

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 288

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLARICH.

Read 1st time January 15, 2001, and 1,000 copies ordered printed.

Read 2nd time January 29, 2001, and referred to the Committee on Judiciary.

Reported from the Committee February 20, 2001, with recommendation that the bill do pass with Senate Committee Amendment No. 1 and be placed on the Consent Calendar.

Senate Committee Amendment No. 1 adopted March 6, 2001.

Taken up March 6, 2001. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

0578S.01P

AN ACT

To repeal sections 351.120, 351.220, 351.268, 351.410, 351.415, 351.435, 351.440, 351.458, 351.478 and 351.482, RSMo 2000, relating to corporations, and to enact in lieu thereof ten new sections relating to the same subject.

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

Section A. Sections 351.120, 351.220, 351.268, 351.410, 351.415, 351.435, 351.440, 351.458, 351.478 and 351.482, RSMo 2000, are repealed and ten new sections enacted in lieu thereof, to be known as sections 351.120, 351.220, 351.247, 351.268, 351.410, 351.415, 351.435, 351.458, 351.478 and 351.482, to read as follows:

351.120. Every corporation organized pursuant to the laws of this state, including corporations organized pursuant to or subject to this chapter, and every foreign corporation licensed to do business in this state, whether such license shall have been issued pursuant to this chapter or not, other than corporations exempted from taxation by the laws of this state, shall file an annual corporation registration report stating its corporate name, the name of its registered agent

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

and such agent's Missouri address, giving street and number, or building and number, or both, as the case may require, the name and correct business or residence address of its officers and directors, and the mailing address of the corporation's principal place of business or corporate headquarters. The annual corporation registration report shall be due on the date that the corporation's franchise tax report is due as required in section 147.020, RSMo, or within thirty days of the date of incorporation of the corporation; but any extension of time for filing the franchise tax report shall not apply to the due date of the annual corporation registration report. Any corporation that is not required to file a franchise tax report shall still be required to file an annual corporation registration report. **In the event of any change in the names and addresses of the officers and directors set forth in an annual registration report following the required date of its filing and the date of the next such required report, the corporation may correct such information by filing a certificate of correction pursuant to section 351.049.**

351.220. The board of directors of a corporation may declare and the corporation may pay dividends on its [outstanding] shares in cash, property, or its own shares, subject to the following limitations and provisions:

(1) No dividend shall be declared or paid at a time when the net assets of the corporation are less than its stated capital or when the payment thereof would reduce the net assets of the corporation below its stated capital;

(2) If a dividend is declared out of the paid-in surplus of the corporation, whether created by reduction of stated capital or otherwise, the limitations contained in section 351.210 shall apply;

(3) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is declared an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend;

(4) If a dividend is declared payable in its own shares, without par value, and such shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, such shares shall be issued at the liquidation value thereof, and there shall be transferred to stated capital at the time such dividend is declared, an amount of surplus equal to the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(5) If a dividend is declared payable in its own shares without par value and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, such shares shall be issued at such value as shall be fixed by the board of directors by resolution at the time such dividend is declared, and there shall be transferred to stated capital, at the time such dividend is declared, an amount of surplus equal to the aggregate value so fixed in respect of such shares, and the amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends concurrently with payment thereof;

(6) A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section;

(7) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation.

351.247. 1. An agreement among the shareholders of a corporation that complies with this section and is not contrary to public policy is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations set forth in section 351.220;

(3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director or employee of the corporation or among any of them;

(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;

(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or

(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors and the corporation, or among any of them.

2. An agreement authorized by this section shall be:

(1) Set forth in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement, or in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for ten years, unless the agreement provides otherwise.

3. The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares, or in the case of uncertificated shares, on any required information statement. If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or required information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or required information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, any required information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares whichever is earlier.

4. An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

5. An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

6. The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation as if it were a partnership or if it results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

7. Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

8. This section shall apply to all agreements entered into either prior to or after the effective date of this section.

351.268. 1. In addition to the provisions of sections 351.265 and 351.267 regarding the adjournment of shareholders meetings at which a quorum is not present, unless the bylaws provide to the contrary, a meeting may be otherwise successively adjourned to a specified date not longer than ninety days after such adjournment or to another place. Notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than ninety days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the date and place of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

2. A shareholder's meeting may be successively postponed by resolution of the board of directors, unless otherwise provided in the bylaws, to a specified date up to a date ninety days after such postponement or to another place, provided [public] notice **of the date and place of the postponed meeting, which may be by public notice, is given to each shareholder of record entitled to vote at the meeting** of such postponement is given prior to the date previously scheduled for such meeting. [Such notice shall state the new date and place of such postponed meeting.]

3. For purposes of this chapter, "adjournment" means a delay in the date, which may also be combined with a change in the place, of a meeting after the meeting has been convened; "postponement" means a delay in the date, which may be combined with a change in the place, of the meeting before it has been convened, but after the time and place thereof have been set forth in a notice delivered or given to shareholders; and public notice shall be deemed to have been given if a public announcement is made by press release reported by a national news service or in a publicly available document filed with the United States Securities and Exchange Commission.

351.410. Any two or more domestic corporations may merge into one of the corporations in the following manner: The board of directors of each corporation shall approve a plan of merger and direct the submission of the plan to a vote at a meeting of shareholders. The plan of merger shall set forth:

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

(2) The terms and conditions of the proposed merger and the mode of carrying it into effect;

(3) The manner and basis of converting the shares of each merging corporation into cash, property, shares or other securities or obligations of the surviving corporation, or (if any shares of any merging corporation are not to be converted solely into cash, property, shares or other securities

or obligations of the surviving corporation) into cash, property, shares or other securities or obligations of any other domestic or foreign corporation, which cash, property, shares or other securities or obligations of any other domestic or foreign corporation may be in addition to or completely in lieu of cash, property, shares or other securities or obligations of the surviving corporation;

(4) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by the merger;

(5) Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

351.415. Any two or more domestic corporations may consolidate into a new domestic corporation in the following manner: The board of directors of each corporation shall approve a plan of consolidation and direct the submission of the plan to a vote at a meeting of shareholders. The plan of consolidation shall set forth:

(1) The names of the corporations proposing to consolidate, **which are herein designated as the "constituent corporations"** and the name of the new corporation into which they propose to consolidate, which is herein designated as "the new corporation";

(2) The terms and conditions of the proposed consolidation and the mode of carrying it into effect;

(3) The manner and basis of converting the shares of each consolidating corporation into cash, property, shares, or other securities, or obligations of the new corporation, or (if any shares of any consolidating corporation are not to be converted solely into cash, property, shares or other securities or obligations of the new corporation) into cash, property, shares or other securities or obligations of any other domestic or foreign corporation, which cash, property, shares or other securities or obligations of any other domestic or foreign corporation may be in addition to or completely in lieu of cash, property, shares or other securities or obligations of the new corporation;

(4) With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(5) Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

351.435. **1.** Duplicate originals or the original and a copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state **by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation. The articles shall be executed pursuant to section 351.430, filed pursuant to section 351.046 and effective pursuant to section 351.048.** If the secretary of state finds that the articles conform to law, he shall, when all required taxes or fees have been paid, file the same, keeping the original as a permanent record, and issue a certificate of merger or a certificate of consolidation, to which he shall affix the copy of such articles.

2. In lieu of the delivery of articles of merger or articles of consolidation as required pursuant to subsection 1 of this section, summary articles of merger or summary articles of consolidation, executed pursuant to section 351.046, may be filed pursuant to section 351.046 to be effective pursuant to section 351.048. Such summary articles shall state:

- (1) The name and state of incorporation of each of the constituent corporations;**
- (2) That a plan of merger or consolidation has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations as required by this chapter;**
- (3) The name of the surviving corporation in the case of a merger or the new corporation in the case of a consolidation;**
- (4) In the case of a merger, such amendments or changes in the articles of the surviving corporation as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the articles of incorporation of the surviving corporation shall be the articles of incorporation;**
- (5) In the case of a consolidation, that the articles of incorporation of the new corporation shall be as set forth in an attachment to the summary articles;**
- (6) That the executed plan of merger or consolidation is on file at an office of the surviving corporation in the case of a merger, or new corporation in the case of a consolidation stating the address thereof; and**
- (7) That a copy of a plan of merger or consolidation will be furnished by the surviving corporation in the case of a merger or the new corporation in the case of a consolidation, on request and without cost, to any shareholder of any constituent corporation.**

[351.440. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.]

351.458. 1. One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

- (1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized;
- (2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to do business in this state, and regardless of whether or not it is to do business in this state it shall file with the secretary of state of this state:

(a) An agreement that it will promptly pay to the dissenting shareholders of any domestic corporation which is a party to the merger or consolidation the amount, if any, to which they shall be entitled under provisions of this chapter with respect to the rights of dissenting shareholders, and

(b) An agreement that it may be served with process in this state, and an irrevocable appointment of the secretary of state of this state as its agent to accept service of process, in any proceeding based upon any cause of action against any such domestic corporation arising in this state prior to the issuance of the certificate of merger or the certificate of consolidation by the secretary of state of this state, and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation.

2. The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations; except, if the surviving or new corporation is to be governed by the laws of any state other than this state, to the extent that the laws of the other state shall otherwise provide.

3. [If the surviving or new corporation is to be governed by the laws of any state other than this state, the secretary of state of this state may nevertheless in his discretion issue a certificate of merger or certificate of consolidation in the manner provided in section 351.435.

4.] If the surviving or new corporation is a foreign corporation, the effective date of such merger or consolidation shall be the date on which the same becomes effective in the state of domicile of such surviving or new corporation and the provisions of section 351.440 shall not apply. **A document from the state of the domicile of the surviving corporation in the case of a merger, or the new corporation in the case of a consolidation, certifying that the merger or consolidation has become effective in such state shall be a requirement for the merger or consolidation becoming effective in this state.**

351.478. 1. After dissolution is authorized **pursuant to sections 351.462, 351.464 or 351.466, or it has been dissolved pursuant to section 351.486**, a corporation shall dispose of the known claims against it by following the procedure described in this section.

2. The corporation shall notify its known claimants in writing by United States Postal Service of the dissolution at any time after dissolution is authorized. The written notice must:

- (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 one hundred eighty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
- (4) State that the claim will be barred if not received by the deadline.

3. Other rules of law, including rules on the permissibility of third-party claims, to the contrary notwithstanding, a claim against a corporation dissolved without fraudulent intent is barred:

(1) If a claimant who was given written notice pursuant to subsection 2 of this section does not deliver the claim to the corporation by the deadline;

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence proceedings to enforce the claim within ninety days from the effective date of the rejection notice.

4. For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

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 was to defraud shareholders, creditors or others.

351.482. 1. After dissolution is authorized **pursuant to sections 351.462, 351.464 or 351.466, or it has been dissolved pursuant to section 351.486**, 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;

(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) At the request of the corporation, be published by the secretary of state in an electronic format accessible to the public;

(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 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.

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