

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 Corporation Act - part two.

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 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 the word
2 "stock" in each place where it appears and inserting in place thereof the following word:-
3 shares.
- 4 SECTION 2. Section 2.05 of chapter 156D is hereby amended by striking out the word "by-
5 laws" in each place where it appears and inserting in place thereof the following word:- bylaws.
- 6 SECTION 3. Section 2.05 of chapter 156D is hereby amended by striking out the word "and" in
7 line 19 and inserting in place thereof the following word:- or.
- 8 SECTION 4. Section 3.02 of chapter 156D is hereby amended by striking out the word "stock" in
9 each place where it appears and inserting in place thereof the following word:- shares.
- 10 SECTION 5. Clause (1) of subsection (a) of section 4.01 of chapter 156D is hereby amended
11 by striking out its text in its entirety and inserting in place thereof the following words:- shall
12 contain the word "corporation," "incorporated," "company" or "limited" or the abbreviation
13 "corp," "inc," "co," or "ltd," or words or abbreviations of like import in another language; and
- 14 SECTION 6. Section 6.02 of chapter 156D is hereby amended by striking out the word
15 "recision" in line 40, and inserting in place thereof the following word:- rescission.
- 16 SECTION 7. Section 6.23 of chapter 156D is hereby amended by striking out the words "class
17 of series" in line 9, and inserting in place thereof the following words:- class or series.
- 18 SECTION 8. Section 6.23 of chapter 156D is hereby amended by striking out the words "with
19 respect to distributions" in line 16, and inserting in place thereof the following words:- with
20 respect to a distribution.

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

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

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

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

29 (b) If any provision of this chapter requires the affirmative vote of more than a majority of all
30 the votes entitled to be cast on a matter by any voting group, the articles of organization may
31 provide that action may be taken by the affirmative vote of a lesser proportion than the
32 chapter specifies, but not less than a majority of all the votes entitled to be cast on the matter
33 by the voting group.

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

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

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

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

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

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

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

53 (c) (1) Subsection (b) shall apply to every public corporation, whether or not notice of an
54 annual meeting of the public corporation has been given on or prior to the effective date of this
55 chapter, unless (i) the board of directors of the public corporation, or (ii) the holders of shares
56 of each class of stock outstanding holding the right to cast two-thirds of all the votes entitled to
57 be cast by the class, and the holders of two-thirds of the shares of each class of otherwise
58 nonvoting stock outstanding, each voting as a separate voting group, shall at a meeting duly

59 called for the purpose of the vote adopt a vote providing that the corporation elects to be
60 exempt from the provisions of subsection (b). Upon adoption of the vote, subsection (b) shall,
61 unless otherwise provided in the vote, become immediately ineffective with respect to such
62 public corporation and the provisions of section 8.05 shall become immediately effective with
63 respect to the corporation as soon as subsection (b) of this section is no longer effective.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

172 shareholder of the corporation, (ii) in his capacity as a director, officer, employee or consultant
173 of either the merging or the surviving corporation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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