

SECOND REGULAR SESSION

HOUSE BILL NO. 2092

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BURNETT (Sponsor), SKAGGS, LeVOTA, LOW (39), HUGHES, LOWE (44), VOGT, WITTE, CORCORAN, DARROUGH, CASEY, HOLSMAN, TALBOY, BLAND, GRILL, WALSH, BRINGER AND BAKER (25) (Co-sponsors).

Read 1st time February 12, 2008 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

5032L.01I

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 limited liability companies.

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Section A. Sections 347.187, 355.020, 355.171, 355.631, 355.791, and 359.121, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 347.187, 355.020, 355.171, 355.631, 355.791, and 359.121, to read as follows: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 person", when applied to a limited liability company:

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.

12 **(1) Wherein management of the company is vested in a manager or managers,**
13 **means the manager or managers so designated;**

14 **(2) Wherein management of the company is not vested in a manager or managers,**
15 **means any member who:**

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

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

22 **3. No member of a limited liability company shall be held liable for the taxes**
23 **imposed by sections 143.191 to 143.265, RSMo, sections 144.010 to 144.745, RSMo, sections**
24 **288.010 to 288.500, RSMo, or any other laws imposing a responsibility to make tax**
25 **payments solely on the basis of such member's membership in a limited liability company.**
26 **Nothing in this section shall be construed to create or extend liability for taxes imposed**
27 **under sections 143.191 to 143.265, RSMo, sections 144.010 to 144.745, RSMo, sections**
28 **288.010 to 288.500, RSMo, or any other laws imposing a responsibility to make tax**
29 **payments for or to a member of a limited liability company unless such member is a**
30 **responsible person.**

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

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

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

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

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

14 **b. To set forth in its articles of incorporation or articles of agreement any provision**
15 **authorized under this chapter to be inserted in the articles of incorporation of corporations**
16 **organized under this chapter which the corporation chooses to insert therein and the material and**
17 **information required to be set forth under section 355.096 in the original articles of incorporation**

18 of corporations organized under this chapter except, however, the names and addresses of the
19 persons constituting the board of directors.

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

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

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

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

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

40 (d) Filing with the secretary of state [duplicate] articles of acceptance of this chapter,
41 signed by its president or vice president and its secretary or assistant secretary, which articles of
42 acceptance, in the case of a corporation organized under the provisions of chapter 352, RSMo,
43 shall have been approved by the circuit court having jurisdiction to approve amendments to the
44 articles of agreement of such corporation. The articles of acceptance shall set forth:

45 a. The name of the corporation;

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

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

52 2. If the secretary of state finds that the resolutions provided in this section have been
53 duly adopted, that the corporation's articles of incorporation have been duly amended, where

54 necessary, to conform with the requirements of this chapter, and that the articles of acceptance
55 conform to law, [he] **the secretary of state** shall file [one duplicate original of] the articles of
56 acceptance in [his] **the secretary of state's** office, and shall issue his **or her** certificate of
57 acceptance to which [he] **the secretary of state** shall affix [the other duplicate original] **a copy**
58 of the articles of acceptance. The certificate of acceptance, with the [duplicate original] **copy**
59 of the articles of acceptance, shall be returned to the corporation or its representative. Upon the
60 issuance of the certificate of acceptance by the secretary of state:

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

63 (2) If the corporation has been theretofore authorized to issue shares of stock, all
64 authority for the issuance of shares of stock and all shares of stock then issued and outstanding
65 is eliminated, canceled and extinguished, the shareholders of the corporation are members of the
66 corporation of the class provided in the resolutions set forth in the articles of acceptance, and all
67 rights, interests, and obligations of the shareholders are changed and converted into the rights,
68 interests and obligations of members of a corporation organized under this chapter; and

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

72 3. The provisions of this chapter relating to foreign corporations apply to all foreign
73 not-for-profit corporations conducting affairs in this state for a purpose or purposes for which
74 a corporation might be organized under this chapter.

355.171. Any registered agent of a corporation may resign as such agent upon filing a
2 written notice of the resignation[, executed in duplicate,] with the secretary of state, who shall
3 immediately mail a copy to any officer of the corporation at his **or her** address as last known to
4 the secretary of state, other than such registered office. Such resignation shall become effective
5 upon the expiration of 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, shareholders,
2 and if required by section 355.626, by the members and any other persons, the surviving or
3 acquiring corporation shall deliver to the secretary of state articles of merger setting forth:

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

6 (2) The plan of merger;

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

9 (4) If approval by members was required:

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

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

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

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

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

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

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

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

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

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

7 3. The agency is terminated, and the registered office discontinued if so provided, on the
8 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 office of the
2 secretary of state shall be executed in the following manner:

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

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

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

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

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

12 **(2) State and affirm the occurrence of the specific event of withdrawal under**
13 **subdivision (4) of section 359.451.**

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

17 **[3.] 4.** The execution of a certificate by a general partner constitutes an affirmation under
18 the penalties of section 575.040, RSMo, that the facts stated therein are true.

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