

HOUSE No. 3033

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act making amendments to the Massachusetts Corporation Act - part two..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1.40 of chapter 156D is hereby further amended by striking out
2 the word “stock” in each place where it appears and inserting in place thereof the following
3 word:- shares.

4 SECTION 2. Section 2.05 of chapter 156D is hereby amended by striking out the word
5 “by-laws” in each place where it appears and inserting in place thereof the following word:-
6 bylaws.

7 SECTION 3. Section 2.05 of chapter 156D is hereby amended by striking out the word
8 "and" in line 19 and inserting in place thereof the following word:- or.

9 SECTION 4. Section 3.02 of chapter 156D is hereby amended by striking out the word
10 “stock” in each place where it appears and inserting in place thereof the following word:- shares.

11 SECTION 5. Clause (1) of subsection (a) of section 4.01 of chapter 156D is hereby
12 amended by striking out its text in its entirety and inserting in place thereof the following words:-

13 shall contain the word “corporation,” “incorporated,” “company” or “limited” or the abbreviation
14 “corp,” “inc,” “co,” or “ltd,” or words or abbreviations of like import in another language; and

15 SECTION 6. Section 6.02 of chapter 156D is hereby amended by striking out the word
16 “recision” in line 40, and inserting in place thereof the following word:- rescission.

17 SECTION 7. Section 6.23 of chapter 156D is hereby amended by striking out the words
18 "class of series" in line 9, and inserting in place thereof the following words:- class or series.

19 SECTION 8. Section 6.23 of chapter 156D is hereby amended by striking out the words
20 "with respect to distributions" in line 16, and inserting in place thereof the following words:-
21 with respect to a distribution.

22 SECTION 9. Section 6.23(b) of Chapter 156D is amended by deleting from the first
23 clause (1) thereof the word “authorized” and inserting in place thereof the following word: -
24 authorize

25 SECTION 10. Section 7.08 of chapter 156D is hereby amended by striking out the word
26 "stockholder" in line 17, and inserting in place thereof the following word:- shareholder.

27 SECTION 11. Section 7.08 of chapter 156D is hereby amended by striking out the word
28 "stockholder" in line 23, and inserting in place thereof the following word:- shareholder.

29 SECTION 12. Section 7.27(b) of Chapter 156D is deleted in its entirety and replaced by
30 the following:—

31 (b) If any provision of this chapter requires the affirmative vote of more than a majority
32 of all the votes entitled to be cast on a matter by any voting group, the articles of organization
33 may provide that action may be taken by the affirmative vote of a lesser proportion than the

34 chapter specifies, but not less than a majority of all the votes entitled to be cast on the matter by
35 the voting group.

36 SECTION 13, Section 7.44(b)(3) of Chapter 156D is deleted in its entirety and replaced
37 by the following:—

38 (3) the affirmative vote of a majority of all the votes entitled to be cast on the matter, not
39 including the votes cast by holders of shares owned by or voted under the control of a
40 shareholder or related person who has or had a beneficial financial interest in the act or omission
41 complained of or other interest therein that would reasonably be expected to exert an influence
42 on that shareholder's or related person's judgment if called upon to vote in the determination.

43 SECTION 14. Section 8.06 of chapter 156D is hereby amended by striking out the word
44 “stock” in line 38, and inserting in place thereof the following word:- shares.

45 SECTION 15. Section 8.06 of chapter 156D is hereby amended by striking out the word
46 “stock” in line 50, and inserting in place thereof the following word:- shares.

47 SECTION 16. Section 8.06 of chapter 156D is hereby amended by striking out the words
48 “shall, unless otherwise provided in the vote, shall become” lines 53-54, and inserting in place
49 thereof the following words:- shall, unless otherwise provided in the vote, become.

50 SECTION 17. Section 8.06 of chapter 156D is hereby amended by striking out the word
51 “effect” in line 111, and inserting in place thereof the following word:- affect.

52 SECTION 18. Sections 8.06(c)(1) and (2) are deleted in their entirety and replaced by the
53 following:—

54 (c) (1) Subsection (b) shall apply to every public corporation, whether or not notice of
55 an annual meeting of the public corporation has been given on or prior to the effective date of
56 this chapter, unless (i) the board of directors of the public corporation, or (ii) the holders of
57 shares of each class of stock outstanding holding the right to cast two-thirds of all the votes
58 entitled to be cast by the class, and the holders of two-thirds of the shares of each class of
59 otherwise nonvoting stock outstanding, each voting as a separate voting group, shall at a meeting
60 duly called for the purpose of the vote adopt a vote providing that the corporation elects to be
61 exempt from the provisions of subsection (b). Upon adoption of the vote, subsection (b) shall,
62 unless otherwise provided in the vote, become immediately ineffective with respect to such
63 public corporation and the provisions of section 8.05 shall become immediately effective with
64 respect to the corporation as soon as subsection (b) of this section is no longer effective.

65 (2) In the event that any public corporation shall so elect by vote of the board of directors
66 to be exempt pursuant to clause (1) the public corporation may at any time thereafter adopt a
67 vote of its board of directors electing to be subject to subsection (b). In the event that any public
68 corporation shall so elect by the shareholders to be exempt pursuant to clause (1) of this
69 subsection the public corporation may at any time thereafter by vote of the holders of the shares
70 of all classes of stock outstanding, voting as a single voting group, holding the right to cast two-
71 thirds of all the votes entitled to be cast by all classes, elect to be subject to the provisions of
72 subsection (b). Upon adoption of the vote, subsection (b), unless otherwise provided in the vote,
73 shall immediately become effective.

74 SECTION 19. Section 8.06(d) of Chapter 156D is deleted in its entirety and replaced by
75 the following:—

76 (d) Notwithstanding anything to the contrary in this chapter or in the articles of
77 organization or bylaws of any public corporation, in the case of directors of a public corporation
78 whose terms are staggered pursuant to subsection (b), shareholders may, by the vote of the
79 holders of shares having the right to cast a majority of all the votes entitled to be cast by the
80 holders of all classes of stock outstanding and entitled to vote in the election of directors, voting
81 as a single voting group, effect the removal of any director or directors or the entire board of
82 directors only for cause.

83 SECTION 20. Section 8.10 of chapter 156D is hereby amended by striking out the word
84 “by-laws” in line 12, and inserting in place thereof the following word:- bylaws.

85 SECTION 21. Section 8.32 of chapter 156D is hereby amended by striking out the words
86 “the obligation of a director of, the corporation” in line 3, and inserting in place thereof the
87 following words:- the obligation of, a director of the corporation.

88 SECTION 22. Section 8.31(d) of Chapter 156D is deleted in its entirety and replaced by
89 the following:—

90 (d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is
91 authorized, approved, or ratified if it receives the affirmative vote of a majority of all the votes
92 entitled to be cast on the matter entitled to be counted under this subsection. The votes of shares
93 owned by or voted under the control of a director who has a direct or indirect interest in the
94 transaction, and of shares owned by or voted under the control of an entity described in clause
95 (1) of subsection (b), may not be counted in a vote of shareholders to determine whether to
96 authorize, approve, or ratify a conflict of interest transaction under clause (2) of subsection (a).

97 SECTION 36. Section 8.45 of chapter 156D is hereby amended by striking out the words “clerk

98 or an assistant clerk” in line 6, and inserting in place thereof the following words:- secretary or
99 an assistant secretary.

100 SECTION 23. Section 8.54 of chapter 156D is hereby amended by striking out the words
101 “sections 8.51 or 8.51” in lines 19-20, and inserting in place thereof the following words:-
102 section 8.51.

103 SECTION 24. Section 8.58 of chapter 156D is hereby amended by striking out the words
104 "articles of incorporation" in line 20, and inserting in place thereof the following words:- articles
105 of organization.

106 SECTION 25. Section 8.58 of chapter 156D is hereby further amended by striking out
107 the words "clause (3) of subsection (a) of section 11.07" in line 24, and inserting in place thereof
108 the following words:- clause (4) of subsection (a) of section 11.07.

109 SECTION 26. Section 9.21 of chapter 156D is hereby amended by striking out the words
110 "subsection (c) of section 9.21" in line 28, and inserting in place thereof the following words:-
111 paragraph (3) of this section.

112 SECTION 27. Section 9.31 of chapter 156D is hereby amended by striking out the words
113 "section 10.22" in line 27, and inserting in place thereof the following words:- section 10.21.

114 SECTION 28. Section 9.31 of chapter 156D is hereby further amended by striking out
115 the words "plan of domestication" in line 30, and inserting in place thereof the following words:-
116 plan of nonprofit conversion.

117 SECTION 29. Section 9.31 of chapter 156D is hereby further amended by striking out
118 the words "section 9.31(c)" in line 35, and inserting in place thereof the following words:-
119 section 9.31(3).

120 SECTION 30. Section 9.52 of chapter 156D is hereby amended by striking out the words
121 "organizational documents" in lines 16-17, and inserting in place thereof the following words:-
122 organic documents.

123 SECTION 31. Section 9.52 of chapter 156D is hereby further amended by striking out
124 the words "plan of domestication" in line 24, and inserting in place thereof the following words:-
125 plan of conversion.

126 SECTION 32. Section 9.52 of chapter 156D is hereby further amended by striking out
127 the words "subsection (c) of this section" in line 29, and inserting in place thereof the following
128 words:- paragraph (3) of this section.

129 SECTION 33. Section 9.53 of chapter 156D is hereby amended by striking out the words
130 "any other desired provisions that section 2.02 subsection (b) of permits" in lines 34-35, and
131 inserting in place thereof the following words:- any other desired provisions that subsection (b)
132 of section 2.02 permits.

133 SECTION 34. Clause (5) of subsection (a) of section 9.55 of chapter 156D is hereby
134 amended by striking out the words "organizational document" in each place it appears and
135 inserting in place thereof the following words:- organic document.

136 SECTION 35. Section 11.01 of chapter 156D is hereby amended by striking out the
137 words "merger under a plan of merger" in line 9, and inserting in place thereof the following
138 word:- merge under a plan of merger.

139 SECTION 36. Section 11.04 of chapter 156D is hereby further amended by striking out
140 the words "subsection (c) of section 11.04" in lines 36-37, and inserting in place thereof the
141 following words:- paragraph (3) of this section.

142 SECTION 37. Section 11.04 of chapter 156D is hereby amended by striking out the
143 words "article of organization" in lines 38-39, and inserting in place thereof the following
144 words:- articles of organization.

145 SECTION 38. Section 11.04 of chapter 156D is hereby amended by striking out the word
146 "stock" in line 65, and inserting in place thereof the following word:- shares.

147 SECTION 39. Section 11.06 of chapter 156D is hereby amended by striking out the
148 words "organizational documents" in line 28, and inserting in place thereof the following words:-
149 organic documents.

150 SECTION 40. Section 11.07 of chapter 156D is hereby amended by striking out the
151 words "organizational documents" in line 18, and inserting in place thereof the following words:-
152 organic documents.

153 SECTION 41. Subsection (e) of section 12.02 of chapter 156D is hereby amended by
154 striking out the words "subsection (c) of section 12.02" in each place it appears and inserting in
155 place thereof the following words:- subsection (b) of this section 12.02.

156 SECTION 42. Section 13.02 of chapter 156D is hereby amended by striking out the
157 words "other than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer,
158 employee or consultant of either the merging or the surviving corporation" in lines 14-17, and
159 inserting in place thereof the following words:- other than (i) in his capacity as a shareholder of
160 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
161 merging or the surviving corporation.

162 SECTION 43. Section 13.02 of chapter 156D is hereby amended by striking out the
163 words "other than in his capacity as (i) a shareholder of the corporation whose shares are to be
164 exchanged, (ii) a director, officer, employee or consultant of either the corporation whose shares
165 are to be exchanged or the acquiring corporation" in lines 26-30, and inserting in place thereof
166 the following words:- other than (i) in his capacity as a shareholder of the corporation, (ii) in his
167 capacity as a director, officer, employee or consultant of either the merging or the surviving
168 corporation.

169 SECTION 44. Section 13.02 of chapter 156D is hereby amended by striking out the
170 words "other than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer,
171 employee or consultant of either the corporation or the acquiring corporation" in lines 51-53, and
172 inserting in place thereof the following words:- other than (i) in his capacity as a shareholder of
173 the corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
174 merging or the surviving corporation.

175 SECTION 45. Section 13.02 of chapter 156D is hereby amended by striking out the
176 words "transfer of registration or any outstanding shares" in lines 79-80, and inserting in place
177 thereof the following words:- transfer of registration of any outstanding shares.

178 SECTION 46. Section 13.21 of chapter 156D is hereby amended by striking out the word
179 "chapter" in line 13, and inserting in place thereof the following word:- PART.

180 SECTION 47. Section 13.22 of chapter 156D is hereby amended by striking out the word
181 "chapter" in line 38, and inserting in place thereof the following word:- PART.

182 SECTION 48. Section 13.25 of chapter 156D is hereby amended by striking out the word
183 "deserved" in line 31, and inserting in place thereof the following word:- described.

184 SECTION 49. Section 13.31 of chapter 156D is hereby amended by striking out the word
185 "chapter" in line 20, and inserting in place thereof the following word:- PART.

186 SECTION 50. Section 14.30 of chapter 156D is hereby amended by striking out the word
187 "stock" in line 11, and inserting in place thereof the following word:- shares.

188 SECTION 51. Section 14.34 of chapter 156D is hereby amended by striking out the word
189 "stock" in line 24, and inserting in place thereof the following word:- shares.

190 SECTION 52. Section 15.01 of chapter 156D is hereby amended by inserting after the
191 word "with" in line 29, the following word:- the.

192 SECTION 53. Section 15.03 of chapter 156D is hereby amended by striking out the word
193 "agents" in line 14, and inserting in place thereof the following word:- agent's.

194 SECTION 54. Section 15.04 of chapter 156D is hereby amended by inserting after the
195 word "information" in line 23, the following word:- in.

196 SECTION 55. Section 15.05 of chapter 156D is hereby amended by striking out the word
197 "corporations" in line 12, and inserting in place thereof the following word:- corporation's.

198 SECTION 56. Section 15.05 of chapter 156D is hereby further amended by striking out
199 the word "stockholders" in line 13, and inserting in place thereof the following word:-
200 shareholders.

201 SECTION 57. Section 15.30 of chapter 156D is hereby amended by inserting after the
202 words "or chapter 63" in line 6, the following words:- of the General Laws.

203 SECTION 58. Section 15.31 of chapter 156D is hereby amended by striking out the word
204 "corporations" in line 13, and inserting in place thereof the following word:- corporation's.

205 SECTION 59. Section 15.31 of chapter 156D is hereby amended by striking out the word
206 "corporations" in line 19, and inserting in place thereof the following word:- corporation's.

207 SECTION 60, Section 15.32 of chapter 156D is hereby amended by striking out the word
208 "corporations" in line 10, and inserting in place thereof the following word:- corporation's.

209 SECTION 61. Section 16.21 of chapter 156D is hereby amended by striking out the title
210 "BY-LAW AMENDMENTS" in line 1, and inserting in place thereof the following title:-
211 BYLAW AMENDMENTS.