

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 123

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BARTLE.

Pre-filed December 13, 2004, and ordered printed.

Read 2nd time January 13, 2005, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee February 14, 2005, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up February 24, 2005. Read 3rd time and placed upon its final passage; bill passed.

0582S.01P

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 351.107, 351.180, 351.182, 351.295, and 351.405, RSMo, and to enact in lieu thereof five new sections relating to corporations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 351.107, 351.180, 351.182, 351.295, and 351.405, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 351.107, 351.180, 351.182, 351.295, and 351.405, to read as follows:

351.107. The articles of incorporation may be amended at the time of restatement of the articles of incorporation, in the following manner:

(1) The procedure required by this chapter for effecting an amendment to the articles of incorporation may be carried out concurrently with the procedure for restatement so that the proposed amendment and the restated articles may be presented to the same meetings of directors and shareholders;

(2) Such amendment and restatement, upon adoption by that percentage vote of shareholders required for that particular amendment, and on being set forth in a single certificate of amendment and restatement, in the manner required by this chapter, may then be filed in the office of the secretary of state **and shall not become effective** unless and until such amendment has become effective in the manner provided in this chapter.

351.180. 1. Every corporation may issue one or more classes of stock or one or more series of stock within any class thereof, any or all of which classes may be of stock with par

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the articles of incorporation or any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its articles of incorporation. Any of the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of any such class or series of stock may be made dependent upon facts ascertainable outside the articles of incorporation or of any amendment thereto, or outside the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by its articles of incorporation, provided that the manner in which such facts shall operate upon the voting powers, designations, preferences, rights and qualifications, limitations or restrictions of such class or series of stock is clearly and expressly set forth in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors. The power to increase or decrease or otherwise adjust the capital stock as provided in this chapter shall apply to all or any such classes of stock.

2. (1) Subject to the provisions of section 351.200, the stock of any class or series may be made subject to redemption by the corporation at its option or at the option of the holders of such stock or upon the happening of a specified event; provided, that at the time of such redemption the corporation shall have outstanding shares of at least one class or series of stock with full voting powers which shall not be subject to redemption. Notwithstanding the limitation stated in the foregoing provision:

(a) Any stock of a regulated investment company registered under the Investment Company Act of 1940, as amended, may be made subject to redemption by the corporation at its option or at the option of the holders of such stock;

(b) Any stock of a corporation which holds, directly or indirectly, a license, franchise, or contract from a governmental agency to conduct its business or is a member of a national securities exchange, which license, franchise, contract, or membership is conditioned upon some or all of the holders of its stock possessing the prescribed qualifications, may be made subject to redemption by the corporation to the extent necessary to prevent the loss of such license, franchise or membership or to reinstate it;

(2) Any stock which may be redeemable under this section may be redeemed for cash, property or rights, including securities of the same or another corporation, at such time or times, price or prices, or rate or rates, and with such adjustments, as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

3. The holders of preferred or special stock of any class or of any series thereof shall

be entitled to receive dividends at such rates, on such conditions and at such times as shall be stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided, payable in preference to, or in such relation to, the dividends payable on any other class or classes or of any other series of stock, and cumulative or noncumulative as shall be so stated and expressed. When dividends upon the preferred and special stocks, if any, to the extent of the preference to which such stocks are entitled, have been paid or declared and set apart for payment, a dividend on the remaining class or classes or series of stock may then be paid out of the remaining assets of the corporation available for dividends as is provided elsewhere in this chapter.

4. The holders of the preferred or special stock of any class or of any series thereof are entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the corporation as is stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

5. Any stock of any class or of any series thereof may be made convertible into, or exchangeable for, at the option of either the holder or the corporation or upon the happening of a specified event, shares of any other class or classes or any other series of the same or any other class or classes of stock of the corporation, at such price or prices or at such rate or rates of exchange and with such adjustments as is stated in the articles of incorporation or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors as hereinabove provided.

6. If any corporation is authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the corporation issues to represent such class or series of stock **in the case of shares represented by a certificate**; but, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which the corporation issues to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. **The corporation shall also furnish such information upon request to holders of uncertificated shares.**

7. When any corporation desires to issue any shares of stock of any class or of any series of any class of which the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any,

have not been set forth in the articles of incorporation or in any amendment thereto, but are provided for in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, a certificate of designations setting forth a copy of such resolution or resolutions and the number of shares of stock of such class or series as to which the resolution or resolutions apply shall be executed by the president or any vice president and filed by the corporation with the secretary of state. Unless otherwise provided in any such resolution or resolutions, the number of shares of stock of any such class or series to which such resolution or resolutions apply may be increased, but not above the number of shares of the class authorized by the articles of incorporation with respect to which the powers, designations, preferences and rights have not been set forth, or decreased, but not below the number of shares thereof then outstanding, by a certificate likewise executed and filed setting forth a statement that a specified increase or decrease therein had been authorized and directed by a resolution or resolutions likewise adopted by the board of directors. In case the number of such shares shall be decreased, the number of shares so specified in the certificate shall resume their status which they had prior to the adoption of the resolution or resolutions creating such shares. When no shares of any such class or series are outstanding, either because none were issued or because no issued shares of any such class or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the board of directors that none of the authorized shares of such class or series are outstanding, and that none will be issued subject to the certificate of designations previously filed with respect to such class or series, may be executed by the president or any vice president and filed by the corporation with the secretary of state and, when such certificate becomes effective, it shall have the effect of eliminating from the articles of incorporation all reference to such class or series of stock. When shares of stock of any class or of any series of any class of which the powers, designations, preferences, and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, have not been set forth in the articles of incorporation or in any amendment thereto, but are provided in a resolution or resolutions adopted by the board of directors pursuant to authority expressly vested in it by the provisions of the articles of incorporation or any amendment thereto, the board of directors may, by resolution or resolutions adopted by the board of directors, amend the powers, designations, preferences and relative, participating, optional or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, of any such class or series by filing an amended certificate of designations setting forth a copy of such resolution or resolutions, which shall include the terms and conditions of such amendment, executed by the president or any vice president and filed by the corporation with the secretary of state. Provided, however, that if any shares of any such class or series shall be issued and outstanding at the time of such filing, such amendment, if it adversely affects the holders

thereof, shall not become effective unless as to any such class or series, a majority of the holders thereof, or such greater vote as the articles of incorporation or any amendment thereto require, adopts such amendment, and the certificate of designations shall state that such approval has been obtained. When any certificate is filed under this subsection, it shall have the effect of amending the articles of incorporation and shall become effective as provided in subsection 1 of section 351.105.

351.182. 1. Subject to any provisions in the articles of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as [is] **are** approved by the board of directors, **including resolutions of such board**. If at the time the corporation issues rights or options, there is insufficient authorized and unissued shares to provide the shares needed if and when the rights or options are exercised, the granting of the rights or options shall not be invalid solely by reason of the lack of sufficient authorized but unissued shares.

2. The terms upon which any such shares may be purchased from the corporation upon the exercise of any such right or option shall be as stated in the articles of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in [the] **any** instrument or instruments evidencing such rights or options. Such terms may include, but not be limited to:

- (1) The duration of such rights or options, which may be limited or unlimited;
- (2) The price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option;
- (3) The holders by whom such rights or options may be exercised;
- (4) The conditions to or which may preclude or limit the exercise, transfer or receipt of such rights or options, or which may invalidate or void such rights or options, including without limitation conditions based upon a specified number or percentage of outstanding shares, rights, options, convertible securities, or obligations of the corporation as to which any person or persons or their transferees own or offer to acquire; and
- (5) The conditions upon which such rights or options may be redeemed.

Such terms may be made dependent upon facts ascertainable outside the documents evidencing the rights, or the resolution providing for the issue of the rights or options adopted by the board of directors, if the manner in which the facts shall operate upon the exercise of the rights or options is clearly and expressly set forth in the document evidencing the rights or options, or in the resolution. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options

and the sufficiency thereof and the terms of such rights or options shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided in section 351.185. Nothing contained in subsection 1 of section 351.180 shall be deemed to limit the authority of the board of directors to determine, in its sole discretion, the terms of the rights or options issuable pursuant to this section.

3. The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

(1) Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation;

(2) Determine the number of such rights or options to be received by such officers and employees;

provided, however, that the resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.

351.295. 1. [Except as otherwise provided in the articles of incorporation or bylaws.] The shares of a corporation shall be represented by certificates, **provided that the articles of incorporation or bylaws, or a resolution or resolutions of the board of directors of the corporation, may provide that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such provision of the articles of incorporation or bylaws, or resolution of the board of directors, shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding such a provision of the articles of incorporation or bylaws, or the adoption of such a resolution by the board of directors, every holder of stock represented by certificates and upon request every holder of uncertificated shares shall be entitled to have a certificate** signed by the president or a vice president and by the secretary or an assistant secretary or the treasurer or an assistant treasurer of such corporation and sealed with the seal of the corporation. Any or all the signatures on the certificate may be a facsimile and the seal may be facsimile, engraved or printed. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed on a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may nevertheless be issued by the corporation with the same effect as if the person were an officer, transfer agent or registrar at the date of issue.

2. Every certificate for shares without par value shall have plainly stated upon its

face the number of shares which it represents, and no certificate shall express any par value for such shares or a rate of dividend to which such shares shall be entitled in terms of percentage of any par or other value.

351.405. 1. In the event that a sale or exchange of all or substantially all of the property and assets of a corporation, otherwise than in the usual and regular course of its business, is authorized by a vote of the shareholders of the corporation, except as provided in subsection 6 of this section, any shareholder who shall not have voted in favor thereof and who at or prior to the meeting at which said sale or exchange is submitted to a vote shall file with the corporation written objection thereto may, within twenty days after the vote was taken, make written demand on the corporation for the payment to him of the fair value of his shares as of the day prior to the date on which the vote was taken authorizing the sale or exchange. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty-day period shall be conclusively presumed to have consented to the sale or exchange and shall be bound by the terms thereof.

2. If, within thirty days after the date on which such vote was taken, the value of such shares is agreed upon between the dissenting shareholder and the corporation, the corporation shall make payment of the agreed value within ninety days after the date on which the vote was taken authorizing the sale or exchange, upon the surrender of his certificate or certificates representing said shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

3. If within such period of thirty days the shareholder and the corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, file a petition in any court of competent jurisdiction within the county in which the registered office of the corporation is situated asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the corporation for the amount of such fair value as of the day prior to the date on which such vote was taken, together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing said shares. Upon the payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be conclusively presumed to have approved and ratified the sale or exchange and shall be bound by the terms thereof.

4. The rights of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the sale or exchange or the shareholders shall revoke the authority to make such sale or exchange.

5. Shares acquired by the corporation pursuant to the payment of the agreed value

thereof or to the payment of judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as it shall see fit.

6. This section shall not apply to any sale, exchange or other disposition of assets of a corporation authorized by a vote of the shareholders of the corporation if, prior to or in connection with such authorization, the shareholders have consented to or approved the voluntary dissolution of the corporation pursuant to section 351.464 or 351.466, if the sale, exchange or other disposition is made in liquidation of the corporation's business and affairs as provided in section 351.476.

7. When the remedy provided for in this section is available with respect to a transaction, such remedy shall be the exclusive remedy of the shareholder as to that transaction, except in the case of fraud or lack of authorization for the transaction.

Unofficial

Bill

Copy