

SECOND REGULAR SESSION

HOUSE BILL NO. 1715

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

Read 1st time February 8, 2006 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

4618L.03I

AN ACT

To repeal sections 351.295, 351.355, and 351.455, RSMo, and to enact in lieu thereof three new sections relating to corporations.

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

Section A. Sections 351.295, 351.355, and 351.455, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 351.295, 351.355, and 351.455, to read as follows:

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

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.

15 agent or registrar before such certificate is issued, the certificate may nevertheless be issued by
16 the corporation with the same effect as if the person were an officer, transfer agent or registrar
17 at the date of issue. Every holder of uncertificated shares is entitled to receive a statement of
18 holdings as evidence of share ownership.

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.

351.355. 1. A corporation created under the laws of this state may indemnify any person
2 who was or is a party or is threatened to be made a party to any threatened, pending or completed
3 action, suit, or proceeding, whether civil, criminal, administrative or investigative, other than an
4 action by or in the right of the corporation, by reason of the fact that he or she is or was a
5 director, officer, employee or agent of the corporation, or is or was serving at the request of the
6 corporation as a director, officer, employee or agent of another corporation, partnership, joint
7 venture, trust or other enterprise, against expenses, including attorneys' fees, judgments, fines
8 and amounts paid in settlement actually and reasonably incurred by him in connection with such
9 action, suit, or proceeding if he or she acted in good faith and in a manner he or she reasonably
10 believed to be in or not opposed to the best interests of the corporation, and, with respect to any
11 criminal action or proceeding, had no reasonable cause to believe his or her conduct was
12 unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement,
13 conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a
14 presumption that the person did not act in good faith and in a manner which he or she reasonably
15 believed to be in or not opposed to the best interests of the corporation, and, with respect to any
16 criminal action or proceeding, had reasonable cause to believe that his or her conduct was
17 unlawful.

18 2. The corporation may indemnify any person who was or is a party or is threatened to
19 be made a party to any threatened, pending or completed action or suit by or in the right of the
20 corporation to procure a judgment in its favor by reason of the fact that he or she is or was a
21 director, officer, employee or agent of the corporation, or is or was serving at the request of the
22 corporation as a director, officer, employee or agent of another corporation, partnership, joint
23 venture, trust or other enterprise against expenses, including attorneys' fees, and amounts paid
24 in settlement actually and reasonably incurred by him in connection with the defense or
25 settlement of the action or suit if he or she acted in good faith and in a manner he or she
26 reasonably believed to be in or not opposed to the best interests of the corporation; except that
27 no indemnification shall be made in respect of any claim, issue or matter as to which such person
28 shall have been adjudged to be liable for negligence or misconduct in the performance of his or

29 her duty to the corporation unless and only to the extent that the court in which the action or suit
30 was brought determines upon application that, despite the adjudication of liability and in view
31 of all the circumstances of the case, the person is fairly and reasonably entitled to indemnity for
32 such expenses which the court shall deem proper.

33 3. Except as otherwise provided in the articles of incorporation or the bylaws, to the
34 extent that a director, officer, employee or agent of the corporation has been successful on the
35 merits or otherwise in defense of any action, suit, or proceeding referred to in subsections 1 and
36 2 of this section, or in defense of any claim, issue or matter therein, he or she shall be
37 indemnified against expenses, including attorneys' fees, actually and reasonably incurred by him
38 in connection with the action, suit, or proceeding.

39 4. Any indemnification under subsections 1 and 2 of this section, unless ordered by a
40 court, shall be made by the corporation only as authorized in the specific case upon a
41 determination that indemnification of the director, officer, employee or agent is proper in the
42 circumstances because he or she has met the applicable standard of conduct set forth in this
43 section. The determination shall be made by the board of directors by a majority vote of a
44 quorum consisting of directors who were not parties to the action, suit, or proceeding, or if such
45 a quorum is not obtainable, or even if obtainable a quorum of disinterested directors so directs,
46 by independent legal counsel in a written opinion, or by the shareholders.

47 5. Expenses incurred in defending [a] **any** civil [or], criminal, **administrative, or**
48 **investigative** action, suit or proceeding may be paid by the corporation in advance of the final
49 disposition of the action, suit, or proceeding as authorized by the board of directors in the
50 specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or
51 agent to repay such amount unless it shall ultimately be determined that he or she is entitled to
52 be indemnified by the corporation as authorized in this section.

53 6. The indemnification provided by this section shall not be deemed exclusive of any
54 other rights to which those seeking indemnification may be entitled under the articles of
55 incorporation or bylaws or any agreement, vote of shareholders or disinterested directors or
56 otherwise, both as to action in his or her official capacity and as to action in another capacity
57 while holding such office, and shall continue as to a person who has ceased to be a director,
58 officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators
59 of such a person.

60 7. A corporation created under the laws of this state shall have the power to give any
61 further indemnity, in addition to the indemnity authorized or contemplated under other
62 subsections of this section, including subsection 6, to any person who is or was a director,
63 officer, employee or agent, or to any person who is or was serving at the request of the
64 corporation as a director, officer, employee or agent of another corporation, partnership, joint

65 venture, trust or other enterprise, provided such further indemnity is either (i) authorized,
66 directed, or provided for in the articles of incorporation of the corporation or any duly adopted
67 amendment thereof or (ii) is authorized, directed, or provided for in any bylaw or agreement of
68 the corporation which has been adopted by a vote of the shareholders of the corporation, and
69 provided further that no such indemnity shall indemnify any person from or on account of such
70 person's conduct which was finally adjudged to have been knowingly fraudulent, deliberately
71 dishonest or willful misconduct. Nothing in this subsection shall be deemed to limit the power
72 of the corporation under subsection 6 of this section to enact bylaws or to enter into agreements
73 without shareholder adoption of the same.

74 8. The corporation may purchase and maintain insurance or another arrangement on
75 behalf of any person who is or was a director, officer, employee or agent of the corporation, or
76 is or was serving at the request of the corporation as a director, officer, employee or agent of
77 another corporation, partnership, joint venture, trust or other enterprise against any liability
78 asserted against him or her and incurred by him or her in any such capacity, or arising out of his
79 or her status as such, whether or not the corporation would have the power to indemnify him
80 against such liability under the provisions of this section. Without limiting the power of the
81 corporation to procure or maintain any kind of insurance or other arrangement the corporation
82 may for the benefit of persons indemnified by the corporation create a trust fund, establish any
83 form of self insurance, secure its indemnity obligation by grant of a security interest or other lien
84 on the assets of the corporation, or establish a letter of credit, guaranty, or surety arrangement.
85 The insurance or other arrangement may be procured, maintained, or established within the
86 corporation or with any insurer or other person deemed appropriate by the board of directors
87 regardless of whether all or part of the stock or other securities of the insurer or other person are
88 owned in whole or in part by the corporation. In the absence of fraud the judgment of the board
89 of directors as to the terms and conditions of the insurance or other arrangement and the identity
90 of the insurer or other person participating in an arrangement shall be conclusive and the
91 insurance or arrangement shall not be voidable and shall not subject the directors approving the
92 insurance or arrangement to liability on any ground regardless of whether directors participating
93 in the approval are beneficiaries of the insurance arrangement.

94 9. Any provision of this chapter to the contrary notwithstanding, the provisions of this
95 section shall apply to all existing and new domestic corporations, including but not limited to
96 banks, trust companies, insurance companies, building and loan associations, savings bank and
97 safe deposit companies, mortgage loan companies, corporations formed for benevolent, religious,
98 scientific or educational purposes and nonprofit corporations.

99 10. For the purpose of this section, references to "the corporation" include all constituent
100 corporations absorbed in a consolidation or merger as well as the resulting or surviving

101 corporation so that any person who is or was a director, officer, employee or agent of such a
102 constituent corporation or is or was serving at the request of such constituent corporation as a
103 director, officer, employee or agent of another corporation, partnership, joint venture, trust or
104 other enterprise shall stand in the same position under the provisions of this section with respect
105 to the resulting or surviving corporation as he or she would if he or she had served the resulting
106 or surviving corporation in the same capacity.

107 11. For purposes of this section, the term "other enterprise" shall include employee
108 benefit plans; the term "fines" shall include any excise taxes assessed on a person with respect
109 to an employee benefit plan; and the term "serving at the request of the corporation" shall include
110 any service as a director, officer, employee or agent of the corporation which imposes duties on,
111 or involves services by, such director, officer, employee, or agent with respect to an employee
112 benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a
113 manner he or she reasonably believed to be in the interest of the participants and beneficiaries
114 of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best
115 interests of the corporation" as referred to in this section.

351.455. 1. [If a shareholder of a corporation which is a party to a merger or
2 consolidation and, in the case of a shareholder owning voting stock as of the record date, at the
3 meeting of shareholders at which the plan of merger or consolidation is submitted to a vote shall
4 file with such corporation prior to or at such meeting a written objection to such plan of merger
5 or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days
6 after the merger or consolidation is effected, shall make written demand on the surviving or new
7 corporation for payment of the fair value of his or her shares as of the day prior to the date on
8 which the vote was taken approving the merger or consolidation,] **Any shareholder shall be**
9 **deemed a dissenting shareholder and entitled to appraisal under this section if such**
10 **shareholder:**

11 (1) **Owens stock of a corporation which is a party to a merger or consolidation as of**
12 **the record date for the meeting of shareholders at which the plan of merger or**
13 **consolidation is submitted to a vote;**

14 (2) **Files with the corporation before or at such meeting a written objection to such**
15 **plan of merger or consolidation;**

16 (3) **Does not vote in favor thereof if the shareholder owns voting stock as of such**
17 **record date; and**

18 (4) **Makes written demand on the surviving or new corporation within twenty days**
19 **after the merger or consolidation is effected for payment of the fair value of such**
20 **shareholder's shares as of the day before the date on which the vote was taken approving**
21 **the merger or consolidation.**

22 **2.** The surviving or new corporation shall pay to **each** such **dissenting** shareholder, upon
23 surrender of his or her certificate or certificates representing said shares **in the case of**
24 **certificated shares**, the fair value thereof. Such demand shall state the number and class of the
25 shares owned by such dissenting shareholder. Any shareholder [failing to make demand within
26 the twenty-day period] **who:**

27 **(1) Fails to file a written objection prior to or at such meeting;**

28 **(2) Fails to make demand within the twenty-day period; or**

29 **(3) In the case of a shareholder owning voting stock as of such record date, votes**
30 **in favor of the merger or consolidation;**

31

32 shall be conclusively presumed to have consented to the merger or consolidation and shall be
33 bound by the terms thereof **and shall not be deemed to be a dissenting shareholder.**

34 **3. Notwithstanding the provisions of subsection 1 of section 351.230, notice under**
35 **the provisions of subsection 1 of section 351.230 stating the purpose for which the meeting**
36 **is called shall be given to each shareholder owning stock as of the record date for the**
37 **meeting of shareholders at which the plan of merger or consolidation is submitted to a vote,**
38 **whether or not such shareholder is entitled to vote.**

39 [2.] **4.** If within thirty days after the date on which such merger or consolidation was
40 effected the value of such shares is agreed upon between the dissenting shareholder and the
41 surviving or new corporation, payment therefor shall be made within ninety days after the date
42 on which such merger or consolidation was effected, upon the surrender of his or her certificate
43 or certificates representing said shares **in the case of certificated shares**. Upon payment of the
44 agreed value the dissenting shareholder shall cease to have any interest in such shares or in the
45 corporation.

46 [3.] **5.** If within such period of thirty days the shareholder and the surviving or new
47 corporation do not so agree, then the dissenting shareholder may, within sixty days after the
48 expiration of the thirty-day period, file a petition in any court of competent jurisdiction within
49 the county in which the registered office of the surviving or new corporation is situated, asking
50 for a finding and determination of the fair value of such shares, and shall be entitled to judgment
51 against the surviving or new corporation for the amount of such fair value as of the day prior to
52 the date on which such vote was taken approving such merger or consolidation, together with
53 interest thereon to the date of such judgment. The judgment shall be payable only upon and
54 simultaneously with the surrender to the surviving or new corporation of the certificate or
55 certificates representing said shares **in the case of certificated shares**. Upon the payment of the
56 judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the
57 surviving or new corporation. Such shares may be held and disposed of by the surviving or new

58 corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the
59 time herein limited, such shareholder and all persons claiming under such shareholder shall be
60 conclusively presumed to have approved and ratified the merger or consolidation, and shall be
61 bound by the terms thereof.

62 [4.] 6. The right of a dissenting shareholder to be paid the fair value of such shareholder's
63 shares as herein provided shall cease if and when the corporation shall abandon the merger or
64 consolidation.

65 [5.] 7. When the remedy provided for in this section is available with respect to a
66 transaction, such remedy shall be the exclusive remedy of the shareholder as to that transaction,
67 except in the case of fraud or lack of authorization for the transaction.

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