FIRST REGULAR SESSION

[TRULY AGREED TO AND FINALLY PASSED**]**

CONFERENCE COMMITTEE SUBSTITUTE FOR

HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 394

92ND GENERAL ASSEMBLY

2003

1411S.10T

AN ACT

To repeal sections 347.700, 347.720, 351.046, 351.182, 351.268, 351.315, 351.320, 351.385, 351.455, 358.150, 358.520 and 359.165, RSMo, and to enact in lieu thereof twelve new sections relating to general and business corporations.

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

Section A. Sections 347.700, 347.720, 351.046, 351.182, 351.268, 351.315, 351.320, 351.385, 351.455, 358.150, 358.520 and 359.165, RSMo, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 347.700, 347.720, 351.046, 351.182, 351.268, 351.315, 351.320, 351.385, 351.455, 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 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.

351.046. 1. A document shall satisfy the requirements of this section, and of any other section that adds to or varies from these requirements, to be entitled to filing by the secretary of state.

2. This chapter shall require or permit filing the document in the office of the secretary of state.

3. The document shall contain the information required by this chapter. It may contain other information as well.

4. The document shall be typewritten or printed.

5. The document shall be in the English language.

A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

6. The document shall be executed:

(1) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by the incorporator(s); or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may contain the corporate seal, an attestation by the secretary or an assistant secretary, an acknowledgment, verification or proof.

8. If the secretary of state has prescribed a mandatory form for the document under the provisions of section 351.047, the document shall be in or on the prescribed form.

9. The document shall be delivered to the office of the secretary of state for filing and must be accompanied by one exact or conformed copy, except as provided in sections 351.376 and 351.592, the correct filing fee, and any franchise tax, license fee, or penalty required by this chapter or other law.

10. Any signature on any document authorized to be filed by or with the

secretary of state pursuant to this chapter may be a facsimile, a conformed signature or an electronically transmitted signature.

351.182. 1. Subject to any provisions in the articles of incorporation, every corporation may create and issue, whether or not in connection with the issue and sale of any shares of stock or other securities of the corporation, rights or options entitling the holders thereof to purchase from the corporation any shares of its capital stock of any class or classes, such rights or options to be evidenced by or in such instrument or instruments as is approved by the board of directors. If, at the time the corporation issues rights or options, there is insufficient authorized and unissued shares to provide the shares needed if and when the rights or options are exercised, the granting of the rights or options shall not be invalid solely by reason of the lack of sufficient authorized but unissued shares.

2. The terms upon which any such shares may be purchased from the corporation upon the exercise of any such right or option, shall be as stated in the articles of incorporation, or in a resolution adopted by the board of directors providing for the creation and issue of such rights or options, and, in every case, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. Such terms may include, but not be limited to:

(1) The duration of such rights or options, which may be limited or unlimited;

(2) The price or prices at which any such shares may be purchased from the corporation upon the exercise of any such right or option;

(3) The holders by whom such rights or options may be exercised;

(4) The conditions to or which may preclude or limit the exercise, transfer or receipt of such rights or options, or which may invalidate or void such rights or options, including without limitation conditions based upon a specified number or percentage of outstanding shares, rights, options, convertible securities, or obligations of the corporation as to which any person or persons or their transferees own or offer to acquire; and

(5) The conditions upon which such rights or options may be redeemed.

Such terms may be made dependent upon facts ascertainable outside the documents evidencing the rights, or the resolution providing for the issue of the rights or options adopted by the board of directors, if the manner in which the facts shall operate upon the exercise of the rights or options is clearly and expressly set forth in the document evidencing the rights or options, or in the resolution. In the absence of actual fraud in the transaction, the judgment of the directors as to the consideration for the issuance of such rights or options and the sufficiency thereof and the terms of such rights or options shall be conclusive. In case the shares of stock of the corporation to be issued upon the exercise of such rights or options shall be shares having a par value, the price or prices so to be received therefor shall not be less than the par value thereof. In case the shares of stock so to be issued shall be shares of stock without par value, the consideration therefor shall be determined in the manner provided in section 351.185. Nothing

contained in subsection 1 of section 351.180 shall be deemed to limit the authority of the board of directors to determine, in its sole discretion, the terms of the rights or options issuable pursuant to this section.

3. The board of directors may, by a resolution adopted by the board, authorize one or more officers of the corporation to do one or both of the following:

(1) Designate officers and employees of the corporation or of any of its subsidiaries to be recipients of such rights or options created by the corporation;

(2) Determine the number of such rights or options to be received by such officers and employees; provided, however, that the resolution so authorizing such officer or officers shall specify the total number of rights or options such officer or officers may so award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any such rights or options.

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 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 **[**prior to the date previously scheduled for such 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.

351.315. 1. A corporation shall have three or more directors, except that a corporation may have one or two directors provided the number of directors to constitute the board of

directors is stated in the articles of incorporation. Any corporation may elect its directors for one or more years, not to exceed three years, the time of service and mode of classification to be provided for by the articles of incorporation or the bylaws of the corporation; but, there shall be an annual election for such number or proportion of directors as may be found upon dividing the entire number of directors by the number of years composing a term. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders entitled to vote shall elect directors to hold office until the next succeeding annual meeting, except as herein provided. Each director shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

2. **The articles of incorporation may confer upon holders of any class or series of stock the right to elect one or more directors who shall serve for such term and shall have such voting powers as shall be stated in the articles of incorporation. The terms of office and voting powers of the directors elected in the manner so provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that directors elected by the holders of a class or series of stock shall have more or less than one vote per director on any matter, every reference in this chapter to a majority or other proportion of directors shall refer to a majority or other proportion of the votes such directors are entitled to cast.**

3. At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. Such meeting shall be held at the registered office or principal business office of the corporation in this state or in the city or county in this state in which the principal business office of the corporation is located. Unless the articles of incorporation or the bylaws provide otherwise, one or more directors or the entire board of directors may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If the articles of incorporation or bylaws provide for cumulative voting in the election of directors, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against **[**his**]** **such director's** removal would be sufficient to elect **[**him**]** **such director** if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which **[**he**]** **such director** is a part. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect of the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

[3.**]** **4.** The corporation shall give written notice to the secretary of state of the number of directors of the corporation as fixed by any method. The notice shall be given within thirty

days of the date when the number of directors is fixed, and similar notice shall be given whenever the number of directors is changed.

351.320. **1.** Unless otherwise provided in the articles of incorporation or bylaws of the corporation, vacancies on the board and newly created directorships resulting from any increase in the number of directors to constitute the board of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, until the next election of directors by the shareholders of the corporation; except that, if shareholders elect directors by class pursuant to section 351.315, a director elected by the board pursuant to this section to fill a vacancy or to a newly created directorship need not be presented for election by shareholders until the class to which the director has been so elected by the board is presented for election by the shareholders.

2. Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the articles of incorporation, vacancies and newly created directorships with respect to such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office.

351.385. Each corporation shall have power:

(1) To have succession by its corporate name for the period limited in its articles of incorporation or perpetually where there is no such limitations;

(2) To sue and be sued, complain and defend in any court of law or equity;

(3) To have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any manner reproduced;

(4) To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in, sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its real or personal property, or any interest therein, or other assets, wherever situated; and to hold for any period of time, real estate acquired in payment of a debt, by foreclosure or otherwise, or real estate exchanged therefor;

(5) To be a general or limited partner;

(6) To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof;

(7) To make contracts and guarantees, including but not limited to guarantees of the capital stock, bonds, other securities, evidences of indebtedness and other debts and obligations issued by any other corporation of this or any other state, or issued by any state or **[**other**]** **any**

political subdivision thereof; to incur liabilities; to borrow money at such rates of interest as the corporation may determine without regard to the restrictions of any usury law of this state; to issue its notes, bonds, and other obligations; to issue notes or bonds, secured or unsecured, which by their terms are convertible into shares of stock of any class, upon such terms and conditions and at such rates or prices as may be provided in such notes or bonds and the indenture or mortgage under which they are issued; and to secure any of its obligations by mortgage, pledge, or deed of trust of all or any of its property, franchises, and income;

(8) To invest its surplus funds from time to time and to lend money and to take and hold real and personal property as security for the payment of funds so invested or loaned;

(9) To conduct its business, carry on its operations, and have offices within and without this state, and to exercise in any other state, territory, district, or possession of the United States, or in any foreign country, the powers granted by this chapter;

(10) To elect or appoint directors, officers and agents of the corporation, define their duties and fix their compensation, and to indemnify directors, officers and employees to the extent and in the manner permitted by law;

(11) To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation, and to adopt emergency bylaws and exercise emergency powers as permitted by law;

(12) To transact any lawful business in aid of the United States in the prosecution of war, to make donations to associations and organizations aiding in war activities, and to lend money to the state or federal government for war purposes;

(13) To cease its corporate activities and surrender its corporate franchise;

(14) To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is formed;

(15) To make contributions to any corporation organized for civic, charitable, benevolent, scientific or educational purposes, or to any incorporated or unincorporated association, community chest or community fund, not operated or used for profit to its members but operated for the purposes of raising funds for and of distributing funds to other civic, charitable, benevolent, scientific or educational organizations or agencies**;**

(16) To renounce, in its articles of incorporation or by action of its board of directors, any interest or expectancy of the corporation in, or in being offered an opportunity to participate in, specified business opportunities or specified classes or categories of business opportunities that are presented to the corporation, or one or more of its officers, directors, employees, agents, or stockholders.

351.455. 1. If a shareholder of a corporation which is a party to a merger or consolidation **[**shall file with such corporation, prior to or**]** **and, in the case of a shareholder owning voting stock as of the record date,** at the meeting of shareholders at which the plan

of merger or consolidation is submitted to a vote**[,] shall file with such corporation prior to or at such meeting** a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within twenty days after the merger or consolidation is effected, shall make written demand on the surviving or new corporation for payment of the fair value of his **or her** shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon surrender of his **or her** certificate or certificates representing said shares, the fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the twenty day period shall be conclusively presumed to have consented to the merger or consolidation and shall be bound by the terms thereof.

2. If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation, payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his **or her** certificate or certificates representing said shares. Upon payment of the agreed value the dissenting shareholder shall cease to have any interest in such shares or in the corporation.

3. If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty day period, file a petition in any court of competent jurisdiction within the county in which the registered office of the surviving or new corporation is situated, asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing said shares. Upon the payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Such shares may be held and disposed of by the surviving or new corporation as it may see fit. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under **[**him**] such shareholder** shall be conclusively presumed to have approved and ratified the merger or consolidation, and shall be bound by the terms thereof.

4. The right of a dissenting shareholder to be paid the fair value of **[**his**] such shareholder's** shares as herein provided shall cease if and when the corporation shall abandon the merger or consolidation.

5. When the remedy provided for in this section is available with respect to a

transaction, such remedy shall be the exclusive remedy of the shareholder as to that transaction, except in the case of fraud or lack of authorization for the transaction.

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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