

FIRST REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 123
93RD GENERAL ASSEMBLY

Reported from the Committee on Judiciary April 13, 2005, with recommendation that the House Committee Substitute for Senate Bill No. 123 Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

STEPHEN S. DAVIS, Chief Clerk

0582L.03C

AN ACT

To repeal sections 351.107, 351.180, 351.182, 351.295, and 351.488, RSMo, and to enact in lieu thereof five new sections relating to corporations.

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

Section A. Sections 351.107, 351.180, 351.182, 351.295, and 351.488, RSMo, are
2 repealed and five new sections enacted in lieu thereof, to be known as sections 351.107, 351.180,
3 351.182, 351.295, and 351.488, to read as follows:

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

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

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

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

19 2. (1) Subject to the provisions of section 351.200, the stock of any class or series may
20 be made subject to redemption by the corporation at its option or at the option of the holders of
21 such stock or upon the happening of a specified event; provided, that at the time of such
22 redemption the corporation shall have outstanding shares of at least one class or series of stock
23 with full voting powers which shall not be subject to redemption. Notwithstanding the limitation
24 stated in the foregoing provision:

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

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

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

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

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

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

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

72 7. When any corporation desires to issue any shares of stock of any class or of any series
73 of any class of which the powers, designations, preferences and relative, participating, optional
74 or other rights, if any, or the qualifications, limitations or restrictions thereof, if any, have not

75 been set forth in the articles of incorporation or in any amendment thereto, but are provided for
76 in a resolution or resolutions adopted by the board of directors pursuant to authority expressly
77 vested in it by the provisions of the articles of incorporation or any amendment thereto, a
78 certificate of designations setting forth a copy of such resolution or resolutions and the number
79 of shares of stock of such class or series as to which the resolution or resolutions apply shall be
80 executed by the president or any vice president and filed by the corporation with the secretary
81 of state. Unless otherwise provided in any such resolution or resolutions, the number of shares
82 of stock of any such class or series to which such resolution or resolutions apply may be
83 increased, but not above the number of shares of the class authorized by the articles of
84 incorporation with respect to which the powers, designations, preferences and rights have not
85 been set forth, or decreased, but not below the number of shares thereof then outstanding, by a
86 certificate likewise executed and filed setting forth a statement that a specified increase or
87 decrease therein had been authorized and directed by a resolution or resolutions likewise adopted
88 by the board of directors. In case the number of such shares shall be decreased, the number of
89 shares so specified in the certificate shall resume their status which they had prior to the adoption
90 of the resolution or resolutions creating such shares. When no shares of any such class or series
91 are outstanding, either because none were issued or because no issued shares of any such class
92 or series remain outstanding, a certificate setting forth a resolution or resolutions adopted by the
93 board of directors that none of the authorized shares of such class or series are outstanding, and
94 that none will be issued subject to the certificate of designations previously filed with respect to
95 such class or series, may be executed by the president or any vice president and filed by the
96 corporation with the secretary of state and, when such certificate becomes effective, it shall have
97 the effect of eliminating from the articles of incorporation all reference to such class or series of
98 stock. When shares of stock of any class or of any series of any class of which the powers,
99 designations, preferences, and relative, participating, optional or other rights, if any, or the
100 qualifications, limitations or restrictions thereof, if any, have not been set forth in the articles of
101 incorporation or in any amendment thereto, but are provided in a resolution or resolutions
102 adopted by the board of directors pursuant to authority expressly vested in it by the provisions
103 of the articles of incorporation or any amendment thereto, the board of directors may, by
104 resolution or resolutions adopted by the board of directors, amend the powers, designations,
105 preferences and relative, participating, optional or other rights, if any, or the qualifications,
106 limitations or restrictions thereof, if any, of any such class or series by filing an amended
107 certificate of designations setting forth a copy of such resolution or resolutions, which shall
108 include the terms and conditions of such amendment, executed by the president or any vice
109 president and filed by the corporation with the secretary of state. Provided, however, that if any
110 shares of any such class or series shall be issued and outstanding at the time of such filing, such

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

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

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

16 (1) The duration of such rights or options, which may be limited or unlimited;

17 (2) The price or prices at which any such shares may be purchased from the corporation
18 upon the exercise of any such right or option;

19 (3) The holders by whom such rights or options may be exercised;

20 (4) The conditions to or which may preclude or limit the exercise, transfer or receipt of
21 such rights or options, or which may invalidate or void such rights or options, including without
22 limitation conditions based upon a specified number or percentage of outstanding shares, rights,
23 options, convertible securities, or obligations of the corporation as to which any person or
24 persons or their transferees own or offer to acquire; and

25 (5) The conditions upon which such rights or options may be redeemed.

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27 Such terms may be made dependent upon facts ascertainable outside the documents evidencing
28 the rights, or the resolution providing for the issue of the rights or options adopted by the board
29 of directors, if the manner in which the facts shall operate upon the exercise of the rights or
30 options is clearly and expressly set forth in the document evidencing the rights or options, or in

31 the resolution. In the absence of actual fraud in the transaction, the judgment of the directors as
32 to the consideration for the issuance of such rights or options and the sufficiency thereof and the
33 terms of such rights or options shall be conclusive. In case the shares of stock of the corporation
34 to be issued upon the exercise of such rights or options shall be shares having a par value, the
35 price or prices so to be received therefor shall not be less than the par value thereof. In case the
36 shares of stock so to be issued shall be shares of stock without par value, the consideration
37 therefor shall be determined in the manner provided in section 351.185. Nothing contained in
38 subsection 1 of section 351.180 shall be deemed to limit the authority of the board of directors
39 to determine, in its sole discretion, the terms of the rights or options issuable pursuant to this
40 section.

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

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

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

47

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

351.295. 1. [Except as otherwise provided in the articles of incorporation or bylaws,]
2 The shares of a corporation shall be represented by certificates, **provided that the articles of**
3 **incorporation or bylaws, or a resolution or resolutions of the board of directors of the**
4 **corporation, may provide that some or all of any or all classes or series of its stock shall be**
5 **uncertificated shares. Any such provision of the articles of incorporation or bylaws, or**
6 **resolution of the board of directors, shall not apply to shares represented by a certificate**
7 **until such certificate is surrendered to the corporation. Notwithstanding such a provision**
8 **of the articles of incorporation or bylaws, or the adoption of such a resolution by the board**
9 **of directors, every holder of stock represented by certificates and upon request every**
10 **holder of uncertificated shares shall be entitled to have a certificate** signed by the president
11 or a vice president and by the secretary or an assistant secretary or the treasurer or an assistant
12 treasurer of such corporation and sealed with the seal of the corporation. Any or all the
13 signatures on the certificate may be a facsimile and the seal may be facsimile, engraved or
14 printed. In case any officer, transfer agent or registrar who has signed or whose facsimile
15 signature has been placed on a certificate shall have ceased to be such officer, transfer agent or

16 registrar before such certificate is issued, the certificate may nevertheless be issued by the
17 corporation with the same effect as if the person were an officer, transfer agent or registrar at the
18 date of issue.

19 2. Every certificate for shares without par value shall have plainly stated upon its face
20 the number of shares which it represents, and no certificate shall express any par value for such
21 shares or a rate of dividend to which such shares shall be entitled in terms of percentage of any
22 par or other value.

351.488. 1. A corporation administratively dissolved pursuant to section 351.486 may
2 apply to the secretary of state for reinstatement. The application must:

3 (1) Recite the name of the corporation and the effective date of its administrative
4 dissolution;

5 (2) State that the ground or grounds for dissolution either did not exist or have been
6 eliminated;

7 (3) State that the corporation's name satisfies the requirements of section 351.110;

8 (4) Contain a certificate from the department of revenue reciting that all taxes owed by
9 the corporation, including all liabilities owed as determined by the division of employment
10 security pursuant to chapter 288, RSMo, have been paid or that a tax payback plan has been
11 arranged with the department of revenue for liabilities owed to the department of revenue and
12 a tax payback plan has been arranged with the department of labor and industrial relations
13 division of employment security for any liabilities owed as determined by the division of
14 employment security pursuant to chapter 288, RSMo; and

15 (5) Be accompanied by a reinstatement fee in the amount of fifty dollars plus any
16 delinquent fees, penalties, and charges that might have accrued.

17 2. If the secretary of state determines that the application contains the information and
18 is accompanied by the fees required by subsection 1 of this section and that the information and
19 fees are correct, the secretary of state shall cancel the certificate of dissolution and prepare a
20 certificate of reinstatement that recites his or her determination and the effective date of
21 reinstatement, file the original of the certificate, and serve a copy on the corporation as provided
22 in section 351.380.

23 3. When the reinstatement is effective, it relates back to and takes effect as of the
24 effective date of the administrative dissolution and the corporation resumes carrying on its
25 business as if the administrative dissolution had never occurred.

26 4. **In the event a corporation was administratively dissolved for failure to file an**
27 **annual registration report, and the secretary of state determines that such failure was due**
28 **to military service, as described in section 41.950, RSMo, the secretary of state may**
29 **determine to waive the requirements of subsection 1 of this section, including waiver of the**

30 **reinstatement fee described in subdivision (5) of subsection 1 of this section, and shall**
31 **waive any penalties or charges as provided in subdivision (5) of subsection 1 of section**
32 **41.950, RSMo. Upon making the determination that failure to file an annual registration**
33 **report was due to military service, the secretary of state shall cancel the certificate of**
34 **dissolution and prepare a certificate of reinstatement that recites his or her determination**
35 **and the effective date of reinstatement, file the original of the certificate, and serve a copy**
36 **on the corporation as provided in section 351.380, RSMo. Nothing in this subsection shall**
37 **be construed so as to waive the annual registration report fees due for the year or years in**
38 **which no annual registration report was filed.**

39 **5.** In the event the name was reissued prior to the time application for reinstatement was
40 filed, the corporation applying for reinstatement may elect to reinstate using a new name that
41 complies with the requirements of section 351.110, and that has been approved by appropriate
42 action of the corporation for changing the name thereof.