § 6.10; Kessler, supra note 5, at 214-17. Professor O'Neal concludes:

The lawyer drafting an employment agreement usually should avoid describing the employment in terms of one of the elective corporate offices. In most instances, it will be preferable to hire the employee as general manager, sales manager, production supervisor, or an executive in some other nonstatutory position, prescribing his compensation in that capacity; and then provide that he will serve without additional compensation as a director if elected by the shareholders, and in any corporate office to which he is elected by the board of directors.

By avoiding reference to employment in terms of statutory officerships, the draftsman perhaps somewhat diminishes the risk that an agreement will be held to contravene a statute conferring management on the directors or a statute, or charter or bylaw clause providing for election of specified corporate officers annually by the directors.

1 F. O'Neal, supra, § 6.10. This advice is more exigent in Missouri than in states like New York, which allows election of an officer for a term longer than a year. N.Y. BUS. CORP. LAW § 715(c) (McKinney 1963). One commentator points out that if the certificate of incorporation permits election of officers by the shareholders, a shareholder agreement binding the parties to keep named individuals in office should be enforceable because it does not impermissibly interfere with board powers. See Kessler, supra, at 215. See also Miller v. Vanderlip, 285 N.Y. 116, 33 N.E.2d Published by University of Missouri School of Law Scholarship Repository, 1982
Although the courts recognize that a corporation may enter into a long-term employment contract with a nonofficer employee, they are reluctant to find authority in a corporate officer or other corporate representative to bind the corporation to such a contract.\(^{30}\) Thus, the Missouri judiciary has held that there is no inherent power in the president of a corporate employer to enter into a contract to install an individual as overall general manager of the corporation's business.\(^{31}\) In the absence of express authority from either a clearly worded bylaw or resolution of the board of directors, the courts generally have held that corporate officers or agents do not have inherent authority to hire employees for life.\(^{32}\)

The second problem with the long-term employment contract is that the Missouri courts will not specifically enforce employment contracts.\(^{33}\) Thus, the discharged minority shareholder would be relegated to an action at law for breach of contract.\(^{34}\) Because the damages the employee will receive consist solely of the discounted value of his salary for the contract's remaining term, minus what he can be reasonably expected to earn from other employment during the interval, the minority shareholder probably will be in worse financial condition than if he were not removed by the corporation.\(^{35}\)

\(^{30}\) 1 F. O'NEAL, supra note 2, § 6.07. For a discussion of New York cases invalidating employment contracts for lack of authority in the person negotiating and executing them on behalf of the corporation, see de Capriles, Business Organization, 34 N.Y.U. L. REV. 337, 350 (1959). As one New York court has pointed out, contracts for life employment are so unusual that they are usually condemned as unauthorized by the corporation. Heaman v. E.N. Rowell Co., 261 N.Y. 229, 231, 185 N.E. 83, 84 (1933).

\(^{31}\) I.L. Parks v. Midland Ford Tractor Co., 416 S.W.2d 22 (Mo. App., St. L. 1967).


\(^{33}\) Richardson v. Ozark Airlines, Inc., 270 S.W.2d 8 (Mo. 1954). But see Jones v. Williams, 139 Mo. 1, 39 S.W. 486 (1897) (contract to buy stock in consideration for services as editor and manager held not mere personal contract for services, but enforceable in equity).

\(^{34}\) MO. REV. STAT. § 351.365 (1978) provides that removal by the board of directors of officers and agents elected or appointed by the board shall be without prejudice to any contract rights of the person removed. N.Y. BUS. CORP. LAW § 716(a)-(b) (McKinney 1963) is similar. Generally, an officer must be discharged by action signifying the intention of the body authorized to elect or appoint him that he shall no longer hold office. Kiel v. Fred Medart Mfg. Co., 46 S.W.2d 934 (Mo. App., St. L. 1932).

\(^{35}\) See Zammit, supra note 23, at 488.

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important, perhaps, is the lack of protection of the shareholder’s vital interest in preserving his role in the management of the business. Damages may not provide adequate relief to a shareholder-employee who has staked his future on a permanent relationship with the corporation.\(^{36}\)

36. 1 F. O’NEAL, supra note 2, § 6.05. A potential device for avoiding the rule against specific enforcement of employment contracts was suggested by the New York Court of Appeals in Staklinski v. Pyramid Elec. Co., 6 N.Y.2d 159, 160 N.E.2d 78, 188 N.Y.S.2d 541 (1959). In this case, a long-term employment contract included a clause providing for arbitration of any dispute arising out of the contract. A dispute subsequently arose between the directors and the employee, resulting in an arbitrator’s award specifically enforcing the contract. The court upheld the award, concluding that “[t]here is no controlling public policy which voids an arbitration agreement like this one and the courts are not licensed to announce a new public policy to fit the supposed necessities of the case.”\(^{36}\) Id. at 164, 160 N.E.2d at 80, 188 N.Y.S.2d at 543.

Staklinski rarely has been followed outside New York and has been widely criticized by the commentators. See, e.g., Comment, Judicial Enforcement of Arbitration Awards Requiring Reinstatement of Employees, 55 NW. U.L. REV. 615 (1960); Arbitration and Award—Enforcement—Award Reinstating Corporation’s Executive is Specifically Enforceable, 73 HARV. L. REV. 776 (1960). The dissent had the following reservations:

An arbitrator’s award of specific performance of a contract for personal services directing the issuance of a mandatory injunction against a foreign employer in behalf of a nonresident employee who has been wrongfully discharged is without precedent and violates settled principles of equity. In such a situation, the courts of this State are not bound to uphold an arbitration award that offends established principles of law and public policy.

6 N.Y.2d at 164, 160 N.E.2d at 80, 188 N.Y.S.2d at 543 (Burke, J., dissenting). When an award has public policy ramifications beyond the limits of the private dispute, courts generally hold that the award must yield to laws of general applicability. See Board of Trustees v. Cook County College Teachers Union, 74 Ill. 2d 412, 386 N.E.2d 47 (1979); 73 HARV. L. REV., supra, at 778.

Prior to its enactment of the Uniform Arbitration Act in 1980, Missouri provided that equity courts retained authority over arbitration awards. MO. REV. STAT. § 435.240 (1978). A similar Michigan statute was construed to mean that an equity court could vacate an award if the same decision could not have been reached by that court. Kearney v. Washtenaw Mut. Fire Ins. Co., 126 Mich. 246, 85 N.W. 733 (1901). Missouri’s new arbitration act, however, states that “the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.” MO. REV. STAT. § 435.405.1(5) (Cum. Supp. 1981). This significant change in the law may prompt some to argue that an arbitration award reinstating a corporation’s executive should be specifically enforceable in Missouri. Yet, the identical provision was present in Board of Trustees, in which the Illinois Supreme Court nevertheless invalidated the award because it contravened paramount considerations of public policy. See 74 Ill. 2d at 420, 386 N.E.2d at 53 (interpreting ILL. REV. STAT. ch. 10, § 112 (a) (5) (1975)).

Even if a court could specifically enforce arbitration awards requiring reinstatement...
Another objection to the long-term employment contract as a device for assuring the shareholder-employee tenure and status is that an employment contract probably cannot prevent the employee's removal from a particular corporate office.\textsuperscript{37} Neither could the contract protect the shareholder-employee against changes in his duties or locale assignments, lack of cooperation, or other annoyances that the majority shareholders may concoct to make his job unpleasant.\textsuperscript{38}

ment of employees, a contract clause providing for arbitration cannot solve other inherent problems associated with long-term contracts. First, the arbitrator may award damages rather than specifically enforce the contract. Second, he may find for the corporate employer. Third, the arbitration process is often time-consuming. Indeed, a minority shareholder-employee cannot be assured of long-term employment and status unless he possesses the control required to prevent the very attempt to remove him.\textsuperscript{37}


\textsuperscript{38} See 1 F. O'NEAL, \textit{supra} note 2, \textsection 6.04. The contract might contain provisions for severance pay or liquidated damages in the event of breach by the corporation or provisions obligating the corporation to purchase the employee's stock or give him a lifetime pension if it does not renew the contract at the end of its term. \textit{See} B & B Equip. Co. v. Bowen, 581 S.W.2d 80 (Mo. App., W.D. 1979). For a list of precautions that may strengthen an employment agreement, see 1 F. O'NEAL, \textit{supra}, \textsection 6.13.

Both Professors Hornstein and Kessler discuss what an employment contract should contain. \textit{See} G. HORNSTEIN, \textit{supra} note 15, \textsection 519; Kessler, \textit{supra} note 5, at 191-210. While Professor Hornstein stresses that the employment contract should be "definite as to duration of employment, duties, and compensation," G. HORNSTEIN, \textit{supra}, \textsection 519, Professor Kessler includes the following checklist of provisions that should be included in the contract:

1. Term of employment;
2. Employee duties, including time to be devoted (including outside activities to be permitted), and possibly who can prescribe place for performance;
3. Employee powers, and possibly who can fix, and employee liability for exercise of powers beyond those permitted;
4. Compensation, including fringe benefits, pension and stock purchase rights, if any, and continuation of wages to surviving spouse, or on disability, if agreed upon;
5. Reimbursement of expenses, and other "perks" (perquisites) including, of course, vacations;
6. Restrictive covenants against competition during and after employment, including nondisclosure of trade and business secrets;
7. Termination of employment, conditions for, who has power to terminate, and rights on wrongful termination;
8. Provisions for renewal or extension, if any have been agreed upon;
9. Provisions for resolution of disputes, if any have been agreed upon (\textit{e.g.}, arbitration);
B. Shareholder Agreements

In lieu of or in addition to a long-term employment contract, the minority shareholder may seek promises from other shareholders to maintain him in corporate office at a specified salary for a designated period of years, for as long as he owns stock in the corporation, or even for life. This device, although extremely valuable in other jurisdictions, is virtually useless in Missouri because its courts invalidate shareholder agreements promising corporate office.

The two most celebrated decisions in the shareholder agreement area are from New York and Illinois. In the first landmark case, Clark v. Dodge, an agreement between the corporation’s two shareholders provided that Dodge during his lifetime and, after his death, a trustee to be appointed by his will, would so vote his stock and so vote as a director that the plaintiff (a) should continue to be a director of Bell & Company, Inc. and (b) should continue as its general manager so long as he should be "faithful, efficient, and competent;" (c) should during his life receive one-fourth of the net income of the corporations either by way of salary or dividends; and (d) that no unreasonable or incommensurate salaries should be paid to other officers or agents which would so reduce the net income as materially to affect Clark’s profits. Although provisions (b), (c), and (d) impinged on the shareholders’ discretion as directors, the agreement was specifically enforced, apparently on two grounds. First, there was “no damage suffered by or threatened to anybody.” Second, the invasion of the powers of the board of directors was “so slight as to be negligible,” and there was “no attempt to sterilize the board.” The court stressed, however, that all the shareholders were parties to the agreement.

In Galler v. Galler, a minority shareholder sued in equity for an account-
ing and for specific performance of a shareholder agreement of unlimited duration that provided for the continued election of certain persons for specified offices, for a mandatory stated dividend policy, and for salary continuation. In holding that the shareholder agreement was enforceable, the court concluded that when "no injury to a minority interest appears, no fraud or apparent injury to the public or creditors is present, and no clearly prohibitory statutory language is violated, we can see no valid reason for precluding the parties from reaching any arrangements concerning the management of the corporation which are agreeable to all."\textsuperscript{48}

States such as New York and Illinois thus have recognized the special need to protect the reasonable expectations of persons who acquire an interest in a close corporation and have enacted statutes expressly permitting the shareholders to impinge on the board's discretion.\textsuperscript{49} Although the Missouri Supreme Court in \textit{Royster v. Baker}\textsuperscript{50} held that it was not wrongful "for the stockholders of a corporation, who control or own a majority of the stock, to agree among themselves to vote their stock a certain way"\textsuperscript{51} (the so-called shareholder "pooling agreement")\textsuperscript{52}, the Springfield Court of Appeals, in \textit{Gonseth v. K & K Oil Co.}\textsuperscript{53} has since emphasized that an agreement which assumes to change the shareholders' right to participate in the control of the corporation or which undertakes to divest the board of directors of management of the corporation's property and business or deprive the directors of the right to elect officers will not be enforced and cannot support an action.\textsuperscript{54}

Ironically, the major advantage of a shareholder pooling agreement, which is permitted in Missouri, also constitutes its primary deficiency. As Professor O'Neal succinctly points out, a pooling agreement can be beneficial in states in which shareholder agreements designating the corporate officers will not be enforced, by providing "for the election of directors who can be expected to maintain the desired persons in office."\textsuperscript{55} The deficiency is that, although the directors can be expected to maintain the minority shareholder in office, they cannot be required to,\textsuperscript{56} and no matter how sincere the parties' intentions are when they first enter into the agreement, a change of heart is always possible. Thus, once elected, a majority of the board of directors can at any time vote to remove the shareholder-employee from office.\textsuperscript{57}

Similarly, the directors need not vote to re-elect the minority shareholder

\textsuperscript{48} Id. at 30, 203 N.E.2d at 585.
\textsuperscript{49} See notes 102-06 & 119-25 and accompanying text infra.
\textsuperscript{50} 365 S.W.2d 496 (Mo. 1963).
\textsuperscript{51} Id. at 500.
\textsuperscript{52} G. HORNSTEIN, supra note 15, § 158.
\textsuperscript{53} 439 S.W.2d 18 (Mo. App., Spr. 1969).
\textsuperscript{54} Id. at 26.
\textsuperscript{55} 1 F. O'Neal, supra note 2, § 6.14.
\textsuperscript{56} Gonseth v. K & K Oil Co., 439 S.W.2d 18, 26 (Mo. App., Spr. 1969).
\textsuperscript{57} MO. REV. STAT. § 351.365 (1978).
when his term in office expires. 58 Although the minority shareholder cannot force the other directors to keep him in office, the other directors presumably can compel the minority shareholder to elect them as directors, under Royster.

Several other drawbacks to a pooling agreement in Missouri can best be illustrated by postulating a common scenario. \( A, B, \) and \( C \) form a corporation, provide for a three-man board of directors, and divide its 100 shares as follows: 50 to \( A \), 25 to \( B \), and 25 to \( C \). If \( C \) wants to assure himself long-term employment through a pooling agreement, \( A \) would have to be a party to elect enough favorable directors to the board to keep \( C \) in office, even with mandatory cumulative voting. 59 If all three join in the agreement, appointing \( A, B, \) and \( C \) as directors, and if \( A \) or \( B \) dies in office, unless otherwise provided in the articles or bylaws of the corporation, 60 the vacancy on the board must be filled by a majority of the directors then in office. If the remaining director and \( C \) each desire a different person to fill the vacancy, one or both would probably invoke Missouri’s provisional director statute. 61 It provides that if a corporation “has an even number of directors who are equally divided and cannot agree as to the management of its affairs” such that its business cannot be conducted profitably or such that its property and business might be impaired or lost, a court may appoint an impartial provisional director. 62 \( C \)’s future fate as an officer would thus depend on the provisional director. The situation would be even more drastic if only \( B \) and \( C \) entered into the pooling agreement, because they could appoint only one

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59. Id. § 351.245 (3) (1978) provides for cumulative voting. The formula for determining how many shares must be voted to secure representation on the board is as follows:

\[
X = \frac{ac}{b} + 1
\]

\( a \) = number of shares voting
\( b \) = number of directors to be elected
\( c \) = number of directors desired to be elected
\( X \) = number of shares necessary to elect the number of directors desired to be elected

\( C \) would need to elect two favorable directors in order to have control of the three-man board. Under the above formula, \( C \) would need 51 shares to elect two directors. Because \( B \)'s and \( C \)'s combined shares total only 50, they could elect only one director between them. Similarly, \( A \) alone could elect only one director. A provisional director probably would be appointed by the court to fill the board vacancy, unless \( A, B, \) and \( C \) could agree on a third director. See notes 60-62 and accompanying text infra.

61. Id. § 351.323 (1978).
62. Id.
of them as a director. If they elected B as their representative on the board and if B died during office, A could appoint his own nominee to fill the vacancy. Finally, the pre-emptive right of a shareholder to acquire additional shares may be limited or denied by the articles of incorporation. Therefore, if the articles deny the shareholders pre-emptive rights, A and B could vote together to issue enough shares to a nominee that would enable them to oust C as a director.

C. The Irrevocable Proxy

Instead of entering into a pooling agreement, shareholders may agree to surrender the power to vote their own shares and transfer that power, in the form of an irrevocable proxy, to one or more of the parties to the agreement or to someone not a party to the agreement. A proxy is simply an authorization given by a shareholder to another to vote his shares. In Missouri, the use of proxies is permitted by statute:

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power of attorney. The interest with which it is coupled need not be an interest in the shares themselves.

Professor O'Neal points out that an irrevocable proxy "may be advantageous in a voting agreement to facilitate the carrying out of the agreement and to avoid the possibility that a suit for specific performance, with the attendant uncertainties and delays, will be necessary to implement decisions reached under the agreement." At the same time, however, he stresses that a provision for an irrevocable proxy "opens up the agreement to grave

63. See note 59 supra.
64. Under MO. REV. STAT. § 351.320 (Cum. Supp. 1981), a "sole remaining director" may fill a board vacancy. This example assumes that the board originally consisted of only two directors, because B and C together with 50 shares could elect only one director and A with his 50 shares could also elect only one director. If a provisional director had been appointed by the court to fill the original board vacancy, his approval would have been necessary for A's nominee to fill the vacancy created by B's death. If the provisional director and A disagreed on who should fill the vacancy, the court presumably could appoint an additional provisional director.
65. Id. § 351.305 (1978).
66. For example, if the corporation issued 100 shares to A's and B's nominee D, C would still need 51 voting shares to elect even one director. Even if B voted his shares with C, their total number of shares would only be 50. See note 59 supra.
67. 1 F. O'NEAL, supra note 2, § 5.36.
68. MO. REV. STAT. § 351.245.4 (1978). Many other jurisdictions have similar statutes. 1 F. O'NEAL, supra note 2, § 5.37.
69. 1 F. O'NEAL, supra note 2, § 5.36.
One of those dangers results from the Missouri provision that makes all proxies revocable except those "coupled with an interest," a concept that Professor O'Neal describes as "narrowly restrictive." An irrevocable proxy thus may not protect a minority shareholder's long-term employment and status. In addition, because a proxy arrangement is generally considered a special form of agency, the courts usually apply agency rules to proxies. Courts normally assume that a proxy is revoked automatically by the death or incapacity of either the maker or holder of the proxy. In the above hypothetical, if B and C had entered into an agreement conferring on C an irrevocable proxy to vote B's shares, on B's death, C could not elect even a single director. 

The greatest deficiency of the irrevocable proxy is that it can accomplish no more than a pooling agreement alone. According to Professor O'Neal, "A shareholders' agreement setting up irrevocable proxies has the same effect ultimately as a pooling agreement without proxies, assuming the latter will be specifically enforced; and therefore considerations governing the validity of the two types of contracts should be the same."

**D. The Voting Trust**

A voting trust is a device whereby two or more persons owning stock with voting powers transfer the voting rights to a trustee or trustees in whom voting rights of all depositors in the trust are pooled for, among other things, the election of directors. It differs from an irrevocable proxy because it does not make the stockholder or the trustee the other's agent. It is possible, however, for a participating shareholder to serve as trustee. Voting trusts are expressly authorized by statute in Missouri, with no limit on their duration.

The major drawback to the voting trust approach is the same as in the pooling agreement and irrevocable proxy approaches: none can fully insure a minority shareholder long-term employment. Because all a voting trust
can guarantee is the election of specified directors, who are expected to keep
the shareholder-employee in office, the device cannot prevent a disgruntled
director from voting to remove the minority shareholder from office or from
not voting to re-elect him. Thus, in Missouri, the ultimate effect of a voting
trust is the same as that of a pooling agreement. 80

E. Class Voting

Class voting for directors can assure minority shareholders in a close
corporation representation on the board of directors. Under class voting,
the corporation sets up two or more classes of stock, providing that each class
can elect a specified number or a specified percentage of the directors. The
corporation then issues each class of stock to a different shareholder or group
of shareholders. 81 For example, a minority shareholder could be given a class
of stock enabling him to elect two of the three directors.

Although this approach appears to be the most effective way to assure
a minority shareholder long-term employment with the corporation, 82 it is
not often used in this manner. "[T]he other participants, particularly if they
have put up the lion’s share of the capital for the enterprise, will not be willing
to relinquish all control to a single participant, no matter how valuable he
may be to the enterprise." 83 Furthermore, although the Missouri statutes
appear to permit such arrangements, 84 classification of shares has been found
unlawful in Missouri as conflicting with the constitutional right to vote
cumulatively. 85 In any event, the likelihood of class voting ever being used
to give a minority shareholder control over the board is small.

F. High Vote and Quorum Requirements

The final suggested approach for assuring a minority shareholder long-
term employment and status is to require in the articles of incorporation or
bylaws unanimity or a high vote of the directors for selecting or removing
officers and key employees and for changing their compensation or duties, 86

80. See notes 55-58 and accompanying text supra.
81. O’Neal, supra note 2, at 881.
82. Because the minority shareholder would control the board of directors,
he could re-elect himself as an officer at each election of officers. This example
assumes that the minority shareholder elected friendly directors who would not later
become hostile, as a fellow shareholder might become.
83. 1 F. O’NEAL, supra note 2, § 6.04.
for this position beyond MO. CONST. art. XI, § 6, and efforts to obtain clarification
of its legal basis from the Attorney General have thus far been unsuccessful.
See W. PAINTER, supra note 18, at 172 n.247. It is perhaps significant that the pro-
vision in the Missouri statute allowing class voting was added in 1965, one year
after the Attorney General’s Opinion was released. See MO. REV. STAT. § 351.315.2
(1978).
86. See 1 F. O’NEAL, supra note 2, § 6.16.

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or a high or unanimous quorum for board meetings the purpose of which is to consider removal. In the latter case, the minority shareholder’s absence from the meeting would defeat any attempt to remove him from office. The use of either or both alternatives is expressly sanctioned under the Missouri statute. For either of these devices to be successful, the minority shareholder must be represented on the board of directors. This can be accomplished by one or more of the devices previously discussed, i.e., a pooling agreement, cumulative voting, a voting trust, or class voting.

Article of incorporation or bylaw provisions requiring unanimity or a high vote of the directors for the selection or removal of officers and key employees carry a number of limitations and disadvantages that Professor O’Neal has summarized in his treatise:

In the first place, they give a veto and no more; they do not enable minority shareholders to affirmatively determine corporate policy and go forward with the execution of that policy. Secondly, they deprive the corporation of flexibility which it may need in order to adjust to unexpected business situations. At the time an enterprise is being incorporated, the draftsman cannot foresee changes in policy and methods of operation which may in the future become disadvantageous. Thirdly, and perhaps most important, even if all the shareholders in a particular corporation can be expected to act in good faith, the presence of veto arrangements increases the chance that a deadlock will occur in the corporation’s management which will paralyze the corporation and render it unable to conduct its affairs. Finally, veto provisions may place an unscrupulous shareholder in a position to extort (as a condition of approval of beneficial corporate action) unfair concessions from the other shareholders.

Several problems are also associated with requiring a high or unanimous quorum for board meetings the purpose of which is to consider removal of officers or employees. One practical problem is that, unless the quorum requirement is buttressed with a rather strict rule requiring notice of the business to be conducted at each meeting, the minority shareholder must avoid every shareholders’ or board meeting in order to prevent being caught unaware by an unexpected motion to discharge him. This may not be possible in Missouri because the statute provides that “[n]either the business to be transacted at, nor the purpose of, any regular meeting of the board of directors need be specified in the notice or waiver of notice of the meeting.”

Furthermore, although the Missouri judiciary has not ruled on the issue, some state courts have held that the directors have a duty to attend board meetings and may not stay away in order to prevent action to which they

87. See Zammit, supra note 23, at 491.
89. 1 F. O’NEAL, supra note 2, § 4.30.
90. Id. § 4.22.
Thus, in Gearing v. Kelley, a New York Court of Appeals decision, a director deliberately refrained from attending a board of directors meeting to prevent the other two directors from filling a board vacancy with their own nominee. The court held that the absent director, as well as a shareholder who approved of and aided his actions, who together owned fifty percent of the corporation’s stock, were estopped from asserting that the filling of the vacancy by the board was invalid because a quorum of directors was not present.

Whether the New York view would prevail in Missouri is uncertain. Although the Kansas City Court of Appeals in Hall v. Hall held that a fifty percent shareholder had no duty to and could not be compelled to attend a shareholders’ meeting, the court may have implied that a director has a fiduciary duty to attend directors’ meetings:

The holder of shares is under no obligation whatever to the corporation other than to make full payment of the consideration for which the shares are issued. . . . As participation by a shareholder in management of corporate affairs is voluntary, it necessarily follows that no shareholder may be compelled to attend or participate in shareholders’ meetings. Any different rule would contradict the distinction which separates the corporate existence from the identity of its shareholders and which vests management responsibilities in the directors.

III. STATUTORY ALTERNATIVES

The failure of each of the above approaches to assuring a minority shareholder long-term employment stems from the view of the Missouri courts that shareholder agreements which violate the statutory norms conferring corporate management and the right to elect and remove corporate officers on the board of directors are against public policy. Such agreements, however, would not be against the public policy of the state if the Missouri legislature enacted statutes that expressly permit the shareholders of a closely held corporation to unanimously agree to confer some or all of the corporate management on the shareholders. Professor Hornstein summarizes the public policy argument as follows:

At what point does a shareholders’ agreement violate “public policy” and become void? Concededly “public policy” is an uncertain guide. . . . Yet, public policy must be ascertained and at two levels: legislative and judicial. The former, if it can be ascertained, prevails. Judicial views as to public policy, no matter how firmly established, must give way when the legislature enacts a contrary rule. Under

92. 1 F. O’Neal, supra note 2, ¶ 4.22.
94. Id. at 204, 182 N.E.2d at 392, 227 N.Y.S.2d at 898.
95. 506 S.W.2d 42 (Mo. App., K.C. 1974).
96. Id. at 45 (emphasis added).

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EMPLOYMENT IN CLOSE CORPORATIONS

our legal system the legislature is the ultimate spokesman on public policy. 97

It is thus imperative that Missouri join the growing trend among the states and enact legislation designed to recognize the special needs of closely held corporations. The close corporation legislation passed in other jurisdictions follows two patterns: (1) close corporation provisions spread throughout the corporation statute, commonly called "unified" statutes, or (2) a separate chapter of the corporation statute, commonly called "integrated" close corporation statutes. 98 Without adopting such relatively progressive legislation, Missouri has in the past provided that a corporation need have only one director if so stated in the articles of incorporation, 99 permitted informal action by shareholders and directors in lieu of a meeting, in effect allowing one-man corporations, 100 and authorized the courts to appoint provisional directors to break deadlocks. 101 The time is now for the Missouri legislature to take the next step on the path of corporate law reform by enacting special provisions that will protect the reasonable expectations of persons who acquire an interest in a close corporation.

A. The Unified Approach

The unified approach is best exemplified by the New York Business Corporation Law. This statute contains numerous provisions designed to meet the needs of close corporations. The primary section permits, under certain specified conditions, a provision in the certificate of incorporation otherwise prohibited by law because it improperly restricts the board in its management of the business of the corporation, or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them, all or any part of such management otherwise within the authority of the board under this chapter. 102

In addition, the provision will be valid "only so long as no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association." 103 The provision may be removed only on the "vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the certificate of incorporation for that purpose." 104


98. W. PAINTER, supra note 18, at 159-63. See also O’Neal, supra note 2, at 873-81.


100. Id. §§ 351.273, .340.

101. Id. § 351.323. See notes 61 & 62 and accompanying text supra.


104. Id. § 620(d) (McKinney 1963).
Under the New York statute, the shareholders of a New York close corporation could thus provide in the articles of incorporation for the election of officers by the shareholders because such action is "otherwise within the authority of the board," if all the shareholders of the corporation agreed to include the provision.\textsuperscript{105} The agreement to elect the named persons as officers for the entire term of the agreement would not be invalid as against public policy because it would only bind the participants in their shareholder capacities.\textsuperscript{106} Furthermore, the articles of incorporation could require shareholder unanimity for officer election and removal. Such a clause would give the minority shareholder-employee the control necessary to veto any attempt to remove him. He would then not have to be concerned about the

\textsuperscript{105} Id. § 620(b) (McKinney 1963 & Cum. Supp. 1981-1982).
\textsuperscript{106} R. KESSLER, supra note 23, § 8.05. Professor Kessler has drafted the following example of a provision in the articles of incorporation that would best assure a minority shareholder long-term employment and status under § 620(b):

\textit{Officers}

(1) (a) The corporation shall have the following four [or three, or two] officers: president, vice-president, treasurer, and secretary.

(b) A suitable provision providing for the election and removal of such officers only by the shareholders, and not by the directors, will be inserted in the certificate of incorporation. A provision requiring consent of all the shareholders for the election and removal of all such officers shall also be included in the certificate of incorporation.

(2) The parties shall so vote their shares that the following named persons shall be elected to the offices following their names, and shall remain as such, during the entire term of the agreement, except as otherwise in this agreement provided, at the annual salaries respectively set forth:

\begin{tabular}{lll}
(name) & (office) & \$(annual salary) \\
\hline
\end{tabular}

\ldots

Said salaries shall be in addition to any salaries paid to said officers as employees.

There shall be no change in any of the aforesaid salaries, nor in any of the duties of said officers, during the term of the agreement.

(3) Except as otherwise in this agreement provided, or required by law, no officer shall be removed, with or without cause, for any reason whatsoever, during the term of this agreement.

R. KESSLER, supra, § 8.07.

Perhaps Professor Kessler was too zealous in his protection of the minority shareholder's interests by including the phrase "with or without cause" in paragraph (3) of the above provision. As Professor Kessler himself recognized in a later work, "[a] tight protection may mean that his co-participants are saddled with an indolent or even disloyal participant of whom they cannot rid themselves." Kessler, supra note 5, at 212. He may have had in mind N. Y. BUS. CORP. LAW § 716(c) (McKinney 1963), which allows the attorney general or the holders of 10\% of the outstanding shares to sue for removal.
EMPLOYMENT IN CLOSE CORPORATIONS

public policy against specific enforcement of employment contracts because he could never be removed from office in the first place.

B. The Integrated Approach

The integrated close corporation statute is the subject of the American Bar Association Committee on Corporate Law's Proposed Statutory Close Corporation Supplement to the Model Business Corporation Act (the "Supplement").

The Model Business Corporation Act originally contained several liberal provisions for close corporations. As the introductory comment to the Supplement points out, its intent is to build on this close corporation legislation by providing a model statute "for those states that wish to enact special provisions that incorporate the best available ideas on the special needs of close corporation shareholders." The Supplement assumes that the state's existing legislation contains provisions authorizing supermajority voting requirements, shareholder voting agreements, voting trusts, stock transfer restrictions, class voting for the election of directors and for the approval of fundamental structural changes, and dissenters' rights similar to sections 80 and 81 of the Model Business Corporation Act. Except for a provision authorizing shareholder voting agreements, the Missouri statutes contain sections permitting each of these shareholder activities. Furthermore, the absence of a provision expressly authorizing shareholder voting agreements would not be fatal to the enactment of the Supplement in Missouri because the Missouri Supreme Court has specifically upheld such agreements. Thus, the Supplement could be easily incorporated into the existing Missouri statutes.

Section 11 of the Supplement, "Agreements Among Shareholders," is designed to give "legal sanction to the special needs of the shareholders of . . . [close] corporations." It provides:

(a) The shareholders of a statutory close corporation may by unanimous action enter into one or more written agreements to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relations among the shareholders of the corporation.

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107. 37 BUS. LAW., supra note 1.
108. These provisions are summarized in MODEL BUSINESS CORPORATION ACT ANNOTATED § 35, ¶ 2, comment (2d ed. 1969).
109. 37 BUS. LAW., supra note 1, at 270-76.
110. Id. at 271.
111. Id. at 270.
114. 37 BUS. LAW., supra note 1, at 291.
(b) Any agreement authorized by this section shall be valid and enforceable according to its terms notwithstanding the elimination of a board of directors, any restriction on the discretion or powers of the board of directors, or any proxy or weighted voting rights given to directors and notwithstanding that the effect of the agreement is to treat the corporation as if it were a partnership or that the arrangement of the relations among the shareholders or between the shareholders and the corporation would otherwise be appropriate only among partners.

. . . .

(d) An election not to have a board of directors in an agreement authorized by this section shall not be valid unless the articles of incorporation contain a statement to that effect . . . .

. . . .

(f) A shareholder agreement authorized by this section shall not be amended except by the unanimous written consent of the shareholders unless otherwise provided in the agreement.

. . . .

(h) This section shall not prohibit any other agreement among two or more shareholders not otherwise prohibited by law.115

The official comment to section 11 states that it would authorize the shareholders of a statutory close corporation to enter into any agreement regulating the business of the corporation and their relationship to one another, including provisions specifying the directors and officers of the corporation and the terms and conditions of the employment of any officer or employee by the corporation, regardless of the length of the period of employment.116 The only prerequisites are that all of the shareholders of the corporation must be parties to the agreement and that if the agreement provides that the corporation shall have no board of directors, the articles of incorporation must contain appropriate language to that effect.117 Section 11 is essentially derived from similar provisions in the Maryland and Texas close corporation statutes.118

Like the Supplement, the recently enacted Illinois Close Corporation Act119 contains a number of specific provisions designed to allow the shareholders to manage a close corporation. For example, the Illinois statute provides that all of the shareholders of a close corporation may enter into a written agreement concerning any phase of the affairs of the corporation, including the management of the corporation, the officers and directors of

115. Id. at 290-91.
116. Id. at 291.
117. Id.
118. Id. at 292. See MD. CORPS. & ASS'NS CODE ANN. §§ 4-101 to -603 (1975); TEX. BUS. CORP. ACT ANN. art. 12.01-.54 (Vernon Cum. Supp. 1982).
EMPLOYMENT IN CLOSE CORPORATIONS

the corporation, and employment of shareholders by the corporation.\textsuperscript{120} Furthermore, if the business of the close corporation is managed by a board of directors, the Illinois statute provides that an agreement among all of the shareholders is not invalid because it relates to the conduct of the affairs of the corporation in a manner that interferes with the discretion of the board of directors.\textsuperscript{121} The statute also provides that no written agreement among the shareholders of a close corporation, whether embodied in the articles of incorporation or bylaws of the corporation or in any separate agreement and which relates to any phase of the affairs of the corporation, including the management of its business or the division of its profits, shall be invalid as an attempt by the parties thereto to treat the corporation like a partnership.\textsuperscript{122} Whether this latter provision applies to agreements among any two, a majority, or all of the shareholders is unclear.\textsuperscript{123} Another section of the Illinois statute permits a close corporation to provide in its articles of incorporation "that the business of the corporation shall be managed by the shareholders of the corporation rather than by a board of directors."\textsuperscript{124} Such a provision may be inserted in the articles of incorporation by amendment if all of the shareholders authorize it and may be deleted only on the approval of holders of record of at least two-thirds of all the outstanding shares of each class of the corporation.\textsuperscript{125} Statutes similar to the Illinois Close Corporation Act have been enacted in Delaware,\textsuperscript{126} Pennsylvania,\textsuperscript{127} Kansas,\textsuperscript{128} and Arizona.\textsuperscript{129}

The integrated close corporation statute, like the unified statute discussed above, constitutes a device far superior to the present state of the Missouri law for assuring a minority shareholder long-term employment and status within a close corporation. Because the shareholders would, in effect, run the company, the public policy objections to employing shareholders for life are invalid. Whether the Missouri legislature would adopt the Supplement, an Illinois-type statute, or a combination of the two, an integrated close corporation statute would provide the minority shareholder with an excellent tool for protecting his reasonable expectation of permanent participation in management and employment with the company.

\textsuperscript{120} Id. § 1211(a).
\textsuperscript{121} Id. § 1211(c). The Delaware statute only requires that a majority of a close corporation’s outstanding voting stock join in such an agreement. DEL. CODE ANN. tit. 8, § 350 (1975).
\textsuperscript{125} Id. § 1212(b). The Delaware statute requires only a majority vote of the shareholders to delete such provisions. DEL. CODE ANN. tit. 8, § 351 (1975).
\textsuperscript{126} DEL. CODE ANN. tit. 8, §§ 341-356 (1975).
\textsuperscript{128} KAN. STAT. ANN. §§ 17-7201 to -7216 (1981).
\textsuperscript{129} ARIZ. REV. STAT. ANN. §§ 10-201 to -218 (1977).
IV. CONCLUSION

The assurance of long-term employment and status is primary among an investor's concerns in deciding whether to purchase a minority interest in a closely held corporation. Usually forsaking other employment, the minority shareholder may reasonably expect that, because he is investing a substantial portion of his savings in the enterprise, he should be able to participate in the management of and be permanently employed by the company. Nevertheless, an agreement promising permanent employment or a particular corporate office will not be specifically enforced under present Missouri law.

Outside Missouri, a wealth of statutory and common law has developed giving legal cognizance to the special needs of the shareholders of closely held corporations. These cases and statutes recognize that long-term employment contracts are often necessary for the close corporation to obtain the type of executive or investor it needs. Thus, they legalize agreements among all of the shareholders, which agreements in the past have been considered against public policy as improperly impinging on the discretion of future boards of directors.

The need for legislative reform to protect the reasonable expectations of persons who acquire an interest in a Missouri close corporation is manifest. The challenge to the Missouri legislature is to join in the growing trend among the states and respond to this need.