

HOUSE No. 3034

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act making amendments to the Massachusetts Business Act - Part One..

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 5.01 of Chapter 156D is deleted in its entirety and replaced by the
2 following:—

3 Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

4 Each corporation shall continuously maintain in the commonwealth:

5 (1) a registered office that may, but need not, be the same as any of its places of
6 business; and

7 (2) a registered agent, who may be any of the following individuals or entities whose
8 business office is also the registered office of the corporation:

9 (i) an individual, including the secretary or another officer of the corporation;

10 (ii) a domestic corporation or not-for-profit domestic corporation;

11 (iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in
12 this commonwealth; or

13 (iv) an other entity.

14 SECTION 2. Section 6.30(a) of Chapter 156D is deleted in its entirety and replaced by
15 the following:—

16 (a) The shareholders of a corporation shall not have a preemptive right to acquire the
17 corporation's unissued shares except to the extent the articles of organization so provide.

18 SECTION 3. Section 7.04(d) of Chapter 156D is deleted in its entirety and replaced by
19 the following:—

20 (d) If (1) this chapter requires that notice of a proposed action be given to nonvoting
21 shareholders and the action is to be taken by written consent of the voting shareholders, or (2)
22 action is taken by less than unanimous written consent of the voting shareholders, the
23 corporation shall give its nonvoting shareholders or its nonconsenting voting shareholders, as the
24 case may be, written notice of the action not more than 7 days after written consents sufficient to
25 take the action have been delivered to the corporation. The notice must reasonably describe the
26 action taken and contain or be accompanied by the same material that, under any provision of
27 this chapter, would have been required to be sent to nonvoting shareholders or to voting
28 shareholders, as the case may be, in a notice of a meeting at which the proposed action would
29 have been submitted to the shareholders for action.

30 (e) The notice requirements in subsection (d) shall not delay the effectiveness of actions
31 taken by written consent, and a failure to comply with such notice requirements shall not
32 invalidate actions taken by written consent, provided that this subsection shall not be deemed to
33 limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely
34 affected by a failure to give such notice within the required time period.

35 SECTION 4. Section 8.21 of Chapter 156D is deleted in its entirety and replaced by the
36 following:—

37 Section 8.21. ACTION WITHOUT MEETING

38 (a) Unless the articles of organization or bylaws provide that action required or permitted
39 by this chapter to be taken by the directors may be taken only at a meeting, the action may be
40 taken without a meeting if each director signs a consent describing the action to be taken and
41 delivers it to the corporation or as the corporations directs. The consents shall be filed with the
42 corporate records.

43 (b) Action taken under this section is effective when one or more consents signed by all
44 the directors are delivered as provided in subsection (a), unless the consent specifies a different
45 effective date.

46 (c) A consent signed and delivered under this section has the effect of a meeting vote and
47 may be described as such in any document.

48 SECTION 5. Section 8.25(e) of Chapter 156D is deleted in its entirety and replaced by
49 the following:—

50 (e) A committee may not, however:

51 (1) authorize distributions, including in connection with the reacquisition of shares,
52 except according to a formula or method prescribed by the board of directors;

53 (2) adopt or submit to shareholders action that this chapter requires be approved by
54 shareholders;

55 (3) change the number of the board of directors, remove directors from office or fill
56 vacancies on the board of directors;

57 (4) amend articles of organization pursuant to section 10.02; or

58 (5) adopt, amend or repeal bylaws.

59 SECTION 6. Section 10.21(c) of Chapter 156D is deleted in its entirety and replaced by
60 the following:—

61 (c) Any initial bylaw adopted by the incorporators or board of directors, and any bylaw
62 subsequently adopted or amended by the shareholders, that provides for (i) a greater or lesser
63 quorum requirement for shareholders than is provided by this chapter or (ii) a greater voting
64 requirement for shareholders (or for voting groups of shareholders) than is provided by this
65 chapter may not be amended or repealed by the board of directors unless the bylaw otherwise
66 provides.

67 SECTION 7. Section 11.03(e) of Chapter 156D is deleted in its entirety.

68 SECTION 8. Sections 11.04(5) through 11.04(8), inclusive, of Chapter 156D are deleted
69 in their entirety and replaced by the following:—

70 (5) Unless (i) a greater percentage vote is required by the articles of organization,
71 pursuant to subsection (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the
72 board of directors, acting pursuant to clause (3) of this section, or (ii) the articles provide for a
73 lesser percentage vote, in accordance with subsection (b) of section 7.27, approval of the plan of
74 merger or share exchange requires the affirmative vote of two-thirds of all the votes entitled
75 generally to be cast on the plan by the articles of organization, and in addition the affirmative

76 vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote
77 separately on the plan by this chapter, by the articles, by the bylaws, or by action of the board of
78 directors pursuant to subsection (3) of section 11.04.

79 (6) Except as otherwise expressly provided in the articles of organization, voting by a
80 class or series of shares as a separate voting group is required on a plan of merger or share
81 exchange if the plan contains a provision that, if contained in a proposed amendment to articles
82 of organization, would entitle such class or series to vote as a separate voting group on the
83 proposed amendment under section 10.04; provided however, that (i) receipt of shares of a class
84 or series of shares in exchange for shares pursuant to a plan of merger or share exchange
85 involving each outstanding class and series shall not, in and of itself, entitle holders of the
86 exchanged class or series to vote as a separate voting group, and (ii) if the proposed provision
87 would, as an amendment, entitle two or more classes or series of shares to vote separately but
88 would affect those classes or series in the same or a substantially similar way, the shares of all
89 such classes or series shall, unless the articles of organization provide otherwise, vote together as
90 a single voting group on the plan.

91 (7) Unless the articles of organization otherwise provide, approval by the corporation's
92 shareholders of a plan of merger or share exchange is not required if:

93 (i) the corporation will survive the merger or is the acquiring corporation in a share
94 exchange;

95 (ii) except for amendments permitted by section 10.05, its articles of organization will
96 not be changed;

97 (iii) each shareholder of the corporation whose shares were outstanding immediately
98 before the effective date of the merger or share exchange will hold the same number of shares,
99 with identical preferences, limitations, and relative rights, immediately after the effective date of
100 change; and

101 (iv) in the case of a plan of merger, the shares of any class or series of stock of such
102 corporation to be issued or delivered pursuant to the plan of merger does not exceed 20 per cent
103 of the shares of such corporation of the same class or series outstanding immediately before the
104 effective date of the merger.

105 (8) If as a result of a merger or share exchange 1 or more shareholders of a domestic
106 corporation would become subject to owner liability for the debts, obligations or liabilities of any
107 other person or entity, approval of the plan of merger or share exchange shall require the
108 execution, by each such shareholder, of a separate written consent to become subject to such
109 owner liability.

110 SECTION 9. Section 11.05(a) of Chapter 156D is deleted in its entirety and replaced by
111 the following:—

112 (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary
113 corporation, and a foreign parent corporation that owns shares of a domestic subsidiary
114 corporation, in each case that carry at least 90 per cent of the voting power of each class and
115 series of the outstanding shares of the subsidiary that have voting power, may merge the
116 subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, without
117 the approval of the board of directors or shareholders of the subsidiary unless the laws of the

118 foreign jurisdiction or jurisdictions under which the parent or the subsidiary is organized or the
119 articles of organization of any of the corporations otherwise provide.

120 SECTION 10. Section 12.01(a)(3) of Chapter 156D is deleted in its entirety and replaced
121 by the following:—

122 (3) transfer any or all of its assets to one or more corporations or other entities all of the
123 shares or interests of which are owned, directly or indirectly, by the corporation; or

124 SECTION 11. Section 13.01 of Chapter 156D is amended by deleting therefrom the
125 definition of “marketable securities” and by substituting the following new definition in its
126 place:—

127 “Marketable securities”, securities which, immediately prior to the time corporate action
128 becomes effective, are

129 (a) listed on the New York Stock Exchange or the American Stock Exchange or
130 designated as a national market system security on an interdealer quotation system by the
131 National Association of Securities Dealers, Inc.,

132 (b) listed on a national securities exchange or a regional securities exchange or traded in
133 an interdealer quotation system or other trading system (other than as described in clause (a)) and
134 have at least 250,000 outstanding shares or units, exclusive of those held by officers, directors
135 and affiliates, which have a market value of at least \$5,000,000, or

136 (c) held of record by, or by financial intermediaries or depositories on behalf of, at least
137 2,000 persons and which securities, exclusive of those held by officers, directors and affiliates,
138 have a market value of at least \$20,000,000.

139 SECTION 12. Section 13.02(a) of Chapter 156D is deleted in its entirety and replaced by
140 the following:—

141 (a) A shareholder is entitled to appraisal rights, and obtain payment of the fair value of
142 his shares in the event of, any of the following corporate or other actions:

143 (1) consummation of a plan of merger to which the corporation is a party if shareholder
144 approval is required for the merger by section 11.04 or the articles of organization or if the
145 corporation is a subsidiary that is merged with its parent under section 11.05, unless, in either
146 case, (A) all shareholders are to receive only cash for their shares in amounts at least equal to
147 what they would receive upon a dissolution of the corporation or, in the case of shareholders
148 already holding marketable securities in the corporation, only marketable securities and/or cash
149 and (B) no director, officer or controlling shareholder has a direct or indirect material financial
150 interest in the merger other than (i) in his capacity as a shareholder of the corporation, (ii) in his
151 capacity as a director, officer, employee or consultant of either the merging or the surviving
152 corporation or of any affiliate of the surviving corporation if his financial interest is pursuant to
153 bona fide arrangements with either corporation or any such affiliate, or (iii) in any other capacity
154 so long as the shareholder owns not more than five percent of the voting shares of all classes and
155 series of the corporation in the aggregate;

156 (2) consummation of a plan of share exchange in which his shares are included unless:
157 (A) both his existing shares and the shares, obligations or other securities to be acquired are
158 marketable securities; and (B) no director, officer or controlling shareholder has a direct or
159 indirect material financial interest in the share exchange other than (i) in his capacity as a
160 shareholder of the corporation whose shares are to be exchanged, (ii) in his capacity as a director,

161 officer, employee or consultant of either the corporation whose shares are to be exchanged or the
162 acquiring corporation or of any affiliate of the acquiring corporation if his financial interest is
163 pursuant to bona fide arrangements with either corporation or any such affiliate, or (iii) in any
164 other capacity so long as the shareholder owns not more than five percent of the voting shares of
165 all classes and series of the corporation whose shares are to be exchanged in the aggregate;

166 (3) consummation of a sale or exchange of all, or substantially all, of the property of the
167 corporation if the sale or exchange is subject to section 12.02, or a sale or exchange of all, or
168 substantially all, of the property of a corporation in dissolution, unless:

169 (i) his shares are then redeemable by the corporation at a price not greater than the cash
170 to be received in exchange for his shares; or

171 (ii) the sale or exchange is pursuant to court order; or

172 (iii) in the case of a sale or exchange of all or substantially all the property of the
173 corporation subject to section 12.02, approval of shareholders for the sale or exchange is
174 conditioned upon the dissolution of the corporation and the distribution in cash or, if his shares
175 are marketable securities, in marketable securities and/or cash, of substantially all of its net
176 assets, in excess of a reasonable amount reserved to meet unknown claims under section 14.07,
177 to the shareholders in accordance with their respective interests within one year after the sale or
178 exchange and no director, officer or controlling shareholder has a direct or indirect material
179 financial interest in the sale or exchange other than (i) in his capacity as a shareholder of the
180 corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
181 corporation or the acquiring corporation or of any affiliate of the acquiring corporation if his
182 financial interest is pursuant to bona fide arrangements with either corporation or any such

183 affiliate, or (iii) in any other capacity so long as the shareholder owns not more than five percent
184 of the voting shares of all classes and series of the corporation in the aggregate;

185 (4) an amendment of the articles of organization that materially and adversely affects
186 rights in respect of a shareholder's shares because it:

187 (i) creates, alters or abolishes the stated rights or preferences of the shares with respect to
188 distributions or to dissolution, including making non-cumulative in whole or in part a dividend
189 theretofore stated as cumulative;

190 (ii) creates, alters or abolishes a stated right in respect of conversion or redemption,
191 including any provision relating to any sinking fund or purchase, of the shares;

192 (iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or
193 other securities;

194 (iv) excludes or limits the right of the holder of the shares to vote on any matter, or to
195 cumulate votes, except as such right may be limited by voting rights given to new shares then
196 being authorized of an existing or new class; or

197 (v) reduces the number of shares owned by the shareholder to a fraction of a share if the
198 fractional share so created is to be acquired for cash under section 6.04;

199 (5) an amendment of the articles of organization or of the bylaws or the entering into by
200 the corporation of any agreement to which the shareholder is not a party that adds restrictions on
201 the transfer or registration of transfer of any outstanding shares held by the shareholder or
202 amends any pre-existing restrictions on the transfer or registration of transfer of his shares in a
203 manner which is materially adverse to the ability of the shareholder to transfer his shares;

204 (6) any corporate action taken pursuant to a shareholder vote to the extent the articles of
205 organization, bylaws or a resolution of the board of directors provides that voting or nonvoting
206 shareholders are entitled to appraisal;

207 (7) consummation of a conversion of the corporation to nonprofit status pursuant to
208 subdivision B of PART 9; or

209 (8) consummation of a conversion of the corporation into a form of other entity pursuant
210 to subdivision D of PART 9.

211 SECTION 13. Section 15.07 of Chapter 156D is deleted in its entirety and replaced by
212 the following:—

213 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN
214 CORPORATION

215 Each foreign corporation authorized to transact business in the commonwealth shall
216 continuously maintain in the commonwealth:

217 (1) a registered office that may, but need not, be the same as any of its places of
218 business; and

219 (2) a registered agent, who may be any of the following individuals or entities whose
220 business office is also the registered office of the foreign corporation:

221 (i) an individual who resides in the commonwealth and whose business office is identical
222 with the registered office;

223 (ii) a domestic corporation or not-for-profit domestic corporation;

224 (iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in
225 this commonwealth; or

226 (iv) an other entity.

227 SECTION 14. Section 16.20(c) of Chapter 156D is deleted in its entirety and replaced by
228 the following:

229 (c) Unless otherwise provided in the articles of organization or bylaws or unless the
230 annual financial statements of the corporation shall have previously been delivered to the
231 shareholders, a corporation shall deliver a written notice of the availability of its annual financial
232 statements to each shareholder before the earlier to occur of the annual meeting of shareholders
233 or 120 days after the close of the fiscal year.