

FIRST REGULAR SESSION

# SENATE BILL NO. 310

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR CASKEY.

Read 1st time January 22, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1149S.011

## AN ACT

To repeal sections 347.700, 347.720, 358.150, 358.520, and 359.165, RSMo, and to enact in lieu thereof five new sections relating to business organizations.

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

Section A. Sections 347.700, 347.720, 358.150, 358.520, and 359.165, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 347.700, 347.720, 358.150, 358.520, and 359.165, to read as follows:

347.700. 1. A merger or consolidation solely between any two or more domestic corporations or one or more domestic corporations and one or more foreign corporations shall be governed by and subject to chapter 351 or 355, RSMo, as is applicable.

**2. A merger or consolidation solely between any two or more domestic general partnerships or one or more domestic general partnerships and one or more foreign general partnerships shall be governed by and subject to section 358.520, RSMo.**

[2.] 3. A merger or consolidation solely between any two or more domestic limited partnerships or one or more domestic limited partnerships and one or more foreign limited partnerships shall be governed by and subject to section 359.165, RSMo.

[3.] 4. A merger or consolidation solely between any two or more domestic limited liability companies or one or more domestic limited liability companies and one or more foreign limited liability companies shall be governed by sections 347.127 to 347.133.

[4.] 5. A business combination involving any resident domestic corporation and any interested shareholder of such resident domestic corporation shall be governed by and subject to section 351.459, RSMo.

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

[5.] 6. Subject to the provisions of this section, any merger or consolidation between one or more domestic corporations and any one or more constituent entities at least one of which is not a corporation, one or more domestic general partnerships and any one or more constituent entities at least one of which is not a general partnership, one or more domestic limited partnerships and any one or more constituent entities at least one of which is not a limited partnership, one or more domestic limited liability partnerships and any one or more constituent entities at least one of which is not a limited liability partnership, one or more domestic limited liability limited partnerships and any one or more constituent entities at least one of which is not a limited liability limited partnership, or one or more domestic limited liability companies and any one or more constituent entities at least one of which is not a limited liability company shall be governed by and subject to the provisions of sections 347.700 to 347.735.

347.720. 1. The agreement of merger or consolidation required by section 347.715 shall be authorized and approved in the following manner:

(1) A constituent entity that is a domestic general partnership shall have the agreement of merger or consolidation authorized and approved by all of the partners, unless otherwise provided in the articles or agreement of partnership;

(2) A constituent [estate] **entity** that is a domestic **limited** partnership shall have the agreement of merger or consolidation approved by all general partners and by all of the limited partners unless otherwise provided in the articles or agreement of limited partnership;

(3) A constituent [estate] **entity** that is a domestic **limited** corporation shall have the agreement of merger or consolidation approved in the manner applicable to a merger of two or more domestic corporations as provided in chapter 351 or 355, RSMo, as is applicable;

(4) A constituent entity that is a domestic limited liability company shall have the agreement of merger or consolidation approved in the manner provided in section 347.079; and

(5) Each constituent entity formed under the laws of a jurisdiction other than this state shall have the agreement of merger or consolidation approved in accordance with the laws of such other jurisdiction.

2. The fact that the agreement of merger or consolidation has been authorized and approved in accordance with this section shall be certified on the agreement of merger or consolidation on behalf of each constituent entity:

(1) In the case of any domestic general or limited partnership, by any general partner;

(2) In the case of any domestic corporation, by its president or a vice president, and by its secretary or an assistant secretary;

(3) In the case of any domestic limited liability company, by any authorized person as defined in section 347.015; and

(4) In the case of any constituent entity formed under the laws of any jurisdiction other than this state, in accordance with the laws of such other jurisdiction.

3. After the agreement of merger or consolidation is authorized and approved, unless the agreement of merger or consolidation provides otherwise, and at any time before the agreement of merger or consolidation or certificate of merger or consolidation is effective as provided for in section 347.725, the agreement of merger or consolidation may be abandoned, subject to any contractual rights, in accordance with the procedure set forth in the agreement of merger or consolidation or, if none is set forth, with the approval of those persons or individuals entitled to approve the merger or consolidation as provided in subsection 1 of this section.

358.150. 1. Except as provided in subsection 2 of this section, all partners are liable jointly and severally for everything chargeable to the partnership pursuant to sections 358.130 and 358.140, and for all other debts and obligations of the partnership. Any partner may enter into a separate obligation to perform a partnership contract.

2. Subject to subsection 3 of this section, no partner in a registered limited liability partnership shall be liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment or otherwise, for any debts, obligations and liabilities of, or chargeable to, the partnership or each other, whether in tort, contract or otherwise, which are incurred, created or assumed by such partnership while the partnership is a registered limited liability partnership.

3. Subsection 2 of this section shall not affect the liability of a partner in a registered limited liability partnership for the partner's own negligence, wrongful acts, omissions, misconduct or malpractice [or that of any person under the partner's direct supervision and control] or the partner's liability for any taxes or fees administered by the department of revenue pursuant to chapter 143, 144 or 301, RSMo, and any liabilities owed as determined by the division of employment security, pursuant to chapter 288, RSMo, and any local taxes provided for in section 32.087, RSMo.

4. A partner is not a proper party to a proceeding by or against a registered limited liability partnership, the object of which is to recover damages or enforce obligations arising out of acts, omissions, malpractice or misconduct of the type described in subsection 2 of this section, unless the partner is personally liable pursuant to subsection 1 or 3 of this section.

5. A registered limited liability partnership may sue and be sued in its own name.

6. Venue of claims against registered limited liability partnerships shall be controlled pursuant to section 508.010, RSMo, and, for purposes of venue, a registered limited liability partnership shall be deemed to be a citizen and resident of the county in which it has any office or agent for the transaction of its usual and customary business activities or in which its registered office or registered agent is located.

7. Service of process upon a registered limited liability partnership may be had by delivering a copy of the summons and petition to the partnership's registered agent, a partner, managing or general agent or by leaving the copies at any business office of the registered

limited liability partnership with the person having charge thereof.

358.520. **1. Pursuant to an agreement of merger or consolidation, a domestic general partnership may merge or consolidate with or into one or more general partnerships formed under the laws of this state or any other jurisdiction, with such general partnership as the agreement shall provide being the surviving or resulting general partnership.** A domestic **general** partnership may merge or consolidate with [or into] one or more **domestic or foreign limited [general] partnerships [or domestic or foreign limited partnerships, limited liability companies, trusts, business trusts, corporations, real estate investment trusts and other associations or business entities], limited liability companies, trusts, business trusts, corporations, real estate investment trusts and other associations or business entities at least one of which is not a general partnership,** as provided in sections 347.700 to 347.735, RSMo.

**2. The agreement of merger or consolidation shall be approved by the number or percentage of partners specified in the partnership agreement. If the partnership agreement fails to specify the required partner approval for merger or consolidation of the general partnership, then the agreement of merger or consolidation shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger or consolidation shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners.**

**3. In the case of a merger or consolidation of one or more domestic partnerships into a surviving partnership, the surviving partnership shall file articles of merger or consolidation with the secretary of state setting forth:**

- (1) The name of each party to the merger or consolidation;**
- (2) The effective date of the merger or consolidation which shall be the date the articles of merger or consolidation are filed with the secretary of state or on a later date set forth in the articles of merger or consolidation not to exceed ninety days after the filing date;**
- (3) The name of the surviving partnership in a merger or the new partnership in a consolidation and the state of its formation;**
- (4) A statement that the merger or consolidation was authorized and approved by the partners of each party to the merger or consolidation in accordance with the laws of the jurisdiction where it was organized;**

(5) If applicable, the address of the registered office and the name of the registered agent at such office for the surviving or new partnership;

(6) A statement that the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or new partnership, stating the address of such place of business; and

(7) A statement that a copy of the agreement of merger or consolidation will be furnished by the surviving or new partnership, on request and without cost, to any partner of any entity that is a party to the merger or consolidation.

4. The certificate of merger or consolidation shall be executed by at least one general partner of each domestic partnership and one authorized agent, or its equivalent, for the other party to the merger or consolidation who is duly authorized to execute such notice.

5. If, following a merger or consolidation of one or more domestic partnerships and one or more partnerships formed under the laws of any state, the surviving or resulting partnership is not a domestic partnership, there shall be attached to the articles of merger or consolidation filed pursuant to subsection 3 of this section a certificate executed by the surviving or resulting partnership, stating that such surviving or resulting partnership may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of such domestic partnership, irrevocably appointing the secretary of state as such surviving or resulting partnership's agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to such surviving or resulting partnership to the secretary of state.

6. When the articles of merger or consolidation required by subsection 3 of this section shall have become effective, for all purposes of the laws of this state, all the rights, privileges, franchises and powers of each of the partnerships that have merged or consolidated, and all property, real, personal, and mixed, and all debts due to any of such partnerships, as well as all other things and causes of action belonging to each of such partnerships shall be vested in the surviving or resulting partnership, and shall thereafter be the property of the surviving or resulting partnership as they were of each of the partnerships that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any such partnerships, shall not revert or be in any way impaired by reason of this section; but all rights of creditors and all liens upon any property of any such partnerships shall be preserved unimpaired, and all debts, liabilities and duties of each of the partnerships that have merged or consolidated shall thenceforth attach to the surviving or resulting partnership, and may be enforced against such surviving or

**resulting partnership to the same extent as if such debts, liabilities, and duties had been incurred or contracted by such surviving or resulting partnership.**

359.165. 1. Pursuant to an agreement of merger or consolidation, a domestic limited partnership may merge or consolidate with or into one or more limited partnerships formed under the laws of this state or any other jurisdiction, with such limited partnership as the agreement shall provide being the surviving or resulting limited partnership. A domestic limited partnership may merge or consolidate with one or more domestic or foreign general partnerships, limited liability companies, trusts, business trusts, corporations, real estate investment trusts and other associations or business entities at least one of which is not a limited partnership, as provided in sections 347.700 to 347.735, RSMo.

**2. The agreement of merger or consolidation shall be approved by the number or percentage of general and limited partners specified in the partnership agreement. If the partnership agreement fails to specify the required partner approval for merger or consolidation of the limited partnership, then the agreement of merger or consolidation shall be approved by that number or percentage of general and limited partners specified by the partnership agreement to approve an amendment to the partnership agreement. However, if the merger effects a change for which the partnership agreement requires a greater number or percentage of general and limited partners than that required to amend the partnership agreement, then the merger or consolidation shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the general and limited partners.**

[2.] 3. In the case of a merger or consolidation of one or more domestic limited partnerships into a surviving limited partnership, the surviving limited partnership shall file articles of merger or consolidation with the secretary of state setting forth:

- (1) The name of each party to the merger or consolidation;
- (2) The effective date of the merger or consolidation which shall be the date the articles of merger or consolidation are filed with the secretary or on a later date set forth in the articles of merger or consolidation not to exceed ninety days after the filing date;
- (3) The name of the surviving limited partnership in a merger or the new limited partnership in a consolidation and the state of its formation;
- (4) A statement that the merger or consolidation was authorized and approved by the partners of each party to the merger or consolidation in accordance with the laws of the jurisdiction where it was organized;
- (5) If applicable, the address of the registered office and the name of the registered agent at such office for the surviving or new limited partnership;

(6) In the case of a merger in which a domestic limited partnership is the surviving entity, such amendments or changes to the certificate of limited partnership of the surviving limited partnership as are desired to be effected by the merger, or, if no such amendments or changes are desired, a statement that the certificate of limited partnership of the surviving limited partnership shall not be amended or changed as a result of the merger;

(7) In the case of a consolidation in which a domestic limited partnership is the continuing limited partnership, the certificate of limited partnership of the new domestic limited partnership shall be set forth in an attachment to the certificate of consolidation;

(8) A statement that the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or new limited partnership, stating the address of such place of business; and

(9) A statement that a copy of the agreement of merger or consolidation will be furnished by the surviving or new limited partnership, on request and without cost, to any partner of any entity that is a party to the merger or consolidation.

[3.] 4. The certificate of merger or consolidation shall be executed by at least one general partner of each domestic limited partnership and one authorized agent, or its equivalent, for the other party to the merger or consolidation who is duly authorized to execute such notice.

[4.] 5. In the case of a merger of one or more domestic limited partnerships into a surviving limited partnership, the certificate of limited partnership of the surviving domestic limited partnership shall be amended to the extent provided in the articles of merger and the certificates of limited partnership of each other domestic limited partnership shall be deemed canceled by the filing of the articles of merger with the secretary of state.

[5.] 6. If, following a merger or consolidation of one or more domestic limited partnerships and one or more limited partnerships formed under the laws of any state, the surviving or resulting limited partnership is not a domestic limited partnership, there shall be attached to the articles of merger or consolidation filed pursuant to subsection [2] 3 of this section a certificate executed by the surviving or resulting limited partnership, stating that such surviving or resulting limited partnership may be served with process in this state in any action, suit or proceeding for the enforcement of any obligation of such domestic limited partnership, irrevocably appointing the secretary of state as such surviving or resulting limited partnership's agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to such surviving or resulting limited partnership to the secretary of state.

[6.] 7. When the articles of merger or consolidation required by subsection [2] 3 of this section shall have become effective, for all purposes of the laws of this state, all of the rights, privileges, franchises and powers of each of the limited partnerships that have merged or consolidated, and all property, real, personal and mixed, and all debts due to any of such limited

partnerships, as well as all other things and causes of action belonging to each of such limited partnerships shall be vested in the surviving or resulting limited partnership, and shall thereafter be the property of the surviving or resulting limited partnership as they were of each of the limited partnerships that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of this state, in any such limited partnerships, shall not revert or be in any way impaired by reason of this section; but all rights of creditors and all liens upon any property of any of such limited partnerships shall be preserved unimpaired, and all debts, liabilities and duties of each of the limited partnerships that have merged or consolidated shall thenceforth attach to the surviving or resulting limited partnership, and may be enforced against such surviving or resulting limited partnership to the same extent as if such debts, liabilities and duties had been incurred or contracted by such surviving or resulting limited partnership.

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