FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 278

90TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary, April 8, 1999, with recommendation that the House Committee Substitute for Senate Bill No. 278 Do Pass by Consent.

ANNE C. WALKER, Chief Clerk

L1202.03C

AN ACT

To repeal sections 351.182, 351.459 and 456.120, RSMo 1994, and sections 347.141, 351.245, 351.323 and 351.448, RSMo Supp. 1998, relating to business organizations, and to enact in lieu thereof eight new sections relating to the same subject.

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

Section A. Sections 351.182, 351.459 and 456.120, RSMo 1994, and sections 347.141, 351.245, 351.323 and 351.448, RSMo Supp. 1998, are repealed and eight new sections enacted in lieu thereof, to be known as sections 347.141, 351.182, 351.245, 351.323, 351.448, 351.459, 351.467 and 456.120, to read as follows:

347.141. 1. A dissolved limited liability company may dispose of the known claims against it in accordance with subsections 1 and 2 of this section. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than ninety days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim; and

(4) State that the claim will be barred if not received by the deadline.

2. Notwithstanding other provisions of law, including laws regarding permissibility of third-party claims, to the contrary, a claim against a limited liability company dissolved without fraudulent intent is barred if either of the following occurs:

(1) A claimant who was given written notice under subsection 1 of this section does not deliver the claim to the dissolved limited liability company by the deadline; or

(2) A claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within one hundred and twenty days from the effective date of the rejection notice. For purposes of this subsection, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

3. A dissolved limited liability company may dispose of the unknown claims against it by filing a notice of winding up in accordance with subsections 3 and 4 of this section. The notice of winding up shall meet all of the following requirements:

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

(1) Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or if not in this state, its registered office, is or was located;

(2) Be published one time in a publication of statewide circulation whose audience is primarily persons engaged in the practice of law in this state and which is published not less than four times per year;

[(1)**]** **(3)** Contain a request that persons with claims against the limited liability company present them in accordance with the notice of winding up;

[(2)**]** **(4)** Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

[(3)**]** **(5)** State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.

4. Notwithstanding other provisions of law, including laws regarding permissibility of third-party claims, to the contrary, if a limited liability company dissolved without fraudulent intent files a notice of winding up in accordance with **subsection 2 of section 347.137 and publishes such notice in accordance with** subsection 3 of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three years after the date the notice of winding up is filed **or published, whichever occurs later**:

(1) A claimant who did not receive written notice under subsection 1 of this section;

(2) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; or

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

5. A claim may be enforced under this section in either of the following ways:

(1) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member in liquidation.

6. For purposes of this section, "fraudulent intent" shall be established if it is shown that the sole or primary purpose of the dissolution was to defraud members, creditors or others.

7. Notwithstanding any other provision of this chapter to the contrary, except as provided in subsection 8 of this section, a claim against a limited liability company dissolved pursuant to this chapter for which claim the limited liability company has a contract of insurance which will indemnify the limited liability company for any adverse result from such claim:

(1) Is not subject to the provisions of subsections 1 to 6 of this section and may not be barred by compliance with subsections 1 to 6 of this section;

(2) May be asserted at any time within the statutory period otherwise provided by law for such claims;

(3) May be asserted against, and service of process had upon, the dissolved **[**or dissolving**]** limited liability company for whom the court, at the request of the party bringing the suit, shall appoint a defendant ad litem.

8. Judgments obtained in suits filed and prosecuted pursuant to subsection 7 of this section shall only be enforceable against one or more contracts of insurance issued to the limited liability company, its officers, directors, agents, servants or employees, indemnifying them, or any of them, against such claims.

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 approved by the board of directors. **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**[**, including the time or times which may be limited or unlimited in duration, at or within which, and the price or prices at which**]** any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be **[**such**]** as **[**is**]** 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 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.**

351.245. 1. Unless otherwise provided in the articles of incorporation, each outstanding

share entitled to vote under the provisions of the articles of incorporation shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this chapter to a vote by a majority or other proportion of stock shall refer to such majority or other proportion of the votes of such stock.

2. **[**No person shall be admitted to vote on any shares belonging or hypothecated to the corporation which issued the shares.

3.**]** Unless the articles of incorporation or bylaws provide otherwise, each shareholder in electing directors shall have the right to cast as many votes in the aggregate as shall equal the number of votes held by the shareholder in the corporation, multiplied by the number of directors to be elected at the election, and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute them among two or more candidates.

[4.**]** **3.** A shareholder may vote either in person or by proxy. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Any proxy delivered for or in connection with the shareholder authorization of a control share acquisition pursuant to section 351.407 is valid only if it provides that it is revocable and if it is solicited, appointed, and received both (a) in accordance with all applicable legal requirements and (b) separate and apart from the sale or purchase, contract or tender for sale or purchase, or request or invitation for tender for sale or purchase, of shares of the issuing public corporation. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power of attorney; except that, as provided in this subsection proxies appointed for or in connection with the shareholder authorization of a control share acquisition pursuant to section 351.407 shall be revocable at all times prior to the obtaining of such shareholder authorization, whether or not coupled with an interest. The interest with which it is coupled need not be an interest in the shares themselves, but it may be such an interest or an interest in the corporation generally.

[5.**]** **4.** Without limiting the manner in which a shareholder may authorize a person to act for the shareholder as proxy pursuant to this section, the following shall constitute a valid means by which a shareholder may grant such authority:

(1) A shareholder or the shareholder's duly authorized attorney in fact may execute a writing authorizing another person to act for the shareholder as proxy. Execution may be accomplished by the shareholder or duly authorized attorney in fact signing such writing or causing the shareholder's signature to be affixed to such writing by any reasonable means, including, but not limited to, facsimile signature;

(2) A shareholder may authorize another person to act for the shareholder as proxy by transmitting or authorizing the transmission of a telegram, cablegram, facsimile or other means of electronic transmission, or by telephone, to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such telegram, cablegram, facsimile or other means of electronic transmission, or telephonic transmission shall either set forth or be submitted with information from which it can be determined that the telegram, cablegram, facsimile or other electronic transmission, or telephonic transmission was authorized by the shareholder. If it is determined that such telegrams, cablegrams, facsimiles or other electronic transmissions, or telephonic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making such determination shall specify the information upon which they relied.

"Electronic transmission" shall mean any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

351.323. 1. If a corporation has an even number of directors who are equally divided and cannot agree as to the management of its affairs, so that its business can no longer be conducted to advantage or so that there is danger that its property and business will be impaired and lost, the circuit court of the county where the principal office of the corporation is located may, notwithstanding any provisions of the articles or bylaws of the corporation and whether or not an action is pending for an involuntary winding up or dissolution of the corporation, appoint a provisional director pursuant to this section. Action for the appointment may be filed by one-half of the directors or by the holders of not less than thirty-three and one-third percent of the outstanding shares.

2. The provisional director shall be an impartial person, who is neither a shareholder nor a creditor of the corporation, nor related by consanguinity or affinity within the third degree to any of the other directors or officers of the corporation, or to any judge of the court by which he is appointed. The provisional director shall have all the rights and powers of a director, and shall be entitled to notice of the meetings of the board of directors and to vote at such meetings, until the deadlock in the board of directors is broken or until he is removed by order of the court or by vote or written consent of the holders of a majority of the voting shares. He shall be entitled to receive such compensation as may be agreed upon between him and the corporation, and in the absence of such agreement he shall be entitled to such compensation as shall be fixed by the court. **The court shall remove such provisional director upon the request of one-half of the other directors or by the holders of not less than thirty-three and one-third percent of the outstanding shares if such provisional director has served for three or more years and the deadlock in the board of directors has not been broken.**

3. The shareholders or directors of a corporation, and such corporation, shall be considered to be deadlocked within the meaning of section 351.494 and any and all other provisions of this chapter, notwithstanding the appointment of a provisional director pursuant to this section, if such shareholders, directors or corporation would otherwise be deadlocked but for the appointment of such director.

351.448. 1. Unless expressly required by its articles of incorporation **for a holding company reorganization under this section through the use of a specific reference to this section**, no vote of shareholders of a domestic corporation shall be necessary to authorize a merger with or into a single indirect wholly owned subsidiary of such domestic corporation but solely in connection with a holding company reorganization if:

(1) Such domestic corporation and the indirect wholly owned subsidiary of such domestic corporation are the only constituent corporations to the merger;

(2) Each share or fraction of a share of the capital stock of such domestic corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share or fraction of a share of stock of such domestic corporation being converted in the merger;

(3) The holding company and each of the constituent corporations to the merger are corporations of this state;

(4) The articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and

bylaws of such domestic corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective;

(5) As a result of the merger such domestic corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company;

(6) The directors of such domestic corporation become or remain the directors of the holding company upon the effective time of the merger;

(7) The articles of incorporation of the surviving corporation immediately following the effective time of the merger are identical to the articles of incorporation of such domestic corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, registered office and agent, elections and composition of the board of directors, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective; provided, however, that:

(a) The articles of incorporation of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption pursuant to this chapter or its articles of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter or by the articles of incorporation of the surviving corporation, or both; and

(b) The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue; and

(8) The shareholders of such domestic corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of such domestic corporation.

2. As used in this section only, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct or indirect wholly owned subsidiary of such domestic corporation and whose capital stock is issued in such merger.

3. From and after the effective time of a merger adopted by such domestic corporation by action of its board of directors and without any vote of shareholders pursuant to this section:

(1) To the extent the restrictions of section 351.407 or 351.459 applied to such domestic corporation and its shareholders or shares at the effective time of the merger, such restrictions shall apply to the holding company and its shareholders or shares immediately after the effective time of the merger as though it were such domestic corporation, and all shares of stock of the holding company acquired in the merger shall for purposes of sections 351.407 and 351.459 be deemed to have been acquired at the time that the shares of stock of such domestic corporation converted in the merger were acquired, and provided further that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of section 351.459

shall not solely by reason of the merger become an interested shareholder of the holding company; and

(2) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of such domestic corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of such domestic corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of such domestic corporation.

4. If a plan of merger is adopted by such domestic corporation by action of its board of directors and without any vote of shareholders pursuant to this section, the articles of merger shall state that the plan of merger has been adopted pursuant to this section and shall set forth the resolution of the board of directors of such domestic corporation approving the plan of merger and the date of adoption of the resolution and shall state that the conditions in the first sentence of subsection 1 of this section have been satisfied. The articles of merger shall also set forth the plan of merger and as to each of the constituent corporations to the merger, the number of shares outstanding, shall be executed and verified as provided in section 351.430 and shall be filed in accordance with section 351.435 and the merger shall become effective in accordance with section 351.440.

5. The provisions of section 351.455 shall not apply to a merger effected pursuant to this section.

6. Nothing in this section shall amend, alter, modify, restrict, limit or otherwise change the provisions of section 351.447. As provided in section 351.017, actions taken in accordance with this section and with any other section of this chapter are acts of independent legal significance.

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

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

(2) "Announcement date", when used in reference to any business combination, means the date of the first public announcement of the final, definitive proposal for such business combination;

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

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

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

(b) Individually or with or through any of its affiliates or associates, has the right to acquire such stock, whether such right is exercisable immediately or only after the passage of time, pursuant to any agreement, arrangement or understanding, whether or not in writing, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, however, that a person shall not be deemed the beneficial owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or the right to vote such stock pursuant to any agreement, arrangement or understanding, whether or not in writing; provided, however, that a person shall not

be deemed the beneficial owner of any stock under this item if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made in accordance with the applicable rules and regulations under the Exchange Act and is not then reportable on a Schedule 13D under the Exchange Act, or any comparable or successor report; or

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

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

(a) Any merger or consolidation of such resident domestic corporation or any subsidiary of such resident domestic corporation with such interested shareholder or any other corporation, whether or not itself an interested shareholder of such resident domestic corporation, which is, or after such merger or consolidation would be, an affiliate or associate of such interested shareholder;

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

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

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

(e) Any reclassification of securities, including, without limitation, any stock split, stock dividend, or other distributions of stock in respect of stock, or any reverse stock split, or recapitalization of such resident domestic corporation, or any merger or consolidation of such resident domestic corporation with any subsidiary of such resident domestic corporation, or any other transaction, whether or not with or into or otherwise involving such interested shareholder, proposed by, or pursuant to any agreement, arrangement or understanding, whether or not in writing, with such interested shareholder or any affiliate or associate of such interested shareholder, which has the effect, directly or indirectly, of increasing the proportionate share of the outstanding shares of any class or series of voting stock or securities convertible into voting stock of such resident domestic corporation

or any subsidiary of such resident domestic corporation which is directly or indirectly owned by such interested shareholder or any affiliate or associate of such interested shareholder, except as a result of immaterial changes due to fractional share adjustments; or

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

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

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

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

(9) "Exchange Act", the act of Congress known as the "Securities Exchange Act of 1934", as the same has been or hereafter may be amended from time to time;

(10) "Interested shareholder", when used in reference to any resident domestic corporation, any person, other than such resident domestic corporation or any subsidiary of such resident domestic corporation, that:

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

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

(11) "Market value", when used in reference to stock or property of any resident domestic corporation, means:

(a) In the case of stock, the highest closing sale price during the thirty-day period immediately preceding the date in question of a share of such stock on the composite tape for New York stock exchange listed stocks, or, if such stock is not quoted on such composite tape or if such stock is not listed on such exchange, on the principal United States securities exchange registered under the Exchange Act on which such stock is listed, or, if such stock is not listed on any such exchange, the

highest closing bid quotation with respect to a share of such stock during the thirty-day period preceding the date in question on the National Association of Securities Dealers, Inc., Automated Quotations System or any system then in use, or if no such quotations are available, the fair market value on the date in question of a share of such stock as determined by the board of directors of such resident domestic corporation in good faith; and

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

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

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

(a) One hundred or more shareholders;

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

(c) One of the following:

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

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

c. Ten thousand shareholders resident in Missouri.

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

(14) "Stock" means:

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

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

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

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

(17) "Voting stock", shares of capital stock of a corporation entitled to vote generally in the

election of directors.

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

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

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

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

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

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

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

b. The market value per share of common stock on the announcement date with respect to

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

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of stock, other than common stock, of such resident domestic corporation is at least equal to the highest of the following, whether or not such interested shareholder has previously acquired any shares of such class or series of stock:

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

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

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

(c) The consideration to be received by holders of a particular class or series of outstanding stock, including common stock, of such resident domestic corporation in such business combination is in cash or in the same form as the interested shareholder has used to acquire the largest number of shares of such class or series of stock previously acquired by it, and such consideration shall be distributed promptly;

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

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

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

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

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

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

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

(1) Any business combination of a resident domestic corporation that does not have a class of voting stock registered with the securities and exchange commission pursuant to section 12 of the Exchange Act, unless the **[**certificate**]** **articles** of incorporation provides otherwise; or

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

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

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

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

(6) Any business combination with an interested shareholder or any of its affiliates or associates, provided that such interested shareholder became an interested shareholder at a

time when the restrictions contained in this section did not apply by reason of:

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

(b) The fact that the corporation was not then a resident domestic corporation, provided, however, that this subdivision shall not apply if, at the time such interested shareholder became an interested shareholder, the corporation's articles of incorporation contained a provision authorized by the last sentence of this subsection. This subdivision shall apply regardless of whether the stock acquisition date of such interested shareholder occurred prior to the effective date of this subdivision.

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

351.467. 1. If the stockholders of a corporation of this state, having only two shareholders each of which own fifty percent of the stock therein, shall be unable to agree upon the desirability of continuing the business of such corporation, either stockholder may file with the circuit court in which the principal place of business of such corporation is located a petition stating that it desires to discontinue the business of such corporation and to dispose of the assets used in such business in accordance with a plan to be agreed upon by both stockholders or that, if no such plan shall be agreed upon by both stockholders, the corporation be dissolved. Such petition shall have attached thereto a copy of the proposed plan of discontinuance and distribution and a certificate stating that copies of such petition and plan have been transmitted in writing to the other stockholder and to the directors and officers of such corporation.

2. Unless both stockholders file with the court: (1) within ninety days of the date of the filing of such petition, a certificate similarly executed and acknowledged stating that they have agreed on such plan, or a modification thereof, and (2) within one hundred eighty days from the date of the filing of such petition, a certificate similarly executed and acknowledged stating that the distribution provided by such plan had been completed, the court shall dissolve such corporation and shall by appointment of one or more trustees or receivers, administer and wind up its affairs in a method intended to realize the maximum value for the stockholders, including the sale of the company as a going concern, if appropriate. Either or both of the above periods may be extended by agreement of the stockholder, evidenced by a certificate similarly executed, acknowledged and filed with the court prior to the expiration of such period.

3. If, at any time within ninety days prior to the date upon which a petition is filed pursuant to subsection 1 of this section, shares of a corporation are owned by or for the benefit of persons who would be deemed related taxpayers for purposes of section 267 of the Internal Revenue Code of 1986, as amended, or the regulations promulgated thereunder, then such shares shall be deemed owned by one stockholder for purposes of this section.

456.120. 1. The trustee may be a natural person, corporation, **limited liability company formed pursuant to chapter 347, RSMo,** association or partnership with the capacity to take and hold property except as provided in subsection 2 **of this section**.

2. No corporation, partnership or association organized under the law of a state or country other than the state of Missouri and no United States national banking association having its principal place of business outside of the state of Missouri shall have the capacity to act as trustee in Missouri except as otherwise provided by section 362.600, RSMo.