SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 680

89TH GENERAL ASSEMBLY

Reported from the Committee on Judiciary, April 23, 1998, with recommendation that the House Committee Substitute for Senate Bill No. 680 Do Pass.
ANNE C. WALKER, Chief Clerk
L3176.02C

AN ACT

To repeal sections 347.163 and 359.021, RSMo 1994, and section 358.510, RSMo Supp. 1997, relating to business organizations, and to enact in lieu thereof six new sections relating to the same subject.

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

Section A. Sections 347.163 and 359.021, RSMo 1994, and section 358.510, RSMo Supp. 1997, are repealed and six new sections enacted in lieu thereof, to be known as sections 347.163, 351.448, 358.510, 359.021, 1 and 2, to read as follows:

347.163. 1. Every foreign limited liability company now transacting business in or which may hereafter transact business in this state which shall neglect or fail to comply with the provisions of section 347.153 shall be subject to a fine of not less than one thousand dollars. If the secretary is advised that a foreign limited liability company is transacting business within this state in contravention of sections 347.010 to 347.187, the secretary shall report the fact to the prosecuting attorney of any county in which the limited liability company is transacting business, and the prosecuting attorney shall, as soon thereafter as is practical, institute proceedings to recover the fine prescribed in this section. In addition to such penalty, no foreign limited liability company failing to comply with sections 347.010 to 347.187 may maintain any suit or action, either legal or equitable, in any of the courts of this state, upon any demand, whether arising out of contract or tort, while the requirements of sections 347.010 to 347.187 have not been met.

2. The failure of a foreign limited liability company to register in this state does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit or proceeding in any court of this state.

3. A member of a foreign limited liability company is not liable for any debts, obligations or liabilities of the foreign limited liability company solely by reason of having transacted business in this state without registration.

4. A foreign limited liability company, by transacting business in this state without registration, shall be subject to the provisions of sections 506.500 to 506.520, RSMo, with respect to causes of actions arising out of the transaction of business in this state.

5. Without excluding other activities which may not constitute transacting business in this state, a foreign limited liability company shall not be considered to be transacting business in this state, for purposes of sections 347.010 to 347.187, by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(2) Holding meetings of its members or carrying on other activities concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Borrowing money or creating evidence of debt, mortgage or lien on or other security interest in real or personal property;

(5) Securing or collecting debts or enforcing any rights in properties securing the same;

(6) Transacting any business in interstate commerce; or

(7) Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of a like nature.

6. A foreign corporation, as defined in section 351.015 **or 355.066**, RSMo, shall not be deemed to be transacting business in this state for the purposes of section 351.572, RSMo, solely for the reason that it is a member of a limited liability company.

7. A foreign limited partnership **or foreign registered limited liability limited partnership**, as defined in section 359.011, shall not be deemed to be transacting business in this state for the purposes of section 359.551, solely for the reason that it is a member of a limited liability company.

8. A foreign limited liability company as defined in sections 347.010 to 347.187 shall not be deemed to be transacting business in this state for the purposes of this section, solely for the reason that it is a member of a limited liability company.

9. **A foreign registered limited liability partnership, as defined in section 358.020, RSMo, shall not be deemed to be transacting business in this state for the purposes of section 351.572, RSMo, solely for the reason that it is a member of a limited liability company.**

10. The provisions of this section do not apply in determining the context or activities which may subject a foreign limited liability company to service of process, suit, taxation or regulation under any other statute of this state.

358.510. 1. A domestic limited partnership may become a registered limited liability limited partnership by complying with the applicable provisions of the Missouri uniform limited partnership act, chapter 359, RSMo, and by registering as a registered limited liability limited partnership under this chapter. A general partner in a limited partnership that has so registered as a registered limited liability limited partnership shall be accorded all the limited liability protection of a partner in a general partnership registered as a registered limited liability partnership under this chapter.

2. A foreign limited partnership that may register as a limited liability limited partnership or its equivalent pursuant to the laws of the jurisdiction of its formation, and has so registered in such jurisdiction, may become a registered limited liability **limited** partnership by complying with the applicable provisions of chapter 359, RSMo, and by registering as a registered limited liability limited partnership pursuant to this chapter. A general partner in a foreign limited partnership that has registered as a registered limited liability limited partnership shall have the same limited liability protection as a partner in a registered limited liability partnership pursuant to the laws of such foreign jurisdiction.

359.021. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) Shall contain the words "limited partnership" or the abbreviation **"LP" or** "L.P.";

(2) May not contain the name of a limited partner unless:

(a) It is also the name of a general partner or the corporate name of a corporate general partner; or

(b) The business of the limited partnership has been carried on under that name before the

admission of that limited partner;

(3) Shall be distinguishable from the name of any domestic corporation, limited partnership or limited liability company existing under the law of this state or any foreign corporation, foreign limited partnership or foreign limited liability company authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter. If the name is the same, a word must be added to make such name distinguishable from the name of such other corporation, limited liability company or limited partnership;

(4) May not contain the following words: "corporation", "incorporated", or an abbreviation of one of such words;

(5) May not contain any word or phrase which indicates or implies that it is a governmental agency.

351.448. 1. Unless expressly required by its articles of incorporation, no vote of shareholders of a domestic corporation shall be necessary to authorize a merger with or into a single indirect wholly owned subsidiary of such domestic corporation if:

(1) Such domestic corporation and the indirect wholly owned subsidiary of such domestic corporation are the only constituent corporations to the merger;

(2) Each share or fraction of a share of the capital stock of such domestic corporation outstanding immediately prior to the effective time of the merger is converted in the merger into a share or equal fraction of share of capital stock of a holding company having the same designations, rights, powers and preferences, and the qualifications, limitations and restrictions thereof, as the share or fraction of a share of stock of such domestic corporation being converted in the merger;

(3) The holding company and each of the constituent corporations to the merger are corporations of this state;

(4) The articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of such domestic corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, registered office and agent, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective;

(5) As a result of the merger such domestic corporation or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company;

(6) The directors of such domestic corporation become or remain the directors of the holding company upon the effective time of the merger;

(7) The articles of incorporation of the surviving corporation immediately following the effective time of the merger are identical to the articles of incorporation of such domestic corporation immediately prior to the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, registered office and agent, elections and composition of the board of directors, the initial board of directors and the initial subscribers for shares and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification or cancellation of stock, if such change, exchange, reclassification or cancellation has become effective; provided, however, that:

(a) The articles of incorporation of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation that requires for its adoption pursuant to this chapter or its articles of incorporation the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter or by the articles of incorporation of the surviving corporation, or both; and

(b) The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares of capital stock that the surviving corporation is authorized to issue; and

(8) The shareholders of such domestic corporation do not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of such domestic corporation.

2. As used in this section only, the term "holding company" means a corporation which, from its incorporation until consummation of a merger governed by this section, was at all times a direct or indirect wholly owned subsidiary of such domestic corporation and whose capital stock is issued in such merger.

3. From and after the effective time of a merger adopted by such domestic corporation by action of its board of directors and without any vote of shareholders pursuant to this section:

(1) To the extent the restrictions of section 351.407 or 351.459 applied to such domestic corporation and its shareholders or shares at the effective time of the merger, such restrictions shall apply to the holding company and its shareholders or shares immediately after the effective time of the merger as though it were such domestic corporation, and all shares of stock of the holding company acquired in the merger shall for purposes of sections 351.407 and 351.459 be deemed to have been acquired at the time that the shares of stock of such domestic corporation converted in the merger were acquired, and provided further that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of section 351.459 shall not solely by reason of the merger become an interested shareholder of the holding company; and

(2) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of such domestic corporation immediately prior to the effective time of the merger, the shares of capital stock of the holding company into which the shares of capital stock of such domestic corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of such domestic corporation.

4. If a plan of merger is adopted by such domestic corporation by action of its board of directors and without any vote of shareholders pursuant to this section, the articles of merger shall state that the plan of merger has been adopted pursuant to this section and shall set forth the resolution of the board of directors of such domestic corporation approving the plan of merger and the date of adoption of the resolution and shall also set forth the plan of merger and as to each of the constituent corporations to the merger, the number of shares outstanding, shall be executed and verified as provided in section 351.430 and shall state that the conditions in the first sentence of subsection 1 of this section have been satisfied. The articles of merger shall be filed in accordance with section 351.435 and the merger shall

become effective in accordance with section 351.440.

5. The provisions of section 351.455 shall not apply to a merger effected pursuant to this section.

6. Nothing in this section shall amend, alter, modify, restrict, limit or otherwise change the provisions of section 351.447. As provided in section 351.017, actions taken in accordance with this section and with any other section of this chapter are acts of independent legal significance.

Section 1. 1. Any statement, document or notice, except any document or judicial decree relating to the secretary of state's statutory or constitutional duties regarding elections, required or permitted to be filed with or transmitted by the secretary of state, or any judicial decree requiring the filing of such document, may be filed, transmitted, stored and maintained in an electronic format prescribed by the secretary of state. No statement, document or notice submitted or filed in an electronic format need be submitted or filed in duplicate. Nothing in this section shall require the secretary of state to accept or transmit any statement, document or notice in an electronic format.

2. Any statutory requirement that a statement, document or notice be signed by any person shall be satisfied by an electronically transmitted signature that is:

(1) Unique to the person using it;

(2) Capable of verification;

(3) Under the sole control of the person using it;

(4) Linked to the document in such a manner that if the data is changed, the signature is invalidated; and

(5) Intended by the party using it to have the same force and effect as the use of a manual signature.

3. Any requirement that a statement, document or notice filed with the secretary of state be notarized may be satisfied by a properly authenticated digital signature. The execution of any statement, document or notice with a digital signature pursuant to this subsection constitutes an affirmation under penalty of perjury that the facts stated therein are true and that such person or persons are duly authorized to execute such statement, document or notice, or are otherwise required to file such statement, document or notice.

Section 2. The secretary of state may accept credit or debit cards and establish a new revenue collection center for prepaid accounts for the payment of required taxes and fees. The secretary of state shall work with the state treasurer and the office of administration in connection with such payments. No person establishing a prepayment account pursuant to this section shall be entitled to payment of any interest on such account. Funds in prepayment accounts shall be refundable upon the order of the person or persons authorized to transfer money from such an account.