

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Angelo M. Scaccia	14th Suffolk
William F. Galvin	Secretary of the Commonwealth

The Commonwealth of Massachusetts

In the Year Two Thousand and 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:

SECTION 1. Section 5.01 of Chapter 156D is deleted in its entirety and replaced by the following:—

Section 5.01. REGISTERED OFFICE AND REGISTERED AGENT

Each corporation shall continuously maintain in the commonwealth:

- (1) a registered office that may, but need not, be the same as any of its places of business; and
- (2) a registered agent, who may be any of the following individuals or entities whose business office is also the registered office of the corporation:
 - (i) an individual, including the secretary or another officer of the corporation;
 - (ii) a domestic corporation or not-for-profit domestic corporation;
 - (iii) a foreign corporation or not-for-profit foreign corporation qualified to do business in this commonwealth; or
 - (iv) an other entity.

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

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

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

(d) If (1) this chapter requires that notice of a proposed action be given to nonvoting shareholders and the action is to be taken by written consent of the voting shareholders, or (2) action is taken by less than unanimous written consent of the voting shareholders, the corporation shall give its nonvoting shareholders or its nonconsenting voting shareholders, as the case may be, written notice of the action not more than 7 days

20 after written consents sufficient to take the action have been delivered to the corporation. The notice must
21 reasonably describe the action taken and contain or be accompanied by the same material that, under any
22 provision of this chapter, would have been required to be sent to nonvoting shareholders or to voting
23 shareholders, as the case may be, in a notice of a meeting at which the proposed action would have been
24 submitted to the shareholders for action.

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

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

31 Section 8.21. ACTION WITHOUT MEETING

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

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

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

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

41 (e) A committee may not, however:

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

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

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

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

48 (5) adopt, amend or repeal bylaws.

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

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

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

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

59 (5) Unless (i) a greater percentage vote is required by the articles of organization, pursuant to subsection
60 (a) of section 7.27, by the bylaws, pursuant to section 10.21, or by the board of directors, acting pursuant to
61 clause (3) of this section, or (ii) the articles provide for a lesser percentage vote, in accordance with subsection
62 (b) of section 7.27, approval of the plan of merger or share exchange requires the affirmative vote of two-thirds
63 of all the votes entitled generally to be cast on the plan by the articles of organization, and in addition the affirmative
64 vote of two-thirds of all the votes entitled to be cast by any voting group entitled to vote separately on the plan by
65 this chapter, by the articles, by the bylaws, or by action of the board of directors pursuant to subsection (3) of
66 section 11.04.

67 (6) Except as otherwise expressly provided in the articles of organization, voting by a class or series of
68 shares as a separate voting group is required on a plan of merger or share exchange if the plan contains a
69 provision that, if contained in a proposed amendment to articles of organization, would entitle such class or
70 series to vote as a separate voting group on the proposed amendment under section 10.04; provided however,
71 that (i) receipt of shares of a class or series of shares in exchange for shares pursuant to a plan of merger or
72 share exchange involving each outstanding class and series shall not, in and of itself, entitle holders of the
73 exchanged class or series to vote as a separate voting group, and (ii) if the proposed provision would, as an
74 amendment, entitle two or more classes or series of shares to vote separately but would affect those classes or
75 series in the same or a substantially similar way, the shares of all such classes or series shall, unless the articles
76 of organization provide otherwise, vote together as a single voting group on the plan.

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

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

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

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

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

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

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

93 (a) A domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation, and
94 a foreign parent corporation that owns shares of a domestic subsidiary corporation, in each case that carry at
95 least 90 per cent of the voting power of each class and series of the outstanding shares of the subsidiary that
96 have voting power, may merge the subsidiary into itself or into another such subsidiary, or merge itself into the

97 subsidiary, without the approval of the board of directors or shareholders of the subsidiary unless the laws of the
98 foreign jurisdiction or jurisdictions under which the parent or the subsidiary is organized or the articles of
99 organization of any of the corporations otherwise provide.

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

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

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

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

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

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

115 (c) held of record by, or by financial intermediaries or depositories on behalf of, at least 2,000 persons
116 and which securities, exclusive of those held by officers, directors and affiliates, have a market value of at least
117 \$20,000,000.

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

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

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

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

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

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

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

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

148 (iii) in the case of a sale or exchange of all or substantially all the property of the corporation subject to
149 section 12.02, approval of shareholders for the sale or exchange is conditioned upon the dissolution of the
150 corporation and the distribution in cash or, if his shares are marketable securities, in marketable securities
151 and/or cash, of substantially all of its net assets, in excess of a reasonable amount reserved to meet unknown
152 claims under section 14.07, to the shareholders in accordance with their respective interests within one year
153 after the sale or exchange and no director, officer or controlling shareholder has a direct or indirect material
154 financial interest in the sale or exchange other than (i) in his capacity as a shareholder of the corporation, (ii) in
155 his capacity as a director, officer, employee or consultant of either the corporation or the acquiring corporation
156 or of any affiliate of the acquiring corporation if his financial interest is pursuant to bona fide arrangements with
157 either corporation or any such affiliate, or (iii) in any other capacity so long as the shareholder owns not more
158 than five percent of the voting shares of all classes and series of the corporation in the aggregate;

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

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

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

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

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

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

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

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

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

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

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

186 Section 15.07. REGISTERED OFFICE AND REGISTERED AGENT OF FOREIGN CORPORATION

187 Each foreign corporation authorized to transact business in the commonwealth shall continuously
188 maintain in the commonwealth:

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

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

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

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

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

197 (iv) an other entity.

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

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