

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

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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.

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**AN ACT**

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

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*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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