

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 224

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR GOODMAN.

Read 1st time January 22, 2009, and ordered printed.

Read 2nd time January 27, 2009, and referred to the Committee on the Judiciary and Civil and Criminal Jurisprudence.

Reported from the Committee March 4, 2009, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 12, 2009. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

0998S.02P

AN ACT

To repeal sections 351.085, 351.106, and 355.576, RSMo, and to enact in lieu thereof three new sections relating to articles of incorporation.

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

Section A. Sections 351.085, 351.106, and 355.576, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 351.085,
3 351.106, and 355.576, to read as follows:

351.085. A corporation may amend its articles of incorporation at any time
2 to add or change a provision that is required or permitted in the articles of
3 incorporation or to delete a provision not required in the articles of
4 incorporation[, provided that the name of an incorporator shall not be
5 changed]. Whether a provision is required or permitted in the articles of
6 incorporation is determined as of the effective date of the amendment.

351.106. A domestic corporation may at any time restate its articles of
2 incorporation as theretofore amended, in the following manner:

3 (1) The board of directors of the corporation may at any time adopt a
4 resolution setting forth restated articles of incorporation correctly setting forth
5 without change the corresponding provisions of the articles of incorporation as
6 theretofore amended and, upon the approval of a majority of the directors,
7 adopting the same on behalf of the corporation;

8 (2) Proposed restated articles of incorporation need not be adopted by the
9 directors and may be submitted directly to any annual or special meeting of the

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

10 shareholders. Written or printed notice stating that the purpose, or one of the
11 purposes, of the meeting is to consider the restatement of the articles of
12 incorporation shall be given to each shareholder of record entitled to vote at the
13 meeting within the time and in the manner and upon the conditions provided in
14 this chapter for the giving of notice of meetings of shareholders. The proposed
15 restated articles of incorporation need not be included in the notice of the
16 meeting;

17 (3) If the restatement of the articles is proposed to be adopted by the
18 shareholders, such restated articles shall be adopted upon receiving the
19 affirmative vote of a majority of the outstanding shares entitled to vote, but
20 dissenting shareholders shall not have the rights provided for in this chapter;

21 (4) Upon such approval, restated articles of incorporation shall be
22 executed by an officer of the corporation, and shall contain a statement that the
23 restated articles of incorporation correctly set forth without change the
24 corresponding provisions of the articles of incorporation as theretofore amended,
25 and that the restated articles of incorporation supersede the original articles of
26 incorporation and all amendments thereto;

27 (5) The original copy of the restated articles of incorporation shall be
28 delivered to the secretary of state. If the secretary of state finds that the restated
29 articles of incorporation conform to this chapter he or she shall, when the
30 required taxes or fees have been paid, file the same, and the original shall be
31 retained by the secretary of state as a permanent record;

32 (6) The secretary of state shall then issue a restated certificate of
33 incorporation under the seal of the state that the articles of incorporation of the
34 corporation as amended have been duly restated; the certificate shall set forth the
35 name of the corporation. The secretary of state shall attach the certificate to the
36 other copy of the restated articles of incorporation so filed with him and shall
37 deliver them to the corporation or its representative;

38 (7) Upon the issuance of the restated certificate of incorporation by the
39 secretary of state, the restated articles of incorporation shall become effective and
40 shall supersede the original articles of incorporation and all amendments;

41 **(8) A restated articles of incorporation may omit:**

42 **(a) Such provisions of the original articles of incorporation**
43 **which named the incorporator or incorporators, and the names and**
44 **addresses of the initial board of directors; and**

45 **(b) Such provisions contained in any amendment to the articles**

46 **of incorporation as were necessary to effect a change, exchange,**
47 **reclassification, subdivision, combination or cancellation of stock, if**
48 **such change, exchange, reclassification, subdivision, combination, or**
49 **cancellation has become effective.**

50 **Any such omission shall not be deemed a further amendment.**

355.576. 1. A corporation's board of directors may restate its articles of
2 incorporation at any time with or without approval by members or any other
3 person.

4 2. The restatement may include one or more amendments to the articles.
5 If the restatement includes an amendment requiring approval by the members or
6 any other person, it must be adopted as provided in section 355.561.

7 3. If the restatement includes an amendment requiring approval by
8 members, the board must submit the restatement to the members for their
9 approval.

10 4. If the board seeks to have the restatement approved by the members
11 at a membership meeting, the corporation shall notify each of its members of the
12 proposed membership meeting in writing in accordance with section 355.251. The
13 notice must also state that the purpose, or one of the purposes, of the meeting is
14 to consider the proposed restatement and contain or be accompanied by a copy or
15 summary of the restatement that identifies any amendments or other change it
16 would make in the articles.

17 5. A restatement requiring approval by the members must be approved
18 by the same vote as an amendment to articles under section 355.561.

19 6. If the restatement includes an amendment requiring approval pursuant
20 to section 355.606, the board must submit the restatement for such approval.

21 **7. A restated articles of incorporation may omit:**

22 **(1) Such provisions of the original articles of incorporation**
23 **which named the incorporator or incorporators, and the names and**
24 **addresses of the initial board of directors; and**

25 **(2) Such provisions contained in any amendment to the articles**
26 **of incorporation as were necessary to effect a change, exchange,**
27 **reclassification, subdivision, combination or cancellation of stock, if**
28 **such change, exchange, reclassification, subdivision, combination, or**
29 **cancellation has become effective.**

30 **Any such omission shall not be deemed a further amendment.**

31 8. A corporation restating its articles shall deliver to the secretary of state

32 articles of restatement setting forth the name of the corporation and the text of
33 the restated articles of incorporation together with a certificate setting forth:

34 (1) Whether the restatement contains an amendment to the articles
35 requiring approval by the members or any other person other than the board of
36 directors and, if it does not, that the board of directors adopted the restatement;
37 or

38 (2) If the restatement contains an amendment to the articles requiring
39 approval by the members, the information required by section 355.571; and

40 (3) If the restatement contains an amendment to the articles requiring
41 approval by a person whose approval is required pursuant to section 355.606, a
42 statement that such approval was obtained.

43 [8.] 9. Duly adopted restated articles of incorporation supersede the
44 original articles of incorporation and all amendments to them.

45 [9.] 10. The secretary of state may certify restated articles of
46 incorporation, as the articles of incorporation currently in effect, without
47 including the certificate information required by subsection [7] 8 of this section.

Bill ✓

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