

SECOND REGULAR SESSION

SENATE BILL NO. 708

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR McKENNA.

Pre-filed December 14, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

3856S.011

AN ACT

To repeal sections 347.187, 355.020, 355.171, 355.631, 355.791, and 359.121, RSMo, and to enact in lieu thereof six new sections relating to Missouri small business organizations.

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

Section A. Sections 347.187, 355.020, 355.171, 355.631, 355.791, and 359.121, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 347.187, 355.020, 355.171, 355.631, 355.791, and 359.121, to read as follows:

347.187. 1. A limited liability company created pursuant to sections 347.010 to 347.187 or entering the state pursuant to sections 347.010 to 347.187 and its [authorized] **responsible** persons[, or their equivalent,] shall have the duty to withhold and pay such taxes as are imposed by the laws of this state or any political subdivision thereof on a basis consistent with such limited liability company's classification pursuant to Section 7701 of the Internal Revenue Code of 1986, as amended.

2. [Solely for the purposes of chapter 143, RSMo, chapter 144, RSMo, and chapter 288, RSMo, a limited liability company and its members shall be classified and treated on a basis consistent with the limited liability company's classification for federal income tax purposes.] **For purposes of this section, "responsible persons", when applied to a limited liability company wherein management of the company:**

(1) **Is vested in a manager or managers, means the manager or managers so designated;**

(2) **Is not vested in a manager or managers, means any member**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 **who:**

18 **(a) Is designated as a responsible member under this section in**
19 **the company's articles of organization; or**

20 **(b) Has the direct control, supervision, or responsibility for filing**
21 **returns and making payment of the amount of tax imposed in**
22 **accordance with sections 143.191 to 143.265, sections 144.010 to 144.745,**
23 **sections 288.010 to 288.500, and any other laws imposing a**
24 **responsibility to make tax payments.**

25 **3. No member of a limited liability company shall be held liable**
26 **for the taxes imposed by sections 143.191 to 143.265, sections 144.010 to**
27 **144.745, sections 288.010 to 288.500, or any other laws imposing a**
28 **responsibility to make tax payments solely on the basis of such**
29 **member's membership in a limited liability company. Nothing in this**
30 **section shall be construed to create or extend liability for taxes**
31 **imposed under sections 143.191 to 143.265, sections 144.010 to 144.745,**
32 **sections 288.010 to 288.500, or any other laws imposing a responsibility**
33 **to make tax payments for or to a member of a limited liability company**
34 **unless such member is a responsible person.**

355.020. 1. The provisions of this chapter relating to domestic
2 corporations apply to:

3 (1) All corporations organized under this chapter including all domestic
4 corporations in existence on July 1, 1995, that were previously incorporated under
5 this chapter; and

6 (2) Any corporation organized under any laws of this state, including laws
7 relating to profit corporations, which is in fact a not-for-profit corporation
8 organized for a purpose or purposes for which a corporation might be organized
9 under this chapter and which accepts the provisions of this chapter as herein
10 provided. Any such corporation may accept the provisions of this chapter by:

11 (a) Adopting in the manner and upon the vote required by the law under
12 which it is organized a resolution amending its articles of incorporation or articles
13 of agreement so as:

14 a. To eliminate from its articles of incorporation or articles of agreement
15 any purpose, power or other provision thereof not authorized to be set forth in the
16 articles of incorporation of corporations organized under this chapter;

17 b. To set forth in its articles of incorporation or articles of agreement any
18 provision authorized under this chapter to be inserted in the articles of

19 incorporation of corporations organized under this chapter which the corporation
20 chooses to insert therein and the material and information required to be set
21 forth under section 355.096 in the original articles of incorporation of
22 corporations organized under this chapter except, however, the names and
23 addresses of the persons constituting the board of directors.

24 (b) If the corporation is authorized to issue shares of stock, adopting, in
25 the manner and upon the vote required by the law under which it is organized for
26 the approval of an amendment altering adversely the preferences, privileges,
27 characteristics, and special or relative rights of each class of shares then issued
28 and outstanding, a resolution:

29 a. Eliminating from its articles of incorporation all authorization for the
30 issuance of shares of stock, and canceling and extinguishing all issued and
31 outstanding shares of its stock;

32 b. Providing that each of the shareholders of the corporation is a member
33 of the corporation and if the corporation desires to have more than one class of
34 members, establishing the class in which each class of shareholders is a member;

35 c. Providing for the surrender and cancellation of all certificates for shares
36 of stock then issued and outstanding and if the corporation desires to issue
37 certificates evidencing membership therein, for the issuance of appropriate
38 certificates of membership in lieu thereof.

39 (c) Adopting a resolution, duly recommended by its board of directors and
40 approved by the affirmative vote or consent in writing of a majority of its
41 members having voting rights, if any, or if such corporation has shares of stock
42 outstanding by the affirmative vote or consent in writing of the majority of each
43 class of its outstanding shares required by the law under which it is organized for
44 approval of an amendment to its articles of incorporation adversely altering the
45 preferences, privileges, characteristics, and special or relative rights of such class
46 of shares, accepting all of the provisions of this chapter and providing that such
47 corporation shall for all purposes be thenceforth deemed to be a corporation
48 organized under this chapter.

49 (d) Filing with the secretary of state duplicate articles of acceptance of
50 this chapter, signed by its president or vice president and its secretary or
51 assistant secretary, which articles of acceptance, in the case of a corporation
52 organized under the provisions of chapter 352, RSMo, shall have been approved
53 by the circuit court having jurisdiction to approve amendments to the articles of
54 agreement of such corporation. The articles of acceptance shall set forth:

55 a. The name of the corporation;

56 b. The resolutions adopted pursuant to the foregoing provisions of this
57 section;

58 c. Where there are members or shareholders having voting rights, the
59 date of the meeting of members or shareholders, if any, at which the resolutions
60 were adopted, the total number of members or shares entitled to vote with respect
61 thereto, and the number voting for or consenting to the resolution, and the vote
62 by classes if the corporation has outstanding more than one class of memberships
63 or shares entitled to vote by classes thereon.

64 2. If the secretary of state finds that the resolutions provided in this
65 section have been duly adopted, that the corporation's articles of incorporation
66 have been duly amended, where necessary, to conform with the requirements of
67 this chapter, and that the articles of acceptance conform to law, [he] **the**
68 **secretary of state** shall file [one duplicate original of] the articles of acceptance
69 in [his] **the secretary of state's** office, and shall issue his **or her** certificate of
70 acceptance to which [he] **the secretary of state** shall affix [the other duplicate
71 original] **a copy** of the articles of acceptance. The certificate of acceptance, with
72 the [duplicate original] **copy** of the articles of acceptance, shall be returned to
73 the corporation or its representative. Upon the issuance of the certificate of
74 acceptance by the secretary of state:

75 (1) The articles of incorporation or articles of agreement of the corporation
76 are deemed to be amended as provided in the resolutions set forth in the articles
77 of acceptance;

78 (2) If the corporation has been theretofore authorized to issue shares of
79 stock, all authority for the issuance of shares of stock and all shares of stock then
80 issued and outstanding is eliminated, canceled and extinguished, the
81 shareholders of the corporation are members of the corporation of the class
82 provided in the resolutions set forth in the articles of acceptance, and all rights,
83 interests, and obligations of the shareholders are changed and converted into the
84 rights, interests and obligations of members of a corporation organized under this
85 chapter; and

86 (3) The corporation is a corporation organized under this chapter and is
87 entitled to all the rights, privileges and benefits and is subject to all the
88 obligations, duties and liabilities provided in this chapter.

89 3. The provisions of this chapter relating to foreign corporations apply to
90 all foreign not-for-profit corporations conducting affairs in this state for a purpose

91 or purposes for which a corporation might be organized under this chapter.

355.171. Any registered agent of a corporation may resign as such agent
2 upon filing a written notice of the resignation[, executed in duplicate,] with the
3 secretary of state, who shall immediately mail a copy to any officer of the
4 corporation at his address as last known to the secretary of state, other than such
5 registered office. Such resignation shall become effective upon the expiration of
6 thirty days after receipt of such notice by the secretary of state.

355.631. 1. After a plan of merger is approved by the board of directors,
2 shareholders, and if required by section 355.626, by the members and any other
3 persons, the surviving or acquiring corporation shall deliver to the secretary of
4 state articles of merger setting forth:

5 (1) The names of the corporations proposing to merge, and the name of the
6 corporation into which they propose to merge, which is herein designated as "the
7 surviving corporation";

8 (2) The plan of merger;

9 (3) If approval by members was not required, a statement to that effect
10 and a statement that the plan was approved by a sufficient vote of the board of
11 directors;

12 (4) If approval by members was required:

13 (a) The designation, number of memberships outstanding, number of votes
14 entitled to be cast by each class entitled to vote separately on the plan, and
15 number of votes of each class indisputably voting on the plan; and

16 (b) Either the total number of votes cast for and against the plan by each
17 class entitled to vote separately on the plan or the total number of undisputed
18 votes cast for the plan by each class and a statement that the number cast for the
19 plan by each class was sufficient for approval by that class;

20 (5) If approval of the plan by some person or persons other than the
21 members or the board is required pursuant to subdivision (3) of subsection 1 of
22 section 355.626, a statement that the approval was obtained;

23 (6) If approval by shareholders was required, then a statement as to the
24 manner and basis of converting the shares of each merging corporation into cash,
25 property, memberships or other securities or obligations of the surviving
26 corporation, or, if any shares of any merging corporation are not to be converted
27 solely into cash, property, memberships or other securities or obligations of the
28 surviving corporation, into cash, property, shares or other securities or obligations
29 of any other domestic or foreign corporation, which cash, property, shares or other

30 securities or obligations of any other domestic or foreign corporation may be in
31 addition to or completely in lieu of cash, property, shares or other securities or
32 obligations of the surviving corporation;

33 (7) A statement of any changes in the articles of incorporation of the
34 surviving corporation to be effected by the merger.

35 2. The articles of merger shall be executed [in duplicate] by each nonprofit
36 or business corporation as follows:

37 (1) Signed as provided in subdivision (1) of subsection 6 of section 355.011
38 for nonprofit corporations;

39 (2) Signed as provided in section 351.430, RSMo, for business
40 corporations.

355.791. 1. The registered agent of a foreign corporation may resign as
2 agent by signing and delivering to the secretary of state for filing [the] **an**
3 original [and two exact or conformed copies of a] statement of resignation. The
4 statement of resignation may include a statement that the registered office is also
5 discontinued.

6 2. The secretary of state shall immediately mail a copy to any officer of
7 the corporation at his **or her** address as last known to the secretary of state, or
8 the registered office.

9 3. The agency is terminated, and the registered office discontinued if so
10 provided, on the thirtieth day after the date on which the statement was filed.

359.121. 1. Each certificate required by this chapter to be filed in the
2 office of the secretary of state shall be executed in the following manner:

3 (1) An original certificate of limited partnership must be signed by all
4 general partners;

5 (2) A certificate of amendment must be signed by at least one general
6 partner and by each other general partner designated in the certificate as a new
7 general partner;

8 (3) A certificate of cancellation must be signed by all general partners.

9 2. **If there is no remaining general partner as a result of an event**
10 **of withdrawal under section 359.241 and the partners agree to continue**
11 **the business of the limited partnership under subdivision (4) of section**
12 **359.451, the certificate of amendment shall:**

13 (1) **Be signed by each general partner designated in the**
14 **certificate as a new general partner; and**

15 (2) **State and affirm the occurrence of the specific event of**

16 **withdrawal under subdivision (4) of section 359.451.**

17 **3.** Any person may sign a certificate by an attorney-in-fact, but a power
18 of attorney to sign a certificate relating to the admission of a general partner
19 shall specifically describe the admission.

20 **[3.] 4.** The execution of a certificate by a general partner constitutes an
21 affirmation under the penalties of section 575.040, RSMo, that the facts stated
22 therein are true.

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