

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2508
103RD GENERAL ASSEMBLY

6075H.02C

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 347.186, RSMo, and to enact in lieu thereof two new sections relating to limited liability companies.

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

Section A. Section 347.186, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 347.044 and 347.186, to read as follows:

347.044. 1. Any person may apply to the secretary of state for a certificate of good standing for a domestic limited liability company or a foreign limited liability company.

2. A certificate of good standing for a domestic limited liability company shall include:

(1) The domestic limited liability company's name;

(2) When the limited liability company was formed;

(3) That the limited liability company was formed under the laws of this state;

and

(4) That the limited liability company has complied with all the requirements of the corporation division of the secretary of state.

3. A certificate of good standing for a foreign limited liability company shall include:

(1) The name of the limited liability company as registered in the company's home state;

(2) The name the foreign limited liability company uses in this state;

(3) The name of the state or jurisdiction the limited liability was formed in; and

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.

18 **(4) That the limited liability company has complied with all the requirements of**
19 **the corporation division of the secretary of state.**

20 **4. Subject to any qualification stated in the certificate, a certificate of good**
21 **standing issued by the secretary of state shall be prima facie evidence that the domestic**
22 **or foreign limited liability company exists and is authorized to transact business in this**
23 **state.**

24 **5. Any person may apply to the secretary of state for a certificate of good**
25 **standing for any individual domestic limited liability company series or a foreign limited**
26 **liability company series.**

27 **6. A certificate of good standing for a domestic limited liability company series**
28 **shall include:**

29 **(1) The domestic limited liability company series name;**

30 **(2) When the limited liability company series was formed;**

31 **(3) That the limited liability company series was formed under the laws of this**
32 **state; and**

33 **(4) That the limited liability company series has complied with all the**
34 **requirements of the corporation division of the secretary of state.**

35 **7. A certificate of good standing for a foreign limited liability company series**
36 **shall include:**

37 **(1) The name of the limited liability company series as registered in the**
38 **company's home state;**

39 **(2) The name the foreign limited liability company series uses in this state;**

40 **(3) The name of the state or jurisdiction the limited liability company series was**
41 **formed in; and**

42 **(4) That the limited liability company series has complied with all the**
43 **requirements of the corporation division of the secretary of state.**

44 **8. Subject to any qualification stated in the certificate, a certificate of good**
45 **standing issued by the secretary of state shall be prima facie evidence that the domestic**
46 **or foreign limited liability company series exists and is authorized to transact business**
47 **in this state.**

347.186. 1. An operating agreement may establish or provide for the establishment
2 of a designated series of members, managers, or limited liability company interests having
3 separate rights, powers, or duties with respect to specified property or obligations of the
4 limited liability company or profits and losses associated with specified property or
5 obligations. To the extent provided in the operating agreement, any such series may have a
6 separate business purpose or investment objective.

7 2. (1) Notwithstanding any other provisions of law to the contrary, the debts,
8 liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a
9 particular series shall be enforceable against the assets of such series only, and not against the
10 assets of the limited liability company generally or any other series thereof. Such particular
11 series shall be deemed to have possession, custody, and control only of the books, records,
12 information, and documentation related to such series and not of the books, records,
13 information, and documentation related to the limited liability company as a whole or any
14 other series thereof if all of the following apply:

15 (a) The operating agreement creates one or more series;

16 (b) Separate and distinct records are maintained for or on behalf of any such series;

17 (c) The assets associated with any such series, whether held directly or indirectly,
18 including through a nominee or otherwise, are accounted for separately from the other assets
19 of the limited liability company or of any other series;

20 (d) The operating agreement provides for the limitations on liabilities of a series
21 described in this subdivision;

22 (e) Notice of the limitation on liabilities of a series described in this subdivision is
23 included in the limited liability company's articles of organization; and

24 (f) The limited liability company has filed articles of organization that separately
25 identify each series which is to have limited liability under this section.

26 (2) With respect to a particular series, unless otherwise provided in the operating
27 agreement, none of the debts, liabilities, obligations, and expenses incurred, contracted for or
28 otherwise existing with respect to a limited liability company generally, or any other series
29 thereof, shall be enforceable against the assets of such series, subject to the provisions of
30 subdivision (1) of this subsection.

31 (3) Compliance with paragraphs (e) and (f) of subdivision (1) of this subsection shall
32 constitute notice of such limitation of liability of a series.

33 (4) A series with limited liability shall be treated as a separate entity to the extent set
34 forth in the articles of organization. Each series with limited liability may, in its own name,
35 contract, hold title to assets, grant security interests, sue and be sued, and otherwise conduct
36 business and exercise the powers of a limited liability company under this chapter. The
37 limited liability company and any of its series may elect to consolidate its operations as a
38 single taxpayer to the extent permitted under applicable law, elect to work cooperatively, elect
39 to contract jointly, or elect to be treated as a single business for the purposes of qualification
40 or authorization to do business in this or any other state. Such elections shall not affect the
41 limitation of liability set forth in this section except to the extent that the series have
42 specifically accepted joint liability by contract. **Each series shall be individually profiled,**
43 **maintained, and searchable as a business entity on the Missouri secretary of state's**

44 **business services website in the same manner that a nonseries entity is profiled,**
45 **maintained, and searchable.**

46 3. Except in the case of a foreign limited liability company that has adopted a name
47 that is not the name under which it is registered in its jurisdiction of organization, as permitted
48 under sections 347.153 and 347.157, the name of the series with limited liability is required to
49 contain the entire name of the limited liability company and be distinguishable from the
50 names of the other series set forth in the articles of organization. In the case of a foreign
51 limited liability company that has adopted a name that is not the name under which it is
52 registered in its jurisdiction of organization, as permitted under sections 347.153 and 347.157,
53 the name of the series with limited liability must contain the entire name under which the
54 foreign limited liability company has been admitted to transact business in this state.

55 4. (1) (a) Upon filing of articles of organization setting forth the name of each series
56 with limited liability, in compliance with section 347.037 or amendments under section
57 347.041, the series' existence shall begin.

58 (b) Each copy of the articles of organization stamped "Filed" and marked with the
59 filing date shall be conclusive evidence that all required conditions have been met and that the
60 series has been or shall be legally organized and formed under this section and is notice for all
61 purposes of all other facts required to be set forth therein.

62 (c) The name of a series with limited liability under this section may be changed by
63 filing articles of amendment with the secretary of state pursuant to section 347.041,
64 identifying the series whose name is being changed and the new name of such series. If not
65 the same as the limited liability company, the names of the members of a member-managed
66 series or of the managers of a manager-managed series may be changed by an amendment to
67 the articles of organization with the secretary of state.

68 (d) A series with limited liability under this section may be dissolved by filing with
69 the secretary of state articles of amendment pursuant to section 347.041 identifying the series
70 being dissolved or by the dissolution of the limited liability company as provided in section
71 347.045. Except to the extent otherwise provided in the operating agreement, a series may be
72 dissolved and its affairs wound up without causing the dissolution of the limited liability
73 company. The dissolution of a series established in accordance with subsection 2 of this
74 section shall not affect the limitation on liabilities of such series provided by subsection 2 of
75 this section. A series is terminated and its affairs shall be wound up upon the dissolution of
76 the limited liability company under section 347.045.

77 (e) Articles of organization, amendment, or termination described under this
78 subdivision may be executed by the limited liability company or any manager, person, or
79 entity designated in the operating agreement for the limited liability company.

80 (2) If different from the limited liability company, the articles of organization shall
81 list the names of the members for each series if the series is member-managed or the names of
82 the managers if the series is manager-managed.

83 (3) A series of a limited liability company shall be deemed to be in good standing as
84 long as the limited liability company is in good standing. **A series of a limited liability**
85 **company that is in good standing shall be able to obtain a stand-alone certificate of good**
86 **standing from the Missouri secretary of state under section 347.044.**

87 (4) The registered agent and registered office for the limited liability company
88 appointed under section 347.033 shall serve as the agent and office for service of process for
89 each series in this state.

90 5. (1) An operating agreement may provide for classes or groups of members or
91 managers associated with a series having such relative rights, powers, and duties as an
92 operating agreement may provide and may make provision for the future creation of
93 additional classes or groups of members or managers associated with the series having such
94 relative rights, powers, and duties as may from time to time be established, including rights,
95 powers, and duties senior and subordinate to or different from existing classes and groups of
96 members or managers associated with the series.

97 (2) A series may be managed either by the member or members associated with the
98 series or by the manager or managers chosen by the members of such series, as provided in
99 the operating agreement. Unless otherwise provided in an operating agreement, the
100 management of a series shall be vested in the members associated with such series.

101 (3) An operating agreement may grant to all or certain identified members or
102 managers, or to a specified class or group of the members or managers associated with a
103 series, the right to vote separately or with all or any class or group of the members or
104 managers associated with the series, on any matter. An operating agreement may provide that
105 any member or class or group of members associated with a series shall have no voting rights
106 or ability to otherwise participate in the management or governance of such series, but any
107 such member or class or group of members are owners of the series.

108 (4) Except as modified in this section, the provisions of this chapter which are
109 generally applicable to limited liability companies and their managers, members, and
110 transferees shall be applicable to each particular series with respect to the operation of such
111 series.

112 (5) Except as otherwise provided in an operating agreement, any event specified in
113 this chapter or in an operating agreement that causes a manager to cease to be a manager with
114 respect to a series shall not, in itself, cause such manager to cease to be a manager of the
115 limited liability company or with respect to any other series thereof.

116 (6) Except as otherwise provided in an operating agreement, any event specified in
117 this chapter or in an operating agreement that causes a member to cease to be associated with
118 a series shall not, in itself, cause such member to cease to be associated with any other series,
119 terminate the continued membership of a member in the limited liability company, or cause
120 the termination of the series, regardless of whether such member was the last remaining
121 member associated with such series.

122 (7) An operating agreement may impose restrictions, duties, and obligations on
123 members of the limited liability company or any series thereof as a matter of internal
124 governance, including, without limitation, those with regard to:

- 125 (a) Choice of law, forum selection, or consent to personal jurisdiction;
- 126 (b) Capital contributions;
- 127 (c) Restrictions on, or terms and conditions of, the transfer of membership interests;
- 128 (d) Restrictive covenants, including noncompetition, nonsolicitation, and
129 confidentiality provisions;
- 130 (e) Fiduciary duties; and
- 131 (f) Restrictions, duties, or obligations to or for the benefit of the limited liability
132 company, other series thereof, or their affiliates.

133 6. (1) If a limited liability company with the ability to establish series does not
134 register to do business in a foreign jurisdiction for itself and its series, a series of a limited
135 liability company may itself register to do business as a limited liability company in the
136 foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

137 (2) If a foreign limited liability company, as permitted in the jurisdiction of its
138 organization, has established a series having separate rights, powers, or duties and has limited
139 the liabilities of such series so that the debts, liabilities, and obligations incurred, contracted
140 for, or otherwise existing with respect to a particular series are enforceable against the assets
141 of such series only, and not against the assets of the limited liability company generally or any
142 other series thereof, or so that the debts, liabilities, obligations, and expenses incurred,
143 contracted for, or otherwise existing with respect to the limited liability company generally or
144 any other series thereof are not enforceable against the assets of such series, then the limited
145 liability company, on behalf of itself or any of its series, or any of its series on its own behalf
146 may register to do business in this state in accordance with this chapter. The limitation of
147 liability shall also be stated on the application for registration. As required under section
148 347.153, the registration application filed shall identify each series being registered to do
149 business in the state by the limited liability company. Unless otherwise provided in the
150 operating agreement, the debts, liabilities, and obligations incurred, contracted for, or
151 otherwise existing with respect to a particular series of such a foreign limited liability
152 company shall be enforceable against the assets of such series only and not against the assets

153 of the foreign limited liability company generally or any other series thereof, and none of the
154 debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with
155 respect to such a foreign limited liability company generally or any other series thereof shall
156 be enforceable against the assets of such series.

157 7. Nothing in sections 347.039, 347.153, or 347.186 shall be construed to alter
158 existing Missouri statute or common law providing any cause of action for fraudulent
159 conveyance, including but not limited to chapter 428, or any relief available under existing
160 law that permits a challenge to limited liability.

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