

SECOND REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 1983

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PRATT.

Read 1st time February 5, 2008 and copies ordered printed.

Read 2nd time February 6, 2008 and referred to the Committee on Judiciary February 7, 2008.

Reported from the Committee on Judiciary February 27, 2008 with recommendation that the bill Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules March 3, 2008 with recommendation that the bill Do Pass by Consent with no time limit for debate.

Perfected by Consent March 11, 2008.

D. ADAM CRUMBLISS, Chief Clerk

4780L.01P

AN ACT

To amend chapter 351, RSMo, by adding thereto two new sections relating to business organizations.

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

Section A. Chapter 351, RSMo, is amended by adding thereto two new sections, to be
2 known as sections 351.408 and 351.409, to read as follows:

**351.408. 1. As used in this section, the term "other entity" means a limited liability
2 company, statutory trust, business trust or association, real estate investment trust,
3 common—law trust or any other unincorporated business including a partnership
4 (whether general (including a limited liability partnership) or limited (including a limited
5 liability limited partnership)), or a foreign corporation.**

**6 2. Any other entity may convert to a corporation of this state by complying with
7 subsection 8 of this section and filing in the office of the secretary of state:**

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.

8 (1) A certificate of conversion to corporation that has been executed in accordance
9 with subsection 9 of this section and filed in accordance with section 351.046; and

10 (2) Articles of incorporation that have been executed, acknowledged and filed in
11 accordance with section 351.046.

12 3. The certificate of conversion to corporation shall state:

13 (1) The date on which and jurisdiction where the other entity was first created,
14 incorporated, formed or otherwise came into being and, if it has changed, its jurisdiction
15 immediately prior to its conversion to a domestic corporation;

16 (2) The name of the other entity immediately prior to the filing of the certificate of
17 conversion to corporation; and

18 (3) The name of the corporation as set forth in its articles of incorporation filed in
19 accordance with subsection 2 of this section.

20 4. Upon the effective time of the certificate of conversion to corporation and the
21 articles of incorporation, the other entity shall be converted to a corporation of this state
22 and the corporation shall thereafter be subject to all of the provisions of this title, except
23 that notwithstanding section 351.075, the existence of the corporation shall be deemed to
24 have commenced on the date the other entity commenced its existence in the jurisdiction
25 in which the other entity was first created, formed, incorporated or otherwise came into
26 being.

27 5. The conversion of any other entity to a corporation of this state shall not be
28 deemed to affect any obligations or liabilities of the other entity incurred prior to its
29 conversion to a corporation of this state or the personal liability of any person incurred
30 prior to such conversion.

31 6. When another entity has been converted to a corporation of this state under this
32 section, the corporation of this state shall, for all purposes of the laws of the state of
33 Missouri, be deemed to be the same entity as the converting other entity. When any
34 conversion shall have become effective under this section, for all purposes of the laws of
35 the state of Missouri, all of the rights, privileges and powers of the other entity that has
36 converted, and all property, real, personal and mixed, and all debts due to such other
37 entity, as well as all other things and causes of action belonging to such other entity, shall
38 remain vested in the domestic corporation to which such other entity has converted and
39 shall be the property of such domestic corporation and the title to any real property vested
40 by deed or otherwise in such other entity shall not revert or be in any way impaired by
41 reason of this chapter; but all rights of creditors and all liens upon any property of such
42 other entity shall be preserved unimpaired, and all debts, liabilities and duties of the other
43 entity that has converted shall remain attached to the corporation of this state to which

44 such other entity has converted, and may be enforced against it to the same extent as if said
45 debts, liabilities and duties had originally been incurred or contracted by it in its capacity
46 as a corporation of this state. The rights, privileges, powers and interests in property of
47 the other entity, as well as the debts, liabilities and duties of the other entity, shall not be
48 deemed, as a consequence of the conversion, to have been transferred to the domestic
49 corporation to which such other entity has converted for any purpose of the laws of the
50 state of Missouri.

51 7. Unless otherwise agreed for all purposes of the laws of the state of Missouri or
52 as required under applicable nonMissouri law, the converting other entity shall not be
53 required to wind up its affairs or pay its liabilities and distribute its assets, and the
54 conversion shall not be deemed to constitute a dissolution of such other entity and shall
55 constitute a continuation of the existence of the converting other entity in the form of a
56 corporation of this state.

57 8. Prior to filing a certificate of conversion to corporation with the office of the
58 secretary of state, the conversion shall be approved in the manner provided for by the
59 document, instrument, agreement or other writing, as the case may be, governing the
60 internal affairs of the other entity and the conduct of its business or by applicable law, as
61 appropriate, and articles of incorporation shall be approved by the same authorization
62 required to approve the conversion.

63 9. The certificate of conversion to corporation shall be signed by any person who
64 is authorized to sign the certificate of conversion to corporation on behalf of the other
65 entity.

66 10. In connection with a conversion hereunder, rights or securities of, or interests
67 in, the other entity which is to be converted to a corporation of this state may be exchanged
68 for or converted into cash, property, or shares of stock, rights or securities of such
69 corporation of this state or, in addition to or in lieu thereof, may be exchanged for or
70 converted into cash, property, or shares of stock, rights or securities of or interests in
71 another domestic corporation or other entity or may be cancelled.

351.409. 1. A corporation of this state may, upon the authorization of such
2 conversion in accordance with this section, convert to a limited liability company, statutory
3 trust, business trust or association, real estate investment trust, common—law trust or any
4 other unincorporated business including a partnership (whether general (including a
5 limited liability partnership) or limited (including a limited liability limited partnership))
6 or a foreign corporation.

7 2. The board of directors of the corporation which desires to convert under this
8 section shall adopt a resolution approving such conversion, specifying the type of entity

9 into which the corporation shall be converted and recommending the approval of such
10 conversion by the shareholders of the corporation. Such resolution shall be submitted to
11 the shareholders of the corporation at an annual or special meeting. Due notice of the time,
12 and purpose of the meeting shall be mailed to each holder of stock, whether voting or
13 nonvoting, of the corporation at the address of the shareholder as it appears on the records
14 of the corporation, at least twenty days prior to the date of the meeting. At the meeting,
15 the resolution shall be considered and a vote taken for its adoption or rejection. If all
16 outstanding shares of stock of the corporation, whether voting or nonvoting, shall be voted
17 for the adoption of the resolution, the conversion shall be authorized.

18 3. If a corporation shall convert in accordance with this section to another entity
19 organized, formed or created under the laws of a jurisdiction other than the state of
20 Missouri, the corporation shall file with the secretary of state a certificate of conversion
21 executed in accordance with section 351.046, which certifies:

22 (1) The name of the corporation, and if it has been changed, the name under which
23 it was originally incorporated;

24 (2) The date of filing of its original articles of incorporation with the secretary of
25 state;

26 (3) The name and jurisdiction of the entity to which the corporation shall be
27 converted;

28 (4) That the conversion has been approved in accordance with the provisions of this
29 section;

30 (5) The agreement of the corporation that it may be served with process in the state
31 of Missouri in any action, suit or proceeding for enforcement of any obligation of the
32 corporation arising while it was a corporation of this state, and that it irrevocably appoints
33 the secretary of state as its agent to accept service of process in any such action, suit or
34 proceeding; and

35 (6) The address to which a copy of the process referred to in subdivision (5) of this
36 subsection shall be mailed to it by the secretary of state. In the event of such service upon
37 the secretary of state in accordance with subdivision (5) of this subsection, the secretary
38 of state shall forthwith notify such corporation that has converted out of the state of
39 Missouri by letter, certified mail, return receipt requested, directed to such corporation
40 that has converted out of the state of Missouri at the address so specified, unless such
41 corporation shall have designated in writing to the secretary of state a different address for
42 such purpose, in which case it shall be mailed to the last address designated. Such letter
43 shall enclose a copy of the process and any other papers served on the secretary of state
44 under this subsection. It shall be the duty of the plaintiff in the event of such service to

45 serve process and any other papers in duplicate, to notify the secretary of state that service
46 is being effected under this subsection and to pay the secretary of state the sum of fifty
47 dollars for the use of the state, which sum shall be taxed as part of the costs in the
48 proceeding, if the plaintiff shall prevail therein. The secretary of state shall maintain an
49 alphabetical record of any such service setting forth the name of the plaintiff and the
50 defendant, the title, docket number and nature of the proceeding in which process has been
51 served, the fact that service has been effected under this subsection, the return date thereof,
52 and the day and hour service was made. The secretary of state shall not be required to
53 retain such information longer than five years from receipt of the service of process.

54 4. Upon the filing in the office of the secretary of state of a certificate of conversion
55 to nonMissouri entity in accordance with subsection 3 of this section or upon the future
56 effective date or time of the certificate of conversion to nonMissouri entity and payment
57 to the secretary of state of all fees prescribed under this chapter, the secretary of state shall
58 certify that the corporation has filed all documents and paid all fees required by this
59 chapter, and thereupon the corporation shall cease to exist as a corporation of this state at
60 the time the certificate of conversion becomes effective in accordance with section 351.075.
61 Such certificate of the secretary of state shall be prima facie evidence of the conversion by
62 such corporation out of the state of Missouri.

63 5. The conversion of a corporation out of the state of Missouri in accordance with
64 this section and the resulting cessation of its existence as a corporation of this state
65 pursuant to a certificate of conversion to nonMissouri entity shall not be deemed to affect
66 any obligations or liabilities of the corporation incurred prior to such conversion or the
67 personal liability of any person incurred prior to such conversion, nor shall it be deemed
68 to affect the choice of law applicable to the corporation with respect to matters arising
69 prior to such conversion.

70 6. Unless otherwise provided in a resolution of conversion adopted in accordance
71 with this section, the converting corporation shall not be required to wind up its affairs or
72 pay its liabilities and distribute its assets, and the conversion shall not constitute a
73 dissolution of such corporation.

74 7. In connection with a conversion of a domestic corporation to another entity
75 under this section, shares of stock, of the corporation of this state which is to be converted
76 may be exchanged for or converted into cash, property, rights or securities of, or interests
77 in, the entity to which the corporation of this state is being converted or, in addition to or
78 in lieu thereof, may be exchanged for or converted into cash, property, shares of stock,
79 rights or securities of, or interests in, another domestic corporation or other entity or may
80 be cancelled.

81 **8. When a corporation has been converted to another entity or business form under**
82 **this section, the other entity or business form shall, for all purposes of the laws of the state**
83 **of Missouri, be deemed to be the same entity as the corporation. When any conversion**
84 **shall have become effective under this section, for all purposes of the laws of the state of**
85 **Missouri, all of the rights, privileges and powers of the corporation that has converted, and**
86 **all property, real, personal and mixed, and all debts due to such corporation, as well as all**
87 **other things and causes of action belonging to such corporation, shall remain vested in the**
88 **other entity or business form to which such corporation has converted and shall be the**
89 **property of such other entity or business form, and the title to any real property vested by**
90 **deed or otherwise in such corporation shall not revert or be in any way impaired by reason**
91 **of this chapter; but all rights of creditors and all liens upon any property of such**
92 **corporation shall be preserved unimpaired, and all debts, liabilities and duties of the**
93 **corporation that has converted shall remain attached to the other entity or business form**
94 **to which such corporation has converted, and may be enforced against it to the same extent**
95 **as if said debts, liabilities and duties had originally been incurred or contracted by it in its**
96 **capacity as such other entity or business form. The rights, privileges, powers and interest**
97 **in property of the corporation that has converted, as well as the debts, liabilities and duties**
98 **of such corporation, shall not be deemed, as a consequence of the conversion, to have been**
99 **transferred to the other entity or business form to which such corporation has converted**
100 **for any purpose of the laws of the state of Missouri.**

101 **9. No vote of shareholders of a corporation shall be necessary to authorize a**
102 **conversion if no shares of the stock of such corporation shall have been issued prior to the**
103 **adoption by the board of directors of the resolution approving the conversion.**

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