

SECOND REGULAR SESSION

SENATE BILL NO. 1208

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time March 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

5477S.011

AN ACT

To repeal section 351.090, RSMo, and to enact in lieu thereof one new section relating to amendments to articles of incorporation for corporations.

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

Section A. Section 351.090, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 351.090, to read as follows:

351.090. 1. At any time or times before the corporation has received any
2 payment for any of its shares, the board of directors may adopt amendments to
3 the articles of incorporation by executing a certificate of amendment as provided
4 in subsection 1 of section 351.095.

5 2. After the corporation has received any payment for any of its shares,
6 amendments to the articles of incorporation may be made only in the following
7 manner:

8 (1) The board of directors may adopt a resolution setting forth the
9 proposed amendment and directing that it be submitted to a vote at a meeting of
10 shareholders, which may be either an annual or a special meeting, except that the
11 proposed amendment need not be adopted by the board of directors and may be
12 directly submitted **by the board of directors** to any annual or special meeting
13 of shareholders.

14 (2) Written notice setting forth the proposed amendment or a summary
15 of the changes to be effected thereby shall be given to each shareholder of record
16 entitled to vote thereon within the time and in the manner provided in section
17 351.230 for the giving of notice of meetings of shareholders. If the meeting is an
18 annual meeting, the proposed amendment or summary shall, nevertheless, be
19 included in the notice of the annual meeting.

20 (3) At the meeting a vote of the shareholders entitled to vote thereon shall

21 be taken on the proposed amendment. Subject to subsections 3 and 6 of this
22 section, the proposed amendment shall be adopted upon receiving the affirmative
23 vote of a majority of the outstanding shares entitled to vote thereon, unless any
24 class of shares is entitled to vote thereon as a class, in which event the proposed
25 amendment shall be adopted upon receiving the affirmative vote of a majority of
26 the outstanding shares of each class of shares entitled to vote thereon as a class
27 and of the total shares entitled to vote thereon.

28 3. If the articles of incorporation or bylaws provide for cumulative voting
29 in the election of directors, the number of directors shall not be decreased to less
30 than three by amendment to the articles of incorporation when the number of
31 shares voting against the proposal for decrease would be sufficient to elect a
32 director if the shares were voted cumulatively at an election of three directors. If
33 the articles of incorporation or bylaws do not provide for cumulative voting in the
34 election of directors, then the number of directors shall only be decreased to less
35 than three by amendment to the articles of incorporation approved by the
36 affirmative vote of a majority of the outstanding shares entitled to vote on the
37 amendment.

38 4. If any amendment made under section 351.085 effects a reduction of
39 stated capital, then the corporation making the amendment shall comply with the
40 applicable provisions of sections 351.195 and 351.200, as well as the provisions
41 of this section.

42 5. Any number of amendments may be submitted to the shareholders and
43 voted on by them at one meeting.

44 6. A proposed amendment which provides that section 351.407 does not
45 apply to control share acquisitions of shares of a corporation shall be adopted
46 upon receiving the affirmative vote of two-thirds of all outstanding shares entitled
47 to vote thereon, unless any class of shares is entitled to vote thereon as a class,
48 in which event the proposed amendment shall be adopted upon receiving the
49 affirmative vote of two-thirds of the outstanding shares of each class of shares
50 entitled to vote thereon as a class and of the total shares entitled to vote
51 thereon. This subsection shall not affect or limit the right, power or authority of
52 any issuing public corporation to adopt any other amendment or to take any other
53 action in addition to an amendment providing for the nonapplicability of section
54 351.407 to control share acquisitions of the issuing public corporation pursuant
55 to this section.

56 7. When a corporation has ten or fewer shareholders, cumulative voting

57 may be abolished only by an affirmative vote of the holders of at least two-thirds
58 of the outstanding shares.

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