

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 678

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BYRD.

Read 1st time March 1, 2005 and copies ordered printed.

Read 2nd time March 2, 2005 and referred to the Committee on Judiciary March 3, 2005.

Reported from the Committee on Judiciary March 8, 2005 with recommendation that the bill Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(26)(f).

Reported from the Committee on Rules March 10, 2005 with recommendation that the bill Do Pass by Consent with no time limit for debate.

Perfectured by Consent March 22, 2005.

STEPHEN S. DAVIS, Chief Clerk

0645L.02P

AN ACT

To repeal sections 351.107, 351.180, 351.182, 351.295, 351.405, and 409.2-202, RSMo, and to enact in lieu thereof six 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Section A. Sections 351.107, 351.180, 351.182, 351.295, 351.405, and 409.2-202, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 351.107, 351.180, 351.182, 351.295, 351.405, and 409.2-202, to read as follows:

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

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

(2) Such amendment and restatement, upon adoption by that percentage vote of shareholders required for that particular amendment, and on being set forth in a single certificate of amendment and restatement, in the manner required by this chapter, may then be filed in the

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.

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
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 uncertified 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.

26

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.

351.405. 1. In the event that a sale or exchange of all or substantially all of the property
2 and assets of a corporation, otherwise than in the usual and regular course of its business, is
3 authorized by a vote of the shareholders of the corporation, except as provided in subsection 6
4 of this section, any shareholder who shall not have voted in favor thereof and who at or prior to
5 the meeting at which said sale or exchange is submitted to a vote shall file with the corporation
6 written objection thereto may, within twenty days after the vote was taken, make written demand
7 on the corporation for the payment to him of the fair value of his shares as of the day prior to the
8 date on which the vote was taken authorizing the sale or exchange. Such demand shall state the
9 number and class of the shares owned by such dissenting shareholder. Any shareholder failing
10 to make demand within the twenty-day period shall be conclusively presumed to have consented
11 to the sale or exchange and shall be bound by the terms thereof.

12 2. If, within thirty days after the date on which such vote was taken, the value of such
13 shares is agreed upon between the dissenting shareholder and the corporation, the corporation
14 shall make payment of the agreed value within ninety days after the date on which the vote was
15 taken authorizing the sale or exchange, upon the surrender of his certificate or certificates
16 representing said shares. Upon payment of the agreed value, the dissenting shareholder shall
17 cease to have any interest in such shares or in the corporation.

18 3. If within such period of thirty days the shareholder and the corporation do not so
19 agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day
20 period, file a petition in any court of competent jurisdiction within the county in which the
21 registered office of the corporation is situated asking for a finding and determination of the fair
22 value of such shares, and shall be entitled to judgment against the corporation for the amount of
23 such fair value as of the day prior to the date on which such vote was taken, together with interest
24 thereon to the date of such judgment. The judgment shall be payable only upon and
25 simultaneously with the surrender to the corporation of the certificate or certificates representing

26 said shares. Upon the payment of the judgment, the dissenting shareholder shall cease to have
27 any interest in such shares or in the corporation. Unless the dissenting shareholder shall file such
28 petition within the time herein limited, such shareholder and all persons claiming under him shall
29 be conclusively presumed to have approved and ratified the sale or exchange and shall be bound
30 by the terms thereof.

31 4. The rights of a dissenting shareholder to be paid the fair value of his shares as herein
32 provided shall cease if and when the corporation shall abandon the sale or exchange or the
33 shareholders shall revoke the authority to make such sale or exchange.

34 5. Shares acquired by the corporation pursuant to the payment of the agreed value thereof
35 or to the payment of judgment entered therefor, as in this section provided, may be held and
36 disposed of by the corporation as it shall see fit.

37 6. This section shall not apply to any sale, exchange or other disposition of assets of a
38 corporation authorized by a vote of the shareholders of the corporation if, prior to or in
39 connection with such authorization, the shareholders have consented to or approved the
40 voluntary dissolution of the corporation pursuant to section 351.464 or 351.466, if the sale,
41 exchange or other disposition is made in liquidation of the corporation's business and affairs as
42 provided in section 351.476.

43 **7. When the remedy provided for in this section is available with respect to a**
44 **transaction, such remedy shall be the exclusive remedy of the shareholder as to that**
45 **transaction, except in the case of fraud or lack of authorization for the transaction.**

409.2-202. The following transactions are exempt from the requirements of sections
2 409.3-301 to 409.3-306 and 409.5-504:

3 (1) An isolated nonissuer transaction, whether effected by or through a broker-dealer or
4 not;

5 (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from
6 registration under this act, and a resale transaction by a sponsor of a unit investment trust
7 registered under the Investment Company Act of 1940, in a security of a class that has been
8 outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:

9 (A) The issuer of the security is engaged in business, the issuer is not in the
10 organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind
11 pool, or shell company that has no specific business plan or purpose or has indicated that its
12 primary business plan is to engage in a merger or combination of the business with, or an
13 acquisition of, an unidentified person;

14 (B) The security is sold at a price reasonably related to its current market price;

15 (C) The security does not constitute the whole or part of an unsold allotment to, or a
16 subscription or participation by, the broker-dealer as an underwriter of the security or a

17 redistribution; and

18 (D) A nationally recognized securities manual or its electronic equivalent designated by
19 rule adopted or order issued under this act or a record filed with the Securities and Exchange
20 Commission that is publicly available contains:

21 (i) A description of the business and operations of the issuer;

22 (ii) The names of the issuer's executive officers and the names of the issuer's directors,
23 if any;

24 (iii) An audited balance sheet of the issuer as of a date within eighteen months before
25 the date of the transaction or, in the case of a reorganization or merger when the parties to the
26 reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the
27 combined organization; and

28 (iv) An audited income statement for each of the issuer's two immediately previous fiscal
29 years or for the period of existence of the issuer, whichever is shorter, or, in the case of a
30 reorganization or merger when each party to the reorganization or merger had audited income
31 statements, a pro forma income statement; or

32 (E) The issuer of the security has a class of equity securities listed on a national securities
33 exchange registered under the Securities Exchange Act of 1934 or designated for trading on the
34 National Association of Securities Dealers Automated Quotation System, unless the issuer of the
35 security is a unit investment trust registered under the Investment Company Act of 1940; or the
36 issuer of the security, including its predecessors, has been engaged in continuous business for
37 at least three years; or the issuer of the security has total assets of at least two million dollars
38 based on an audited balance sheet as of a date within eighteen months before the date of the
39 transaction or, in the case of a reorganization or merger when the parties to the reorganization
40 or merger each had the audited balance sheet, a pro forma balance sheet for the combined
41 organization;

42 (3) A nonissuer transaction by or through a broker-dealer registered or exempt from
43 registration under this act in a security of a foreign issuer that is a margin security defined in
44 regulations or rules adopted by the Board of Governors of the Federal Reserve System;

45 (4) A nonissuer transaction by or through a broker-dealer registered or exempt from
46 registration under this act in an outstanding security if the guarantor of the security files reports
47 with the Securities and Exchange Commission under the reporting requirements of Section 13
48 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));

49 (5) A nonissuer transaction by or through a broker-dealer registered or exempt from
50 registration under this act in a security that:

51 (A) Is rated at the time of the transaction by a nationally recognized statistical rating
52 organization in one of its four highest rating categories; or

- 53 (B) Has a fixed maturity or a fixed interest or dividend, if:
- 54 (i) A default has not occurred during the current fiscal year or within the three previous
55 fiscal years or during the existence of the issuer and any predecessor if less than three fiscal
56 years, in the payment of principal, interest, or dividends on the security; and
- 57 (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy
58 or receivership, and is not and has not been within the previous twelve months a blank check,
59 blind pool, or shell company that has no specific business plan or purpose or has indicated that
60 its primary business plan is to engage in a merger or combination of the business with, or an
61 acquisition of, an unidentified person;
- 62 (6) A nonissuer transaction by or through a broker-dealer registered or exempt from
63 registration under this act effecting an unsolicited order or offer to purchase;
- 64 (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of
65 evading this act;
- 66 (8) A nonissuer transaction by a federal covered investment adviser with investments
67 under management in excess of one hundred million dollars acting in the exercise of
68 discretionary authority in a signed record for the account of others;
- 69 (9) A transaction in a security, whether or not the security or transaction is otherwise
70 exempt, in exchange for one or more bona fide outstanding securities, claims, or property
71 interests, or partly in such exchange and partly for cash, if the terms and conditions of the
72 issuance and exchange or the delivery and exchange and the fairness of the terms and conditions
73 have been approved by the commissioner after a hearing;
- 74 (10) A transaction between the issuer or other person on whose behalf the offering is
75 made and an underwriter, or among underwriters;
- 76 (11) A transaction in a note, bond, debenture, or other evidence of indebtedness secured
77 by a mortgage or other security agreement if:
- 78 (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with
79 the mortgage or other security agreement as a unit;
- 80 (B) A general solicitation or general advertisement of the transaction is not made; and
- 81 (C) A commission or other remuneration is not paid or given, directly or indirectly, to
82 a person not registered under this act as a broker-dealer or as an agent;
- 83 (12) A transaction by an executor, commissioner of an estate, sheriff, marshal, receiver,
84 trustee in bankruptcy, guardian, or conservator;
- 85 (13) A sale or offer to sell to:
- 86 (A) An institutional investor;
- 87 (B) A federal covered investment adviser; or
- 88 (C) Any other person exempted by rule adopted or order issued under this act;

89 (14) A sale or an offer to sell securities of an issuer, if part of a single issue in which:

90 (A) Not more than twenty-five purchasers are present in this state during any twelve
91 consecutive months, other than those designated in paragraph (13);

92 (B) A general solicitation or general advertising is not made in connection with the offer
93 to sell or sale of the securities;

94 (C) A commission or other remuneration is not paid or given, directly or indirectly, to
95 a person other than a broker-dealer registered under this act or an agent registered under this act
96 for soliciting a prospective purchaser in this state; and

97 (D) The issuer reasonably believes that all the purchasers in this state, other than those
98 designated in paragraph (13), are purchasing for investment;

99 (15) A transaction under an offer to existing security holders of the issuer, including
100 persons that at the date of the transaction are holders of convertible securities, options, or
101 warrants, if a commission or other remuneration, other than a standby commission, is not paid
102 or given, directly or indirectly, for soliciting a security holder in this state;

103 (16) An offer to sell, but not a sale, of a security not exempt from registration under the
104 Securities Act of 1933 if:

105 (A) A registration or offering statement or similar record as required under the Securities
106 Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165
107 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

108 (B) A stop order of which the offeror is aware has not been issued against the offeror by
109 the commissioner or the Securities and Exchange Commission, and an audit, inspection, or
110 proceeding that is public and that may culminate in a stop order is not known by the offeror to
111 be pending;

112 (17) An offer to sell, but not a sale, of a security exempt from registration under the
113 Securities Act of 1933 if:

114 (A) A registration statement has been filed under this act, but is not effective;

115 (B) A solicitation of interest is provided in a record to offerees in compliance with a rule
116 adopted by the commissioner under this act; and

117 (C) A stop order of which the offeror is aware has not been issued by the commissioner
118 under this act and an audit, inspection, or proceeding that may culminate in a stop order is not
119 known by the offeror to be pending;

120 (18) A transaction involving the distribution of the securities of an issuer to the security
121 holders of another person in connection with a merger, consolidation, exchange of securities, sale
122 of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other
123 person, or its parent or subsidiary, are parties;

124 (19) A rescission offer, sale, or purchase under section 409.5-510;

125 (20) An offer or sale of a security to a person not a resident of this state and not present
126 in this state if the offer or sale does not constitute a violation of the laws of the state or foreign
127 jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or
128 scheme to evade this act;

129 (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar
130 employees' benefit plan, including any securities, plan interests, and guarantees issued under a
131 compensatory benefit plan or compensation contract, contained in a record, established by the
132 issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the
133 issuer's parent for the participation of their employees including offers or sales of such securities
134 to:

135 (A) Directors; general partners; trustees, if the issuer is a business trust; officers;
136 consultants; and advisors;

137 (B) Family members who acquire such securities from those persons through gifts or
138 domestic relations orders;

139 (C) Former employees, **current employees**, directors, general partners, trustees, officers,
140 consultants, and advisors if those individuals were employed by or providing services to the
141 issuer when the securities were offered; and

142 (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's
143 subsidiaries or parents, or who derive more than fifty percent of their annual income from those
144 organizations;

145 (22) A transaction involving:

146 (A) A stock dividend or equivalent equity distribution, whether the corporation or other
147 business organization distributing the dividend or equivalent equity distribution is the issuer or
148 not, if nothing of value is given by stockholders or other equity holders for the dividend or
149 equivalent equity distribution other than the surrender of a right to a cash or property dividend
150 if each stockholder or other equity holder may elect to take the dividend or equivalent equity
151 distribution in cash, property, or stock;

152 (B) An act incident to a judicially approved reorganization in which a security is issued
153 in exchange for one or more outstanding securities, claims, or property interests, or partly in such
154 exchange and partly for cash; or

155 (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance
156 with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162); or

157 (23) A nonissuer transaction in an outstanding security by or through a broker-dealer
158 registered or exempt from registration under this act, if the issuer is a reporting issuer in a foreign
159 jurisdiction designated by this paragraph or by rule adopted or order issued under this act; has
160 been subject to continuous reporting requirements in the foreign jurisdiction for not less than one

161 hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's
162 securities exchange that has been designated by this paragraph or by rule adopted or order issued
163 under this act, or is a security of the same issuer that is of senior or substantially equal rank to
164 the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For
165 purposes of this paragraph, Canada, together with its provinces and territories, is a designated
166 foreign jurisdiction and The Toronto Stock Exchange, Inc., is a designated securities exchange.
167 After an administrative hearing in compliance with chapter 536, RSMo, the commissioner, by
168 rule adopted or order issued under this act, may revoke the designation of a securities exchange
169 under this paragraph, if the commissioner finds that revocation is necessary or appropriate in the
170 public interest and for the protection of investors.