

FIRST REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 431**  
94TH GENERAL ASSEMBLY

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Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, May 3, 2007, with recommendation that the Senate Committee Substitute do pass.

1163S.05C

TERRY L. SPIELER, Secretary.

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**AN ACT**

To repeal sections 347.137, 351.015, and 351.459, RSMo, and to enact in lieu thereof three new sections relating to business organizations.

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

Section A. Sections 347.137, 351.015, and 351.459, RSMo, are repealed  
2 and three new sections enacted in lieu thereof, to be known as sections 347.137,  
3 351.015, and 351.459, to read as follows:

347.137. 1. A domestic limited liability company shall be dissolved upon  
2 the occurrence of any of the following:

3 (1) Upon the happening of the events specified in the operating agreement  
4 or in the articles of organization;

5 (2) Upon the written consent of all members;

6 (3) Except as otherwise provided in the operating agreement, an event of  
7 withdrawal of a member, if a majority, by number, of the remaining members  
8 agree within ninety days after the occurrence of the event of withdrawal to  
9 dissolve the limited liability company;

10 (4) **[An event of withdrawal with respect to the sole remaining member]**  
11 **At any time there are no members; provided, that the limited liability**  
12 **company is not dissolved and is not required to be wound up if:**

13 (a) **Unless otherwise provided in the operating agreement, within**  
14 **ninety days or such other period as is provided for in the operating**  
15 **agreement after the occurrence of the event that terminated the**  
16 **continued membership of the last remaining member, the personal**

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

17 **representative, statutory or otherwise, of the last remaining member**  
18 **agrees in writing to continue the limited liability company and to the**  
19 **admission of such personal representative of such member or its**  
20 **nominee or designee to the limited liability company as a member,**  
21 **effective as of the occurrence of the event that terminated the**  
22 **continued membership of the last remaining member; provided, that**  
23 **the operating agreement may provide that the personal representative,**  
24 **statutory or otherwise, of the last remaining member shall be obligated**  
25 **to agree in writing to continue the limited liability company and to the**  
26 **admission of such personal representative of such member or its**  
27 **nominee or designee to the limited liability company as a member,**  
28 **effective as of the occurrence of the event that terminated the**  
29 **continued membership of the last remaining member; or**

30 **(b) A member is admitted to the limited liability company in the**  
31 **manner provided for in the operating agreement, effective as of the**  
32 **occurrence of the event that terminated the continued membership of**  
33 **the last remaining member, within ninety days or such other period as**  
34 **is provided for in the limited liability company agreement after the**  
35 **occurrence of the event that terminated the continued membership of**  
36 **the last remaining member, under a provision of the operating**  
37 **agreement that specifically provides for the admission of a member to**  
38 **the limited liability company after there is no longer a remaining**  
39 **member of the limited liability company;**

40 **(5) Entry of a decree of dissolution under section 347.143; or**

41 **(6) When the limited liability company is not the surviving entity in a**  
42 **merger or consolidation.**

43 **2. As soon as possible following the occurrence of any of the events**  
44 **specified in subdivisions (1) to (4) of subsection 1 of this section effecting the**  
45 **dissolution of the limited liability company, the limited liability company shall**  
46 **file a notice of winding up with the secretary which discloses the dissolution of**  
47 **the limited liability company and the commencement of winding up of its business**  
48 **and affairs.**

**351.015. As used in this chapter, unless the context otherwise requires:**

2 **(1) "Articles of incorporation" includes the original articles of**  
3 **incorporation and all amendments thereto, and includes articles of merger or**  
4 **consolidation;**

5           (2) "Authorized shares" means the aggregate number of shares of stock of  
6 all classes, whether with or without par value, which the corporation is  
7 authorized to issue. Shares of its own stock belonging to a corporation shall be  
8 deemed to be "issued" shares but not "outstanding" shares;

9           (3) "Certificate of stock" means a written instrument signed by or bearing  
10 the facsimile signature of the proper corporate officers, as required by this  
11 chapter, evidencing the fact that the person therein named is the holder of record  
12 of the share or shares therein described;

13           (4) "Control share acquisition" means the acquisition, directly or  
14 indirectly, by any person of ownership of, or the power to direct the exercise of  
15 voting power with respect to, issued and outstanding control shares. For the  
16 purposes of this chapter, shares acquired within ninety days of any acquisition  
17 of shares or shares acquired pursuant to a plan to make a control share  
18 acquisition are considered to have been acquired in the same acquisition. For the  
19 purposes of this chapter, a person who acquires shares in the ordinary course of  
20 business for the benefit of others in good faith and not for the purpose of  
21 circumventing this chapter has voting power only of shares in respect of which  
22 that person would be able to exercise or direct the exercise of votes without  
23 further instruction from others. The acquisition of any shares of an issuing  
24 public corporation does not constitute a control share acquisition if the acquisition  
25 is consummated in any of the following circumstances:

26           (a) Prior to June 13, 1984;

27           (b) Pursuant to a contract in existence prior to June 13, 1984;

28           (c) Pursuant to a will or other testamentary disposition, the laws of  
29 descent and distribution or by intervivos gift where such gift is made in good  
30 faith and not for the purpose of circumventing section 351.407;

31           (d) Pursuant to a public offering, a private placement, or any other  
32 issuance of shares by an issuing public corporation;

33           (e) By, on behalf of, or pursuant to any benefit or other compensation plan  
34 or arrangement of an issuing public corporation;

35           (f) Pursuant to the conversion of debt securities into shares of an issuing  
36 public corporation under the terms of such debt securities;

37           (g) Pursuant to a binding contract, other than any contract created by,  
38 pursuant to, or in connection with a tender offer, whereby the holders of shares  
39 representing at least two-thirds of the voting power of an issuing public  
40 corporation, such holders acting simultaneously, agreed to sell such shares to any

41 person;

42 (h) Pursuant to the satisfaction of a pledge or other security interest  
43 created in good faith and not for the purpose of circumventing section 351.407;

44 (i) Pursuant to a merger or consolidation effected in compliance with  
45 sections 351.410 to 351.458 if the issuing public corporation is a party to the  
46 agreement of merger or consolidation;

47 (j) Pursuant to a binding contract or other arrangement with any  
48 individual, foreign or domestic corporation (whether or not for profit),  
49 partnership, limited liability company, unincorporated society or association, or  
50 other entity which, at any time within one year prior to the acquisition in  
51 question, owned shares representing more than fifty percent of the voting power  
52 of the issuing public corporation;

53 (k) By or from any person whose shares have been previously accorded  
54 voting rights pursuant to section 351.407; provided, the acquisition entitles the  
55 person making the acquisition, directly or indirectly, alone or as a part of a group,  
56 to exercise or direct the exercise of voting power of the corporation in the election  
57 of directors within a range of the voting power not in excess of the range of voting  
58 power associated with the shares to which voting rights have been previously  
59 accorded;

60 (5) "Control shares" means shares that, except for this chapter, would  
61 have voting power with respect to shares of an issuing public corporation that,  
62 when added to all other shares of the issuing public corporation owned by a  
63 person or in respect to which that person may exercise or direct the exercise of  
64 voting power, would entitle that person, immediately after acquisition of the  
65 shares, directly or indirectly, alone or as a part of a group, to exercise or direct  
66 the exercise of the voting power of the issuing public corporation in the election  
67 of directors within any of the following ranges of voting power:

68 (a) One-fifth or more but less than one-third of all voting power;

69 (b) One-third or more but less than a majority of all voting power;

70 (c) A majority or more of all voting power; provided, however, that shares  
71 which the person or the group have owned or of which the person or the group  
72 could have exercised or directed the voting for more than ten years shall not be  
73 deemed to be "control shares" and shall not be aggregated for the purpose of  
74 determining inclusion within the above-stated ranges;

75 (6) "Corporation" or "domestic corporation" includes corporations  
76 organized under this chapter or subject to some or all of the provisions of this

77 chapter except a foreign corporation;

78 (7) "Foreign corporation" means a corporation for profit organized under  
79 laws other than the laws of this state;

80 (8) "Incorporator" means a signer of the original articles of incorporation;

81 (9) "Interested shares" means the shares of an issuing public corporation  
82 in respect of which any of the following persons may exercise or direct the  
83 exercise of the voting power of the corporation in the election of directors:

84 (a) An acquiring person or member of a group with respect to a control  
85 share acquisition;

86 (b) Any officer of the issuing public corporation elected or appointed by  
87 the directors of the issuing public corporation;

88 (c) Any employee of the issuing public corporation who is also a director  
89 of such corporation;

90 (10) "Issuing public corporation", **unless the articles of incorporation**  
91 **provide otherwise as to the applicability of this section,** means a  
92 **corporation that has a class of voting stock registered with the**  
93 **securities and exchange commission under section 12 of the Exchange**  
94 **Act and is** either (a) a corporation incorporated under the laws of the state of  
95 Missouri, or, (b) subdivision (2) of section 351.690 notwithstanding, any  
96 insurance company organized pursuant to the laws of Missouri and doing  
97 business under the provisions of chapter 376, RSMo, provided that the bylaws of  
98 such insurance company expressly state that such insurance company shall, for  
99 the purposes of this chapter, be included within the definition of "issuing public  
100 corporation"[, that has:

101 (a) One hundred or more shareholders;

102 (b) Its principal place of business, its principal office, or substantial assets  
103 within Missouri; and

104 (c) One of the following:

105 a. More than ten percent of its shareholders resident in Missouri;

106 b. More than ten percent of its shares owned by Missouri residents; or

107 c. Ten thousand shareholders resident in Missouri. The residence of a  
108 shareholder is presumed to be the address appearing in the records of the  
109 corporation. Shares held by banks (except as trustee or guardian), brokers or  
110 nominees shall be disregarded for purposes of calculating the percentages or  
111 numbers described above];

112 (11) "Net assets", for the purpose of determining the right of a corporation

113 to purchase its own shares and of determining the right of a corporation to  
114 declare and pay dividends and the liabilities of directors therefor, shall not  
115 include shares of its own stock belonging to a corporation;

116 (12) "Paid-in surplus" means all that part of the consideration received by  
117 the corporation for, or on account of, all shares issued which does not constitute  
118 stated capital minus such formal reductions from said sum as may have been  
119 effected in a manner permitted by this chapter;

120 (13) "Person" includes, without limitation, an individual, a foreign or  
121 domestic corporation whether not for profit or for profit, a partnership, a limited  
122 liability company, an unincorporated society or association, two or more persons  
123 having a joint or common interest, or any other entity;

124 (14) "Registered office" means that office maintained by the corporation  
125 in this state, the address of which is on file in the office of the secretary of state;

126 (15) "Shareholder" means one who is a holder of record of shares in a  
127 corporation;

128 (16) "Shares" are the units into which the shareholders' rights to  
129 participate in the control of the corporation, in its surplus or profits, or in the  
130 distribution of its assets, are divided;

131 (17) "Stated capital" means at any particular time the sum of:

132 (a) The par value of all shares then issued having a par value; and

133 (b) The consideration received by the corporation for all shares then  
134 issued without par value except such part thereof as may have been allocated  
135 otherwise than to stated capital in a manner permitted by law; and

136 (c) Such amounts not included in paragraphs (a) and (b) of this  
137 subdivision as may have been transferred to the stated capital account of the  
138 corporation, whether upon the issue of shares as a share dividend or otherwise,  
139 minus such formal reductions from said sum as may have been effected in a  
140 manner permitted by this chapter;

141 (18) "Subscriber" means one who subscribes for shares in a corporation,  
142 whether before or after incorporation.

351.459. 1. For the purposes of this section, the following terms mean:

2 (1) "Affiliate", a person that directly, or indirectly through one or more  
3 intermediaries, controls, or is controlled by, or is under common control with, a  
4 specified person;

5 (2) "Announcement date", when used in reference to any business  
6 combination, means the date of the first public announcement of the final,

7 definitive proposal for such business combination;

8 (3) "Associate", when used to indicate a relationship with any person,  
9 means any corporation or organization of which such person is an officer or  
10 partner or is, directly or indirectly, the beneficial owner of ten percent or more  
11 of any class of voting stock, any trust or other estate in which such person has a  
12 substantial beneficial interest or as to which such person serves as trustee or in  
13 a similar fiduciary capacity, and any relative or spouse of such person, or any  
14 relative of such spouse, who has the same home as such person;

15 (4) "Beneficial owner", when used with respect to any stock, means a  
16 person that:

17 (a) Individually or with or through any of its affiliates or associates,  
18 beneficially owns such stock, directly or indirectly; or

19 (b) Individually or with or through any of its affiliates or associates, has  
20 the right to acquire such stock, whether such right is exercisable immediately or  
21 only after the passage of time, pursuant to any agreement, arrangement or  
22 understanding, whether or not in writing, or upon the exercise of conversion  
23 rights, exchange rights, warrants or options, or otherwise; provided, however, that  
24 a person shall not be deemed the beneficial owner of stock tendered pursuant to  
25 a tender or exchange offer made by such person or any of such person's affiliates  
26 or associates until such tendered stock is accepted for purchase or exchange; or  
27 the right to vote such stock pursuant to any agreement, arrangement or  
28 understanding, whether or not in writing; provided, however, that a person shall  
29 not be deemed the beneficial owner of any stock under this item if the agreement,  
30 arrangement or understanding to vote such stock arises solely from a revocable  
31 proxy or consent given in response to a proxy or consent solicitation made in  
32 accordance with the applicable rules and regulations under the Exchange Act and  
33 is not then reportable on a Schedule 13D under the Exchange Act, or any  
34 comparable or successor report; or

35 (c) Has any agreement, arrangement or understanding, whether or not in  
36 writing, for the purpose of acquiring, holding, voting, except voting pursuant to  
37 a revocable proxy or consent as described in paragraph (b) of this subdivision, or  
38 disposing of such stock with any other person that beneficially owns, or whose  
39 affiliates or associates beneficially own, directly or indirectly, such stock;

40 (5) "Business combination", when used in reference to any [resident]  
41 domestic corporation and any interested shareholder of such [resident] domestic  
42 corporation, means:

43 (a) Any merger or consolidation of such [resident] domestic corporation  
44 or any subsidiary of such [resident] domestic corporation with such interested  
45 shareholder or any other corporation, whether or not itself an interested  
46 shareholder of such [resident] domestic corporation, which is, or after such  
47 merger or consolidation would be, an affiliate or associate of such interested  
48 shareholder;

49 (b) Any sale, lease, exchange, mortgage, pledge, transfer or other  
50 disposition, in one transaction or a series of transactions to or with such  
51 interested shareholder or any affiliate or associate of such interested shareholder  
52 of assets of such [resident] domestic corporation or any subsidiary of such  
53 [resident] domestic corporation having an aggregate market value equal to ten  
54 percent or more of the aggregate market value of all the assets, determined on a  
55 consolidated basis, of such [resident] domestic corporation, having an aggregate  
56 market value equal to ten percent or more of the aggregate market value of all  
57 the outstanding stock of such [resident] domestic corporation, or representing ten  
58 percent or more of the earning power or net income, determined on a consolidated  
59 basis, of such [resident] domestic corporation;

60 (c) The issuance or transfer by such [resident] domestic corporation or any  
61 subsidiary of such [resident] domestic corporation, in one transaction or a series  
62 of transactions, of any stock of such [resident] domestic corporation or any  
63 subsidiary of such [resident] domestic corporation which has an aggregate market  
64 value equal to five percent or more of the aggregate market value of all the  
65 outstanding stock of such [resident] domestic corporation to such interested  
66 shareholder or any affiliate or associate of such interested shareholder except  
67 pursuant to the exercise of warrants or rights to purchase stock offered, or a  
68 dividend or distribution paid or made, pro rata to all shareholders of such  
69 [resident] domestic corporation;

70 (d) The adoption of any plan or proposal for the liquidation or dissolution  
71 of such [resident] domestic corporation proposed by, or pursuant to any  
72 agreement, arrangement or understanding, whether or not in writing, with such  
73 interested shareholder or any affiliate or associate of such interested shareholder;

74 (e) Any reclassification of securities, including, without limitation, any  
75 stock split, stock dividend, or other distributions of stock in respect of stock, or  
76 any reverse stock split, or recapitalization of such [resident] domestic corporation,  
77 or any merger or consolidation of such [resident] domestic corporation with any  
78 subsidiary of such [resident] domestic corporation, or any other transaction,



79 whether or not with or into or otherwise involving such interested shareholder,  
80 proposed by, or pursuant to any agreement, arrangement or understanding,  
81 whether or not in writing, with such interested shareholder or any affiliate or  
82 associate of such interested shareholder, which has the effect, directly or  
83 indirectly, of increasing the proportionate share of the outstanding shares of any  
84 class or series of voting stock or securities convertible into voting stock of such  
85 [resident] domestic corporation or any subsidiary of such [resident] domestic  
86 corporation which is directly or indirectly owned by such interested shareholder  
87 or any affiliate or associate of such interested shareholder, except as a result of  
88 immaterial changes due to fractional share adjustments; or

89 (f) Any receipt by such interested shareholder or any affiliate or associate  
90 of such interested shareholder of the benefit, directly or indirectly, except  
91 proportionately as a shareholder of such [resident] domestic corporation, of any  
92 loans, advances, guarantees, pledges or other financial assistance or any tax  
93 credits or other tax advantages provided by or through such [resident] domestic  
94 corporation;

95 (6) "Common stock", any stock other than preferred stock;

96 (7) "Consummation date", with respect to any business combination,  
97 means the date of consummation of such business combination, or, in the case of  
98 a business combination as to which a shareholder vote is taken, the later of the  
99 business day prior to the vote or twenty days prior to the date of consummation  
100 of such business combination;

101 (8) "Control", including the terms "controlling", "controlled by" and "under  
102 common control with", the possession, directly or indirectly, of the power to direct  
103 or cause the direction of the management and policies of a person, whether  
104 through the ownership of voting stock, by contract, or otherwise. A person's  
105 beneficial ownership of ten percent or more of a corporation's outstanding voting  
106 stock shall create a presumption that such person has control of such  
107 corporation. Notwithstanding the foregoing, a person shall not be deemed to have  
108 control of a corporation if such person holds voting stock, in good faith and not  
109 for the purpose of circumventing this section, as an agent, bank, broker, nominee,  
110 custodian or trustee for one or more beneficial owners who do not individually or  
111 as a group have control of such corporation;

112 (9) "**Domestic corporation**", a corporation incorporated under the  
113 laws of the state of Missouri;

114 (10) "Exchange Act", the act of Congress known as the "Securities

115 Exchange Act of 1934", as the same has been or hereafter may be amended from  
116 time to time;

117        ~~[(10)]~~ **(11)** "Interested shareholder", when used in reference to any  
118 ~~[resident]~~ domestic corporation, any person, other than such ~~[resident]~~ domestic  
119 corporation or any subsidiary of such ~~[resident]~~ domestic corporation, that:

120           (a) Is the beneficial owner, directly or indirectly, of twenty percent or  
121 more of the outstanding voting stock of such ~~[resident]~~ domestic corporation; or

122           (b) Is an affiliate or associate of such ~~[resident]~~ domestic corporation and  
123 at any time within the five-year period immediately prior to the date in question  
124 was the beneficial owner, directly or indirectly, of twenty percent or more of the  
125 then outstanding voting stock of such ~~[resident]~~ domestic corporation; provided  
126 that, for the purpose of determining whether a person is an interested  
127 shareholder, the number of shares of voting stock of such ~~[resident]~~ domestic  
128 corporation deemed to be outstanding shall include shares deemed to be  
129 beneficially owned by the person through application of subdivision (4) of this  
130 subsection but shall not include any other unissued shares of voting stock of such  
131 ~~[resident]~~ domestic corporation which may be issuable pursuant to any  
132 agreement, arrangement or understanding, or upon exercise of conversion rights,  
133 warrants or options, or otherwise;

134        ~~[(11)]~~ **(12)** "Market value", when used in reference to stock or property  
135 of any ~~[resident]~~ domestic corporation, means:

136           (a) In the case of stock, the highest closing sale price during the  
137 thirty-day period immediately preceding the date in question of a share of such  
138 stock on the composite tape for New York stock exchange listed stocks, or, if such  
139 stock is not quoted on such composite tape or if such stock is not listed on such  
140 exchange, on the principal United States securities exchange registered under the  
141 Exchange Act on which such stock is listed, or, if such stock is not listed on any  
142 such exchange, the highest closing bid quotation with respect to a share of such  
143 stock during the thirty-day period preceding the date in question on the National  
144 Association of Securities Dealers, Inc., Automated Quotations System or any  
145 system then in use, or if no such quotations are available, the fair market value  
146 on the date in question of a share of such stock as determined by the board of  
147 directors of such ~~[resident]~~ domestic corporation in good faith; and

148           (b) In the case of property other than cash or stock, the fair market value  
149 of such property on the date in question as determined by the board of directors  
150 of such ~~[resident]~~ domestic corporation in good faith;

151 [(12)] (13) "Preferred stock", any class or series of stock of a [resident]  
152 domestic corporation which under the bylaws or articles of incorporation of such  
153 [resident] domestic corporation is entitled to receive payment of dividends prior  
154 to any payment of dividends on some other class or series of stock, or is entitled  
155 in the event of any voluntary liquidation, dissolution or winding up of the  
156 [resident] domestic corporation to receive payment or distribution of a  
157 preferential amount before any payments or distributions are received by some  
158 other class or series of stock;

159 [(13) "Resident domestic corporation", a corporation incorporated under  
160 the laws of the state of Missouri that has:

- 161 (a) One hundred or more shareholders;  
162 (b) Its principal place of business, its principal office, or substantial assets  
163 within Missouri; and  
164 (c) One of the following:  
165 a. More than ten percent of its shareholders resident in Missouri;  
166 b. More than ten percent of its shares owned by Missouri residents; or  
167 c. Ten thousand shareholders resident in Missouri.

168 For purposes of this section, reference to shareholders or ownership of shares  
169 shall refer to ownership of voting stock; the residence of a partnership,  
170 unincorporated association, trust or similar organization shall be the principal  
171 office of such organization; the residence of a shareholder shall otherwise be  
172 presumed to be the address appearing in the records of the corporation; and  
173 shares held by banks (except as trustee or guardian), brokers or nominees shall  
174 be disregarded for purposes of calculating the percentages or numbers described  
175 above. No resident domestic corporation, which is organized under the laws of  
176 this state, shall cease to be a resident domestic corporation by reason of events  
177 occurring or actions taken while such resident domestic corporation is subject to  
178 the provisions of this section;]

179 (14) "Stock" means:

180 (a) Any stock or similar security, any certificate of interest, any  
181 participation in any profit-sharing agreement, any voting trust certificate, or any  
182 certificate of deposit for stock; and

183 (b) Any security convertible, with or without consideration, into stock, or  
184 any warrant, call or other option or privilege of buying stock without being bound  
185 to do so, or any other security carrying any right to acquire, subscribe to or  
186 purchase stock;

187 (15) "Stock acquisition date", with respect to any person and any  
188 [resident] domestic corporation, means the date that such person first becomes  
189 an interested shareholder of such [resident] domestic corporation;

190 (16) "Subsidiary" of any [resident] domestic corporation, means any other  
191 corporation of which voting stock, having a majority of the outstanding voting  
192 stock of such other corporation, is owned, directly or indirectly, by such [resident]  
193 domestic corporation;

194 (17) "Voting stock", shares of capital stock of a corporation entitled to vote  
195 generally in the election of directors.

196 2. Notwithstanding anything to the contrary contained in this section,  
197 except the provisions of subsection 4 of this section, no [resident] domestic  
198 corporation shall engage in any business combination with any interested  
199 shareholder of such [resident] domestic corporation for a period of five years  
200 following such interested shareholder's stock acquisition date unless such  
201 business combination or the purchase of stock made by such interested  
202 shareholder on such interested shareholder's stock acquisition date is approved  
203 by the board of directors of such [resident] domestic corporation on or prior to  
204 such stock acquisition date. If a good faith proposal is made in writing to the  
205 board of directors of such [resident] domestic corporation regarding a business  
206 combination, the board of directors shall respond, in writing, within sixty days  
207 or such shorter period, if any, as may be required by the Exchange Act, setting  
208 forth its reasons for its decision regarding such proposal. If a good faith proposal  
209 to purchase stock is made in writing to the board of directors of such [resident]  
210 domestic corporation, the board of directors, unless it responds affirmatively in  
211 writing within sixty days or such shorter period, if any, as may be required by the  
212 Exchange Act, shall be deemed to have disapproved such stock purchase.

213 3. Notwithstanding anything to the contrary contained in this section,  
214 except the provisions of subsections 2 and 4 of this section, no [resident] domestic  
215 corporation shall engage at any time in any business combination with any  
216 interested shareholder of such [resident] domestic corporation other than any of  
217 the following business combinations:

218 (1) A business combination approved by the board of directors of such  
219 [resident] domestic corporation prior to such interested shareholder's stock  
220 acquisition date, or where the purchase of stock made by such interested  
221 shareholder on such interested shareholder's stock acquisition date had been  
222 approved by the board of directors of such [resident] domestic corporation prior

223 to such interested shareholder's stock acquisition date;

224 (2) A business combination approved by the affirmative vote of the holders  
225 of a majority of the outstanding voting stock not beneficially owned by such  
226 interested shareholder or any affiliate or associate of such interested shareholder  
227 at a meeting called for such purpose no earlier than five years after such  
228 interested shareholder's stock acquisition date;

229 (3) A business combination that meets all of the following conditions:

230 (a) The aggregate amount of the cash and the market value as of the  
231 consummation date of consideration other than cash to be received per share by  
232 holders of outstanding shares of common stock of such [resident] domestic  
233 corporation in such business combination is at least equal to the higher of the  
234 following:

235 a. The highest per share price paid by such interested shareholder at a  
236 time when he was the beneficial owner, directly or indirectly, of five percent or  
237 more of the outstanding voting stock of such [resident] domestic corporation, for  
238 any shares of common stock of the same class or series acquired by it within the  
239 five-year period immediately prior to the announcement date with respect to such  
240 business combination, or within the five-year period immediately prior to, or in,  
241 the transaction in which such interested shareholder became an interested  
242 shareholder, whichever is higher; plus, in either case, interest compounded  
243 annually from the earliest date on which such highest per share acquisition price  
244 was paid through the consummation date at the rate for one-year United States  
245 treasury obligations from time to time in effect; less the aggregate amount of any  
246 cash dividends paid, and the market value of any dividends paid other than in  
247 cash, per share of common stock since such earliest date, up to the amount of  
248 such interest; and

249 b. The market value per share of common stock on the announcement date  
250 with respect to such business combination or on such interested shareholder's  
251 stock acquisition date, whichever is higher; plus interest compounded annually  
252 from such date through the consummation date at the rate for one-year United  
253 States treasury obligations from time to time in effect; less the aggregate amount  
254 of any cash dividends paid, and the market value of any dividends paid other  
255 than in cash, per share of common stock since such date, up to the amount of  
256 such interest;

257 (b) The aggregate amount of the cash and the market value as of the  
258 consummation date of consideration other than cash to be received per share by

259 holders of outstanding shares of any class or series of stock, other than common  
260 stock, of such [resident] domestic corporation is at least equal to the highest of  
261 the following, whether or not such interested shareholder has previously acquired  
262 any shares of such class or series of stock:

263       a. The highest per share price paid by such interested shareholder at a  
264 time when he was the beneficial owner, directly or indirectly, of five percent or  
265 more of the outstanding voting stock of such [resident] domestic corporation, for  
266 any shares of such class or series of stock acquired by him within the five-year  
267 period immediately prior to the announcement date with respect to such business  
268 combination, or within the five-year period immediately prior to, or in, the  
269 transaction in which such interested shareholder became an interested  
270 shareholder, whichever is higher; plus, in either case, interest compounded  
271 annually from the earliest date on which such highest per share acquisition price  
272 was paid through the consummation date at the rate for one-year United States  
273 treasury obligations from time to time in effect; less the aggregate amount of any  
274 cash dividends paid, and the market value of any dividends paid other than in  
275 cash, per share of such class or series of stock since such earliest date, up to the  
276 amount of such interest;

277       b. The highest preferential amount per share to which the holders of  
278 shares of such class or series of stock are entitled in the event of any voluntary  
279 liquidation, dissolution or winding up of such [resident] domestic corporation,  
280 plus the aggregate amount of any dividends declared or due as to which such  
281 holders are entitled prior to payment of dividends on some other class or series  
282 of stock, unless the aggregate amount of such dividends is included in such  
283 preferential amount; and

284       c. The market value per share of such class or series of stock on the  
285 announcement date with respect to such business combination or on such  
286 interested shareholder's stock acquisition date, whichever is higher; plus interest  
287 compounded annually from such date through the consummation date at the rate  
288 for one-year United States treasury obligations from time to time in effect; less  
289 the aggregate amount of any cash dividends paid, and the market value of any  
290 dividends paid other than in cash, per share of such class or series of stock since  
291 such date, up to the amount of such interest;

292       (c) The consideration to be received by holders of a particular class or  
293 series of outstanding stock, including common stock, of such [resident] domestic  
294 corporation in such business combination is in cash or in the same form as the

295 interested shareholder has used to acquire the largest number of shares of such  
296 class or series of stock previously acquired by it, and such consideration shall be  
297 distributed promptly;

298 (d) The holders of all outstanding shares of stock of such [resident]  
299 domestic corporation not beneficially owned by such interested shareholder  
300 immediately prior to the consummation of such business combination are entitled  
301 to receive in such business combination cash or other consideration for such  
302 shares in compliance with paragraphs (a), (b) and (c) of this subdivision;

303 (e) After such interested shareholder's stock acquisition date and prior to  
304 the consummation date with respect to such business combination, such  
305 interested shareholder has not become the beneficial owner of any additional  
306 shares of voting stock of such [resident] domestic corporation except:

307 a. As part of the transaction which resulted in such interested  
308 shareholder becoming an interested shareholder;

309 b. By virtue of proportionate stock splits, stock dividends or other  
310 distributions of stock in respect of stock not constituting a business combination  
311 under paragraph (e) of subdivision (5) of subsection 1 of this section;

312 c. Through a business combination meeting all of the conditions of  
313 subsection 2 of this section and this subsection; or

314 d. Through purchase by such interested shareholder at any price which,  
315 if such price had been paid in an otherwise permissible business combination the  
316 announcement date and consummation date of which were the date of such  
317 purchase, would have satisfied the requirements of paragraphs (a), (b) and (c) of  
318 this subdivision.

319 4. The provisions of this section shall not apply to:

320 (1) Any business combination of a [resident] domestic corporation that  
321 does not have a class of voting stock registered with the securities and exchange  
322 commission pursuant to Section 12 of the Exchange Act, unless the articles of  
323 incorporation provide otherwise; or

324 (2) Any business combination of a [resident] domestic corporation whose  
325 articles of incorporation have been amended to provide that such [resident]  
326 domestic corporation shall be subject to the provisions of this section, which did  
327 not have a class of voting stock registered with the securities and exchange  
328 commission pursuant to Section 12 of the Exchange Act on the effective date of  
329 such amendment, and which is a business combination with an interested  
330 shareholder whose stock acquisition date is prior to the effective date of such

331 amendment; or

332 (3) Any business combination of a [resident] domestic corporation the  
333 original articles of incorporation of which contain a provision expressly electing  
334 not to be governed by this section, or which adopts an amendment to such  
335 [resident] domestic corporation's bylaws prior to August 1, 1986, expressly  
336 electing not to be governed by this section, or which adopts an amendment to  
337 such [resident] domestic corporation's bylaws, approved by the affirmative vote  
338 of the holders, other than interested shareholders and their affiliates and  
339 associates, expressly electing not to be governed by this section, provided that  
340 such amendment to the bylaws shall not be effective until eighteen months after  
341 such vote of such [resident] domestic corporation's shareholders and shall not  
342 apply to any business combination of such [resident] domestic corporation with  
343 an interested shareholder whose stock acquisition date is on or prior to the  
344 effective date of such amendment; or

345 (4) Any business combination of a [resident] domestic corporation with an  
346 interested shareholder of such [resident] domestic corporation which became an  
347 interested shareholder inadvertently, if such interested shareholder as soon as  
348 practicable, divests itself of a sufficient amount of the voting stock of such  
349 [resident] domestic corporation so that it no longer is the beneficial owner,  
350 directly or indirectly, of twenty percent or more of the outstanding voting stock  
351 of such [resident] domestic corporation, and would not at any time within the  
352 five-year period preceding the announcement date with respect to such business  
353 combination have been an interested shareholder but for such inadvertent  
354 acquisition;

355 (5) Any business combination with an interested shareholder who was the  
356 beneficial owner, directly or indirectly, of five percent or more of the outstanding  
357 voting stock of such [resident] domestic corporation on December 1, 1985, and  
358 remained so to such interested shareholder's stock acquisition date;

359 (6) Any business combination with an interested shareholder or any of its  
360 affiliates or associates, provided that such interested shareholder became an  
361 interested shareholder at a time when the restrictions contained in this section  
362 did not apply by reason of:

363 (a) Any of subdivisions (1) through (5) of this subsection; or

364 (b) The fact that the corporation was not then a [resident] domestic  
365 corporation, provided, however, that this subdivision shall not apply if, at the  
366 time such interested shareholder became an interested shareholder, the



367 corporation's articles of incorporation contained a provision authorized by the last  
368 sentence of this subsection. This subdivision shall apply regardless of whether  
369 the stock acquisition date of such interested shareholder occurred prior to August  
370 28, 1999.

371 Notwithstanding subdivisions (1), (2), (3), (4) and (5) of this subsection, a  
372 corporation, whether or not a [resident] domestic corporation, may elect by a  
373 provision of its original articles of incorporation or any amendment thereto to be  
374 governed by this section; provided that any such amendment to the articles of  
375 incorporation shall not apply to restrict a business combination between the  
376 corporation and an interested shareholder of the corporation or any of its  
377 affiliates or associates if the interested shareholder became such prior to the  
378 effective date of the amendment.

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Bill

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