

HOUSE No. 3033

By Mr. Scaccia of Boston, a petition (accompanied by bill, House, No. 3033) of Angelo M. Scaccia and William F. Galvin further regulating certain business corporations. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

PRESENTED BY:

Angelo M. Scaccia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making amendments to the Massachusetts Corporation Act - part two.

PETITION OF:

NAME:

Angelo M. Scaccia

William F. Galvin

DISTRICT/ADDRESS:

14th Suffolk

Secretary of the Commonwealth

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT MAKING AMENDMENTS TO THE MASSACHUSETTS CORPORATION ACT - PART TWO.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Section 1.40 of chapter 156D is hereby further amended by striking out the word
2 "stock" in each place where it appears and inserting in place thereof the following word:- shares.
- 3 SECTION 2. Section 2.05 of chapter 156D is hereby amended by striking out the word "by-
4 laws" in each place where it appears and inserting in place thereof the following word:- bylaws.
- 5 SECTION 3. Section 2.05 of chapter 156D is hereby amended by striking out the word "and" in
6 line 19 and inserting in place thereof the following word:- or.
- 7 SECTION 4. Section 3.02 of chapter 156D is hereby amended by striking out the word "stock"
8 in each place where it appears and inserting in place thereof the following word:- shares.
- 9 SECTION 5. Clause (1) of subsection (a) of section 4.01 of chapter 156D is hereby amended
10 by striking out its text in its entirety and inserting in place thereof the following words:- shall
11 contain the word "corporation," "incorporated," "company" or "limited" or the abbreviation
12 "corp," "inc," "co," or "Ltd," or words or abbreviations of like import in another language; and
- 13 SECTION 6. Section 6.02 of chapter 156D is hereby amended by striking out the word
14 "recision" in line 40, and inserting in place thereof the following word:- rescission.
- 15 SECTION 7. Section 6.23 of chapter 156D is hereby amended by striking out the words "class
16 of series" in line 9, and inserting in place thereof the following words:- class or series.
- 17 SECTION 8. Section 6.23 of chapter 156D is hereby amended by striking out the words "with
18 respect to distributions" in line 16, and inserting in place thereof the following words:- with
19 respect to a distribution.
- 20 SECTION 9. Section 6.23(b) of Chapter 156D is amended by deleting from the first clause (1)
21 thereof the word "authorized" and inserting in place thereof the following word: - authorize
- 22 SECTION 10. Section 7.08 of chapter 156D is hereby amended by striking out the word
23 "stockholder" in line 17, and inserting in place thereof the following word:- shareholder.

24 SECTION 11. Section 7.08 of chapter 156D is hereby amended by striking out the word
25 "stockholder" in line 23, and inserting in place thereof the following word:- shareholder.

26 SECTION 12. Section 7.27(b) of Chapter 156D is deleted in its entirety and replaced by the
27 following:—

28 (b) If any provision of this chapter requires the affirmative vote of more than a majority of all
29 the votes entitled to be cast on a matter by any voting group, the articles of organization may
30 provide that action may be taken by the affirmative vote of a lesser proportion than the chapter
31 specifies, but not less than a majority of all the votes entitled to be cast on the matter by the
32 voting group.

33 SECTION 13. Section 7.44(b)(3) of Chapter 156D is deleted in its entirety and replaced by the
34 following:—

35 (3) the affirmative vote of a majority of all the votes entitled to be cast on the matter, not
36 including the votes cast by holders of shares owned by or voted under the control of a
37 shareholder or related person who has or had a beneficial financial interest in the act or omission
38 complained of or other interest therein that would reasonably be expected to exert an influence
39 on that shareholder's or related person's judgment if called upon to vote in the determination.

40 SECTION 14. Section 8.06 of chapter 156D is hereby amended by striking out the word "stock"
41 in line 38, and inserting in place thereof the following word:- shares.

42 SECTION 15. Section 8.06 of chapter 156D is hereby amended by striking out the word "stock"
43 in line 50, and inserting in place thereof the following word:- shares.

44 SECTION 16. Section 8.06 of chapter 156D is hereby amended by striking out the words "shall,
45 unless otherwise provided in the vote, shall become" lines 53-54, and inserting in place thereof
46 the following words:- shall, unless otherwise provided in the vote, become.

47 SECTION 17. Section 8.06 of chapter 156D is hereby amended by striking out the word "effect"
48 in line 111, and inserting in place thereof the following word:- affect.

49 SECTION 18. Sections 8.06(c)(1) and (2) are deleted in their entirety and replaced by the
50 following:—

51 (c) (1) Subsection (b) shall apply to every public corporation, whether or not notice of an
52 annual meeting of the public corporation has been given on or prior to the effective date of this
53 chapter, unless (i) the board of directors of the public corporation, or (ii) the holders of shares of
54 each class of stock outstanding holding the right to cast two-thirds of all the votes entitled to be
55 cast by the class, and the holders of two-thirds of the shares of each class of otherwise nonvoting
56 stock outstanding, each voting as a separate voting group, shall at a meeting duly called for the
57 purpose of the vote adopt a vote providing that the corporation elects to be exempt from the
58 provisions of subsection (b). Upon adoption of the vote, subsection (b) shall, unless otherwise
59 provided in the vote, become immediately ineffective with respect to such public corporation and
60 the provisions of section 8.05 shall become immediately effective with respect to the corporation
61 as soon as subsection (b) of this section is no longer effective.

62 (2) In the event that any public corporation shall so elect by vote of the board of directors to be
63 exempt pursuant to clause (1) the public corporation may at any time thereafter adopt a vote of

64 its board of directors electing to be subject to subsection (b). In the event that any public
65 corporation shall so elect by the shareholders to be exempt pursuant to clause (1) of this
66 subsection the public corporation may at any time thereafter by vote of the holders of the shares
67 of all classes of stock outstanding, voting as a single voting group, holding the right to cast two-
68 thirds of all the votes entitled to be cast by all classes, elect to be subject to the provisions of
69 subsection (b). Upon adoption of the vote, subsection (b), unless otherwise provided in the vote,
70 shall immediately become effective.

71 SECTION 19. Section 8.06(d) of Chapter 156D is deleted in its entirety and replaced by the
72 following:—

73 (d) Notwithstanding anything to the contrary in this chapter or in the articles of organization or
74 bylaws of any public corporation, in the case of directors of a public corporation whose terms are
75 staggered pursuant to subsection (b), shareholders may, by the vote of the holders of shares
76 having the right to cast a majority of all the votes entitled to be cast by the holders of all classes
77 of stock outstanding and entitled to vote in the election of directors, voting as a single voting
78 group, effect the removal of any director or directors or the entire board of directors only for
79 cause.

80 SECTION 20. Section 8.10 of chapter 156D is hereby amended by striking out the word “by-
81 laws” in line 12, and inserting in place thereof the following word:- bylaws.

82 SECTION 21. Section 8.32 of chapter 156D is hereby amended by striking out the words “the
83 obligation of a director of, the corporation” in line 3, and inserting in place thereof the following
84 words:- the obligation of, a director of the corporation.

85 SECTION 22. Section 8.31(d) of Chapter 156D is deleted in its entirety and replaced by the
86 following:—

87 (d) For purposes of clause (2) of subsection (a), a conflict of interest transaction is authorized,
88 approved, or ratified if it receives the affirmative vote of a majority of all the votes entitled to be
89 cast on the matter entitled to be counted under this subsection. The votes of shares owned by or
90 voted under the control of a director who has a direct or indirect interest in the transaction, and of
91 shares owned by or voted under the control of an entity described in clause (1) of subsection (b),
92 may not be counted in a vote of shareholders to determine whether to authorize, approve, or
93 ratify a conflict of interest transaction under clause (2) of subsection (a). SECTION 36. Section
94 8.45 of chapter 156D is hereby amended by striking out the words “clerk or an assistant clerk” in
95 line 6, and inserting in place thereof the following words:- secretary or an assistant secretary.

96 SECTION 23. Section 8.54 of chapter 156D is hereby amended by striking out the words
97 “sections 8.51 or 8.51” in lines 19-20, and inserting in place thereof the following words:-
98 section 8.51.

99 SECTION 24. Section 8.58 of chapter 156D is hereby amended by striking out the words
100 “articles of incorporation” in line 20, and inserting in place thereof the following words:- articles
101 of organization.

102 SECTION 25. Section 8.58 of chapter 156D is hereby further amended by striking out the words
103 "clause (3) of subsection (a) of section 11.07" in line 24, and inserting in place thereof the
104 following words:- clause (4) of subsection (a) of section 11.07.

105 SECTION 26. Section 9.21 of chapter 156D is hereby amended by striking out the words
106 "subsection (c) of section 9.21" in line 28, and inserting in place thereof the following words:-
107 paragraph (3) of this section.

108 SECTION 27. Section 9.31 of chapter 156D is hereby amended by striking out the words
109 "section 10.22" in line 27, and inserting in place thereof the following words:- section 10.21.

110 SECTION 28. Section 9.31 of chapter 156D is hereby further amended by striking out the words
111 "plan of domestication" in line 30, and inserting in place thereof the following words:- plan of
112 nonprofit conversion.

113 SECTION 29. Section 9.31 of chapter 156D is hereby further amended by striking out the words
114 "section 9.31(c)" in line 35, and inserting in place thereof the following words:- section 9.31(3).

115 SECTION 30. Section 9.52 of chapter 156D is hereby amended by striking out the words
116 "organizational documents" in lines 16-17, and inserting in place thereof the following words:-
117 organic documents.

118 SECTION 31. Section 9.52 of chapter 156D is hereby further amended by striking out the words
119 "plan of domestication" in line 24, and inserting in place thereof the following words:- plan of
120 conversion.

121 SECTION 32. Section 9.52 of chapter 156D is hereby further amended by striking out the words
122 "subsection (c) of this section" in line 29, and inserting in place thereof the following words:-
123 paragraph (3) of this section.

124 SECTION 33. Section 9.53 of chapter 156D is hereby amended by striking out the words "any
125 other desired provisions that section 2.02 subsection (b) of permits" in lines 34-35, and inserting
126 in place thereof the following words:- any other desired provisions that subsection (b) of section
127 2.02 permits.

128 SECTION 34. Clause (5) of subsection (a) of section 9.55 of chapter 156D is hereby amended by
129 striking out the words "organizational document" in each place it appears and inserting in place
130 thereof the following words:- organic document.

131 SECTION 35. Section 11.01 of chapter 156D is hereby amended by striking out the words
132 "merger under a plan of merger" in line 9, and inserting in place thereof the following word:-
133 merge under a plan of merger.

134 SECTION 36. Section 11.04 of chapter 156D is hereby further amended by striking out the
135 words "subsection (c) of section 11.04" in lines 36-37, and inserting in place thereof the
136 following words:- paragraph (3) of this section.

137 SECTION 37. Section 11.04 of chapter 156D is hereby amended by striking out the words
138 "article of organization" in lines 38-39, and inserting in place thereof the following words:-
139 articles of organization.

140 SECTION 38. Section 11.04 of chapter 156D is hereby amended by striking out the word
141 "stock" in line 65, and inserting in place thereof the following word:- shares.

142 SECTION 39. Section 11.06 of chapter 156D is hereby amended by striking out the words
143 "organizational documents" in line 28, and inserting in place thereof the following words:-
144 organic documents.

145 SECTION 40. Section 11.07 of chapter 156D is hereby amended by striking out the words
146 "organizational documents" in line 18, and inserting in place thereof the following words:-
147 organic documents.

148 SECTION 41. Subsection (e) of section 12.02 of chapter 156D is hereby amended by striking out
149 the words "subsection (c) of section 12.02" in each place it appears and inserting in place thereof
150 the following words:- subsection (b) of this section 12.02.

151 SECTION 42. Section 13.02 of chapter 156D is hereby amended by striking out the words "other
152 than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer, employee or
153 consultant of either the merging or the surviving corporation" in lines 14-17, and inserting in
154 place thereof the following words:- other than (i) in his capacity as a shareholder of the
155 corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
156 merging or the surviving corporation.

157 SECTION 43. Section 13.02 of chapter 156D is hereby amended by striking out the words "other
158 than in his capacity as (i) a shareholder of the corporation whose shares are to be exchanged, (ii)
159 a director, officer, employee or consultant of either the corporation whose shares are to be
160 exchanged or the acquiring corporation" in lines 26-30, and inserting in place thereof the
161 following words:- other than (i) in his capacity as a shareholder of the corporation, (ii) in his
162 capacity as a director, officer, employee or consultant of either the merging or the surviving
163 corporation.

164 SECTION 44. Section 13.02 of chapter 156D is hereby amended by striking out the words "other
165 than in his capacity as (i) a shareholder of the corporation, (ii) a director, officer, employee or
166 consultant of either the corporation or the acquiring corporation" in lines 51-53, and inserting in
167 place thereof the following words:- other than (i) in his capacity as a shareholder of the
168 corporation, (ii) in his capacity as a director, officer, employee or consultant of either the
169 merging or the surviving corporation.

170 SECTION 45. Section 13.02 of chapter 156D is hereby amended by striking out the words
171 "transfer of registration or any outstanding shares" in lines 79-80, and inserting in place thereof
172 the following words:- transfer of registration of any outstanding shares.

173 SECTION 46. Section 13.21 of chapter 156D is hereby amended by striking out the word
174 "chapter" in line 13, and inserting in place thereof the following word:- PART.

175 SECTION 47. Section 13.22 of chapter 156D is hereby amended by striking out the word
176 "chapter" in line 38, and inserting in place thereof the following word:- PART.

177 SECTION 48. Section 13.25 of chapter 156D is hereby amended by striking out the word
178 "deserved" in line 31, and inserting in place thereof the following word:- described.

179 SECTION 49. Section 13.31 of chapter 156D is hereby amended by striking out the word
180 "chapter" in line 20, and inserting in place thereof the following word:- PART.

181 SECTION 50. Section 14.30 of chapter 156D is hereby amended by striking out the word
182 "stock" in line 11, and inserting in place thereof the following word:- shares.
183 SECTION 51. Section 14.34 of chapter 156D is hereby amended by striking out the word
184 "stock" in line 24, and inserting in place thereof the following word:- shares.
185 SECTION 52. Section 15.01 of chapter 156D is hereby amended by inserting after the word
186 "with" in line 29, the following word:- the.
187 SECTION 53. Section 15.03 of chapter 156D is hereby amended by striking out the word
188 "agents" in line 14, and inserting in place thereof the following word:- agent's.
189 SECTION 54. Section 15.04 of chapter 156D is hereby amended by inserting after the word
190 "information" in line 23, the following word:- in.
191 SECTION 55. Section 15.05 of chapter 156D is hereby amended by striking out the word
192 "corporations" in line 12, and inserting in place thereof the following word:- corporation's.
193 SECTION 56. Section 15.05 of chapter 156D is hereby further amended by striking out the word
194 "stockholders" in line 13, and inserting in place thereof the following word:- shareholders.
195 SECTION 57. Section 15.30 of chapter 156D is hereby amended by inserting after the words "or
196 chapter 63" in line 6, the following words:- of the General Laws.
197 SECTION 58. Section 15.31 of chapter 156D is hereby amended by striking out the word
198 "corporations" in line 13, and inserting in place thereof the following word:- corporation's.
199 SECTION 59. Section 15.31 of chapter 156D is hereby amended by striking out the word
200 "corporations" in line 19, and inserting in place thereof the following word:- corporation's.
201 SECTION 60. Section 15.32 of chapter 156D is hereby amended by striking out the word
202 "corporations" in line 10, and inserting in place thereof the following word:- corporation's.
203 SECTION 61. Section 16.21 of chapter 156D is hereby amended by striking out the title "BY-
204 LAW AMENDMENTS" in line 1, and inserting in place thereof the following title:- BYLAW
205 AMENDMENTS.