

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 896

90TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organization, February 29, 2000, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

2777S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 359.091 and 359.481, RSMo 1994, and sections 347.137, 347.141, 351.025, 351.482, 354.065 and 359.451, RSMo Supp. 1999, relating to business organizations, and to enact in lieu thereof eight new sections relating to the same subject, with a termination date for certain sections.

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

Section A. Sections 359.091 and 359.481, RSMo 1994, and sections 347.137, 347.141, 351.025, 351.482, 354.065 and 359.451, RSMo Supp. 1999, are repealed and eight new sections enacted in lieu thereof, to be known as sections 347.137, 347.141, 351.025, 351.482, 354.065, 359.091, 359.451 and 359.481, to read as follows:

347.137. 1. A domestic limited liability company shall be dissolved upon the occurrence of any of the following:

(1) [At the time or] Upon the happening of the events specified in the operating agreement or in the articles of organization;

(2) Upon the written consent of all members;

(3) Except as otherwise provided in the operating agreement, an event of withdrawal of a member, if a majority, by number, of the remaining members agree within ninety days after the occurrence of the event of withdrawal to dissolve the limited liability company;

(4) An event of withdrawal with respect to the sole remaining member;

(5) Entry of a decree of dissolution under section 347.143; or

(6) When the limited liability company is not the surviving entity in a merger or consolidation.

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

2. As soon as possible following the occurrence of any of the events specified in subdivisions (1) to (4) of subsection 1 of this section effecting the dissolution of the limited liability company, the limited liability company shall file a notice of winding up with the secretary which discloses the dissolution of the limited liability company and the commencement of winding up of its business and affairs.

347.141. 1. A dissolved limited liability company may dispose of the known claims against it in accordance with subsections 1 and 2 of this section. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

- (1) Describe information that must be included in a claim;
- (2) Provide a mailing address where a claim may be sent;
- (3) State the deadline, which may not be fewer than ninety days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

2. Notwithstanding other provisions of law, including laws regarding permissibility of third-party claims, to the contrary, a claim against a limited liability company dissolved without fraudulent intent is barred if either of the following occurs:

- (1) A claimant who was given written notice under subsection 1 of this section does not deliver the claim to the dissolved limited liability company by the deadline; or
- (2) A claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within one hundred and twenty days from the effective date of the rejection notice. For purposes of this subsection, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

3. A dissolved limited liability company may dispose of the unknown claims against it by filing a notice of winding up in accordance with subsections 3 and 4 of this section. The notice of winding up shall meet all of the following requirements:

- (1) Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office, or if not in this state, its registered office, is or was located **and the Missouri Register**;
- (2) Be published one time in a publication of statewide circulation whose audience is primarily persons engaged in the practice of law in this state and which is published not less than four times per year;
- (3) Contain a request that persons with claims against the limited liability company present them in accordance with the notice of winding up;
- (4) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
- (5) State that a claim against the limited liability company will be barred unless a

proceeding to enforce the claim is commenced within three years after the publication of the notice.

4. Notwithstanding other provisions of law, including laws regarding permissibility of third-party claims, to the contrary, if a limited liability company dissolved without fraudulent intent files a notice of winding up in accordance with subsection 2 of section 347.137 and publishes such notice in accordance with subsection 3 of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved limited liability company within three years after the date the notice of winding up is filed or published, whichever occurs later:

(1) A claimant who did not receive written notice under subsection 1 of this section;

(2) A claimant whose claim was timely sent to the dissolved limited liability company but not acted on; or

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

5. A claim may be enforced under this section in either of the following ways:

(1) Against the dissolved limited liability company, to the extent of its undistributed assets;

or

(2) If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member in liquidation.

6. For purposes of this section, "fraudulent intent" shall be established if it is shown that the sole or primary purpose of the dissolution was to defraud members, creditors or others.

7. Notwithstanding any other provision of this chapter to the contrary, except as provided in subsection 8 of this section, a claim against a limited liability company dissolved pursuant to this chapter for which claim the limited liability company has a contract of insurance which will indemnify the limited liability company for any adverse result from such claim:

(1) Is not subject to the provisions of subsections 1 to 6 of this section and may not be barred by compliance with subsections 1 to 6 of this section;

(2) May be asserted at any time within the statutory period otherwise provided by law for such claims;

(3) May be asserted against, and service of process had upon, the dissolved limited liability company for whom the court, at the request of the party bringing the suit, shall appoint a defendant ad litem.

8. Judgments obtained in suits filed and prosecuted pursuant to subsection 7 of this section shall only be enforceable against one or more contracts of insurance issued to the limited liability company, its officers, directors, agents, servants or employees, indemnifying them, or any of them,

against such claims.

351.025. 1. Any existing corporation heretofore organized for profit under any special law of this state may accept the provisions of this chapter and be entitled to all of the rights, privileges and benefits provided by this chapter, as well as accepting the obligations and duties imposed by this chapter, by filing with the secretary of state a certificate of acceptance of this chapter, signed by its president and secretary, duly authorized by its board of directors, and approved by the affirmative vote of a majority of its outstanding shares.

2. Any health services corporation organized as a not for profit corporation pursuant to chapter 354, RSMo, that has complied with the provisions of section 354.065, RSMo, may accept the provisions of this chapter and be entitled to all of the rights, privileges and benefits provided by this chapter, as well as accepting the obligations and duties imposed by this chapter, by filing with the secretary of state a certificate of acceptance of this chapter, signed by its president and secretary, duly authorized by its board of directors, and approved by the affirmative vote of a majority of its outstanding shares, if any.

3. The provisions of subsection 2 of this section shall expire and have no force and effect on and after August 31, [2000] **2001**.

351.482. 1. After dissolution is authorized, a corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

2. The notice shall:

(1) Be published one time in a newspaper of general circulation in the county where the corporation's principal office, or, if none in this state, its registered office, is or was last located **and the Missouri Register**;

(2) Be published one time in a publication of statewide circulation whose audience is primarily persons engaged in the practice of law in this state and which is published not less than four times per year;

(3) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(4) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within two years after the publication of the notice.

3. Other rules of law, including rules on the permissibility of third-party claims, to the contrary notwithstanding, if a corporation dissolved without fraudulent intent publishes notices in accordance with subsection 2 of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within two years after the publication date of whichever of the notices was published last:

(1) A claimant who did not receive written notice pursuant to section 351.478;

(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;

(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced pursuant to this section only:

(1) Against the dissolved corporation, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims pursuant to this section may not exceed the total amount of assets distributed to the shareholder.

5. For purposes of this section, "fraudulent intent" shall be established if it is shown that the sole or primary purpose of the authorization for dissolution or the dissolution was to defraud shareholders, creditors or others.

354.065. 1. A corporation may amend its articles of incorporation from time to time in the manner provided in chapter 355, RSMo, and shall file a duly certified copy of its certificate of amendment with the director of insurance within twenty days after the issuance of the certificate of amendment by the secretary of state. Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

2. A health services corporation organized as a not for profit corporation pursuant to this chapter may amend its articles in the manner provided in chapter 355, RSMo, to change its status to that of a for profit business corporation and accept the provisions of chapter 351, RSMo, by:

(1) Adopting a resolution amending its articles of incorporation or articles of agreement so as:

(a) To eliminate any purpose, power or other provision thereof not authorized to be set forth in the articles of incorporation of corporations organized pursuant to chapter 351, RSMo;

(b) To set forth any provision authorized pursuant to chapter 351, RSMo, to be inserted in the articles of incorporation of corporations organized pursuant to chapter 351, RSMo, which the corporation chooses to insert therein and the material and information required to be set forth pursuant to chapter 351, RSMo, in the original articles of incorporation of corporations organized pursuant to chapter 351, RSMo;

(2) Adopting a resolution accepting all of the provisions of chapter 351, RSMo, and providing that such corporation shall for all purposes be thenceforth deemed to be a corporation organized pursuant to chapter 351, RSMo;

(3) By filing with the secretary of state a certificate of acceptance of chapter 351, RSMo;

(4) By complying with the provisions of sections 355.616 and 355.621, RSMo, to the extent those sections would apply if such health services corporation were merging with a domestic business corporation with the proposed amended articles of incorporation serving as the proposed

plan of merger.

3. The provisions of subsection 2 of this section shall expire and have no force and effect on and after August 31, [2000] **2001**.

359.091. 1. In order to form a limited partnership, a certificate of limited partnership shall be executed and filed in the office of the secretary of state. The certificate shall set forth:

- (1) The name of the limited partnership;
- (2) The address of the registered office and the name of the registered agent at such office;
- (3) The name and the mailing address of each general partner;
- (4) The [latest date upon] **events, if any on** which the limited partnership is to dissolve **or the number of years the limited partnership is to continue, which may be any number or perpetual;**
- (5) Any other matters the general partners determine to include therein.

2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any other time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

359.451. A limited partnership is dissolved and its affairs shall be wound up upon the first to occur of the following:

- (1) [At the time] **Upon the happening of events** specified in the certificate of limited partnership;
- (2) Upon the happening of events specified in writing in the partnership agreement;
- (3) Written consent of all partners;
- (4) An event of withdrawal of a general partner unless:
 - (a) There remains at least one other general partner and the written provisions of the partnership agreement permit the business of the limited partnership to be carried on by the remaining general partner, alone or together with one or more new general partners, and that partner or those partners do so; or
 - (b) Within ninety days after the withdrawal, partners owning a majority of the profits interests and a majority of the capital interests held by all partners agree in writing to continue the business of the limited partnership and, if there is no remaining general partner, to the appointment of one or more additional general partners if necessary or desired; or
- (5) Entry of a decree of judicial dissolution under section 359.461.

359.481. **1.** Upon the winding up of a limited partnership, the assets shall be distributed as follows:

- (1) To creditors, including partners who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners under section 359.321 or 359.351;

(2) Except as provided in the partnership agreement, to partners and former partners in satisfaction of liabilities for distributions under section 359.321 or 359.351; and

(3) Except as provided in the partnership agreement, to partners first for the return of their contributions and secondly respecting their partnership interests, in the proportions in which the partners share in distributions.

2. A dissolved limited partnership may dispose of the unknown claims against it by filing a notice of winding up in accordance with this subsection. The notice of winding up shall meet all of the following requirements:

(1) Be published one time in the Missouri Register;

(2) Be published one time in a publication of statewide circulation whose audience is primarily persons engaged in the practice of law in this state and which is published not less than four times per year;

(3) Contain a request that persons with claims against the partnership present them in accordance with the notice of winding up;

(4) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and

(5) State that a claim against the partnership will be barred unless a proceeding to enforce the claim is commenced within three years after the publication of the notice.