

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 1983
94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, April 24, 2008, with recommendation that the Senate Committee Substitute do pass.

4780S.03C

TERRY L. SPIELER, Secretary.

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 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 company, statutory trust, common law trust, or any other unincorporated business including a partnership (whether general (including a limited liability partnership) or limited), or a foreign corporation.

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

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

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

3. The certificate of conversion to corporation shall state:

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

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

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

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

31 5. The conversion of any other entity to a corporation of this
32 state shall not be deemed to affect any obligations or liabilities of the
33 other entity incurred prior to its conversion to a corporation of this
34 state or the personal liability of any person incurred prior to such
35 conversion.

36 6. When another entity has been converted to a corporation of
37 this state under this section, the corporation of this state shall, for all
38 purposes of the laws of the state of Missouri, be deemed to be the same
39 entity as the converting other entity. When any conversion shall have
40 become effective under this section, for all purposes of the laws of the
41 state of Missouri, all of the rights, privileges and powers of the other
42 entity that has converted, and all property, real, personal and mixed,
43 and all debts due to such other entity, as well as all other things and
44 causes of action belonging to such other entity, shall remain vested in
45 the domestic corporation to which such other entity has converted and
46 shall be the property of such domestic corporation and the title to any
47 real property vested by deed or otherwise in such other entity shall not
48 revert or be in any way impaired by reason of this chapter; but all
49 rights of creditors and all liens upon any property of such other entity
50 shall be preserved unimpaired, and all debts, liabilities and duties of
51 the other entity that has converted shall remain attached to the
52 corporation of this state to which such other entity has converted, and
53 may be enforced against it to the same extent as if said debts, liabilities
54 and duties had originally been incurred or contracted by it in its
55 capacity as a corporation of this state. The rights, privileges, powers
56 and interests in property of the other entity, as well as the debts,
57 liabilities and duties of the other entity, shall not be deemed, as a

58 consequence of the conversion, to have been transferred to the
59 domestic corporation to which such other entity has converted for any
60 purpose of the laws of the state of Missouri.

61 7. Unless otherwise agreed for all purposes of the laws of the
62 state of Missouri or as required under applicable non-Missouri law, the
63 converting other entity shall not be required to wind up its affairs or
64 pay its liabilities and distribute its assets, and the conversion shall not
65 be deemed to constitute a dissolution of such other entity and shall
66 constitute a continuation of the existence of the converting other entity
67 in the form of a corporation of this state.

68 8. Prior to filing a certificate of conversion to corporation with
69 the office of the secretary of state, the conversion shall be approved in
70 the manner provided for by the document, instrument, agreement or
71 other writing, as the case may be, governing the internal affairs of the
72 other entity and the conduct of its business or by applicable law, as
73 appropriate, and articles of incorporation shall be approved by the
74 same authorization required to approve the conversion.

75 9. The certificate of conversion to corporation shall be signed by
76 any person who is authorized to sign the certificate of conversion to
77 corporation on behalf of the other entity.

78 10. In connection with a conversion hereunder, rights or
79 securities of, or interests in, the other entity which is to be converted
80 to a corporation of this state may be exchanged for or converted into
81 cash, property, or shares of stock, rights or securities of such
82 corporation of this state or, in addition to or in lieu thereof, may be
83 exchanged for or converted into cash, property, or shares of stock,
84 rights or securities of or interests in another domestic corporation or
85 other entity or may be cancelled.

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

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

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

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

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

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

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

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

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

40 (6) The address to which a copy of the process referred to in
41 subdivision (5) of this subsection shall be mailed to it by the secretary
42 of state. In the event of such service upon the secretary of state in
43 accordance with subdivision (5) of this subsection, the secretary of
44 state shall forthwith notify such corporation that has converted out of
45 the state of Missouri by letter, certified mail, return receipt requested,
46 directed to such corporation that has converted out of the state of

47 Missouri at the address so specified, unless such corporation shall have
48 designated in writing to the secretary of state a different address for
49 such purpose, in which case it shall be mailed to the last address
50 designated. Such letter shall enclose a copy of the process and any
51 other papers served on the secretary of state under this subsection. It
52 shall be the duty of the plaintiff in the event of such service to serve
53 process and any other papers in duplicate, to notify the secretary of
54 state that service is being effected under this subsection and to pay the
55 secretary of state the sum of fifty dollars for the use of the state, which
56 sum shall be taxed as part of the costs in the proceeding, if the plaintiff
57 shall prevail therein. The secretary of state shall maintain an
58 alphabetical record of any such service setting forth the name of the
59 plaintiff and the defendant, the title, docket number and nature of the
60 proceeding in which process has been served, the fact that service has
61 been effected under this subsection, the return date thereof, and the
62 day and hour service was made. The secretary of state shall not be
63 required to retain such information longer than five years from receipt
64 of the service of process.

65 4. Upon the filing in the office of the secretary of state of a
66 certificate of conversion to a non-Missouri entity in accordance with
67 subsection 3 of this section or upon the future effective date or time of
68 the certificate of conversion to a non-Missouri entity and payment to
69 the secretary of state of all fees prescribed under this chapter, the
70 secretary of state shall certify that the corporation has filed all
71 documents and paid all fees required by this chapter, and thereupon
72 the corporation shall cease to exist as a corporation of this state at the
73 time the certificate of conversion becomes effective in accordance with
74 section 351.075. Such certificate of the secretary of state shall be prima
75 facie evidence of the conversion by such corporation out of the state of
76 Missouri.

77 5. The conversion of a corporation out of the state of Missouri in
78 accordance with this section and the resulting cessation of its existence
79 as a corporation of this state pursuant to a certificate of conversion to
80 a non-Missouri entity shall not be deemed to affect any obligations or
81 liabilities of the corporation incurred prior to such conversion or the
82 personal liability of any person incurred prior to such conversion, nor
83 shall it be deemed to affect the choice of law applicable to the

84 corporation with respect to matters arising prior to such conversion.

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

90 7. In connection with a conversion of a domestic corporation to
91 another entity under this section, shares of stock, of the corporation of
92 this state which is to be converted may be exchanged for or converted
93 into cash, property, rights or securities of, or interests in, the entity to
94 which the corporation of this state is being converted or, in addition to
95 or in lieu thereof, may be exchanged for or converted into cash,
96 property, shares of stock, rights or securities of, or interests in, another
97 domestic corporation or other entity or may be cancelled.

98 8. When a corporation has been converted to another entity
99 under this section, the other entity shall, for all purposes of the laws of
100 the state of Missouri, be deemed to be the same entity as the
101 corporation. When any conversion shall have become effective under
102 this section, for all purposes of the laws of the state of Missouri, all of
103 the rights, privileges and powers of the corporation that has converted,
104 and all property, real, personal and mixed, and all debts due to such
105 corporation, as well as all other things and causes of action belonging
106 to such corporation, shall remain vested in the other entity to which
107 such corporation has converted and shall be the property of such other
108 entity, and the title to any real property vested by deed or otherwise
109 in such corporation shall not revert or be in any way impaired by
110 reason of this chapter; but all rights of creditors and all liens upon any
111 property of such corporation shall be preserved unimpaired, and all
112 debts, liabilities and duties of the corporation that has converted shall
113 remain attached to the other entity to which such corporation has
114 converted, and may be enforced against it to the same extent as if said
115 debts, liabilities and duties had originally been incurred or contracted
116 by it in its capacity as such other entity. The rights, privileges, powers
117 and interest in property of the corporation that has converted, as well
118 as the debts, liabilities and duties of such corporation, shall not be
119 deemed, as a consequence of the conversion, to have been transferred
120 to the other entity to which such corporation has converted for any

121 **purpose of the laws of the state of Missouri.**

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

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