

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 844
89TH GENERAL ASSEMBLY

Reported from the Committee on Civil & Administrative Law, April 15, 1998, with recommendation that the House Committee Substitute for Senate Bill No. 844 Do Pass by Consent.
ANNE C. WALKER, Chief Clerk
L3403.06C

AN ACT

To repeal sections 347.030, 347.153, 347.163, 351.375, 351.604, 355.716, 355.813, 359.021 and 359.041, RSMo 1994, and sections 347.039 and 358.510, RSMo Supp. 1997, relating to business organizations, and to enact in lieu thereof thirteen new sections relating to the same subject, with an emergency clause for certain sections.

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

Section A. Sections 347.030, 347.153, 347.163, 351.375, 359.021 and 359.041, RSMo 1994, and sections 347.039 and 358.510, RSMo Supp. 1997, are repealed and ten new sections enacted in lieu thereof, to be known as sections 347.030, 347.039, 347.153, 347.163, 351.375, 358.510, 359.021, 359.041, 1 and 2, to read as follows:

347.030. 1. Each limited liability company shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as a place of its business in this state;

(2) A registered agent for service of any process, notice or demand required or permitted by law to be served upon the limited liability company, which agent may be either an individual, resident of this state, whose business office is identical with such registered office, or a domestic or foreign corporation authorized to do business in this state, and whose business office is identical with such registered office. Except as provided in this section and subdivision (5) of section 347.153, the secretary shall not be appointed as the resident agent for any limited liability company.

2. A limited liability company may, from time to time, change its registered agent or the address of its registered office. A limited liability company shall change its registered agent if the office of its registered agent shall become vacant for any reason, if its registered agent becomes disqualified or incapacitated to act, or if the limited liability company revokes the appointment of its registered agent. A limited liability company may change its registered agent or the address of its registered office, or both, by a filing with the secretary, a statement setting forth:

(1) The name of the limited liability company;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office is to be changed, the address, including street and number, if any, to which the registered office is to be changed;

(4) The name of its then 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.

(5) If its registered agent is to be changed, the name of its successor registered agent **and the successor registered agent's written consent to the appointment either on the statement or attached thereto;**

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) That such change was authorized by the limited liability company.

3. The change of address of the registered office, or the change of the registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary.

4. [In the event a registered agent for one or more limited liability companies changes the address of its business office, which office is the registered office of one or more limited liability companies, the registered office of the limited liability company may be changed without action of the limited liability company upon the filing by the registered agent with the secretary of a statement, on a form approved by the secretary, setting forth:

(1) The name of the registered agent;

(2) The address of the business office of the registered agent before the change;

(3) The address of the business office of the registered agent after the change;

(4) The names of the limited liability companies which have designated the agent as their registered agent and which have their registered office at the business office of the registered agent;

(5) That written notice of the change has been mailed by the registered agent to each of the limited liability companies; and

(6) That the address of the registered office of each of the limited liability companies and the address of the business office of the registered agent, as changed, will be identical.] **If a registered agent changes the street address of his business office, he may change the street address of the registered office of any limited liability company for which he is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subdivisions (1) to (6) of subsection 2 of this section and recites that the limited liability company has been notified of the change.**

5. [The statement shall be executed by the registered agent in the registered agent's name, but if the agent is a corporation, the statement shall be executed and verified by its president or a vice president.] The change of an address of the registered office shall become effective upon the filing of the statement by the secretary.

6. Any registered agent of a limited liability company may resign as such agent by the filing with the secretary duplicate originals of a statement, on a form approved by the secretary, setting forth:

(1) The name of the limited liability company;

(2) The address, including street and number, if any, of its then registered office;

(3) The name of such registered agent; and

(4) A representation that such registered agent has given written notice of such agent's resignation and a copy of such statement to the limited liability company. Such resignation shall become effective upon expiration of thirty days after receipt of such statement by the secretary, or on the appointment of a new registered agent, whichever occurs earlier.

347.039. 1. The articles of organization shall set forth:

(1) The name of the limited liability company;

(2) The purpose or purposes for which the limited liability company is organized, which may

be stated to be, or to include, the transaction of any or all lawful business for which a limited liability company may be organized under sections 347.010 to 347.187;

(3) The address, including street and number, if any, of the registered office and the name of the registered agent at such office;

(4) If management of the limited liability company is vested in one or more managers, a statement to that effect;

(5) The [latest date or] events, if any, on which the limited liability company is to dissolve **or the number of years the limited liability company is to continue, which may be any number or perpetual**; and

(6) The name and address of each organizer.

2. The articles of organization may set forth any other provision, not inconsistent with law or sections 347.010 to 347.187, which are in the operating agreement of the limited liability company.

347.153. Before transacting business in this state, a foreign limited liability company shall register with the secretary. In order to register, a foreign limited liability company shall pay the required filing fee and shall submit to the secretary, in duplicate, an application for registration as a foreign limited liability company signed and acknowledged on its behalf by a manager, member or other authorized agent and setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and transact business in this state;

(2) The jurisdiction in which it was formed and date of its formation;

(3) The purpose of the foreign limited liability company or the general character of the business it proposes to transact in this state;

(4) The name and address of its registered agent and registered office in this state, which office and agent shall be subject to the same rights and limitations as provided in [section] **sections 347.030 and 347.033**;

(5) A statement that the secretary is appointed the agent of the foreign limited liability company for service of process if the limited liability company fails to maintain a registered agent in this state or if the agent cannot be found or served with the exercise of reasonable diligence; and

(6) The address of the office required to be maintained in the jurisdiction of its organization by the laws of that jurisdiction or, if not so required, of the principal office of the foreign limited liability company.

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, RSMo, **or section 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.

[9.] **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.

351.375. 1. A corporation may from time to time change the address of its registered office. A corporation shall change its registered agent if the office of registered agent shall become vacant for any reason, if its registered agent becomes disqualified or incapacitated to act, or if the corporation revokes the appointment of its registered agent. A corporation may change the address of its registered office or change its registered agent, or both, by filing in the office of the secretary of state a statement setting forth:

(1) The name of the corporation;

(2) The address, including street and number, if any, of its then registered office;

(3) If the address of its registered office be changed, the address, including street and number,

if any, to which the registered office is to be changed;

(4) The name of its then registered agent;

(5) If its registered agent be changed, the name of its successor registered agent **and the successor registered agent's written consent to the appointment either on the statement or attached thereto;**

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(7) That such change was authorized by resolution duly adopted by the board of directors.

2. [Such statement shall be executed in duplicate by the corporation by its president or a vice president, and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file the same, keeping the original and returning the copy to the corporation or to its representative.

3.] The change of address of the registered office, or the change of the registered agent, or both, as the case may be, shall become effective upon the filing of such statements by the secretary of state. The location or residence of any corporation shall be deemed for all purposes to be in the county where its registered office is maintained.

[4. In the event a registered agent for one or more corporations changes the address of his business office, which office is the registered office of one or more corporations, the registered office of the corporations may be changed without a resolution of the board of directors upon the filing by the registered agent in the office of the secretary of state of a statement setting forth:

(1) The name of the registered agent;

(2) The address of the business office of the registered agent before the change;

(3) The address of the business office of the registered agent after the change;

(4) The names of the corporations which have designated the agent as their registered agent and which have their registered office at the business office of the registered agent;

(5) That notice in writing of the change has been mailed by the registered agent to each of the corporations;

(6) That the address of the registered office of each of the corporations and the address of the business office of the registered agent, as changed, will be identical. The statement shall be executed by the registered agent in his individual name, but if the agent is a corporation the statement shall be executed by its president or a vice president and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. The registered agent shall execute two copies of the statement for each corporation listed in the statement, and the executed copies shall be delivered to the secretary of state for filing. If the secretary of state finds that the statement conforms to the provisions of this chapter, he shall file the same, keeping one copy for each corporation listed on the statement and returning the remaining copy to the registered agent. The change of address of the registered office shall become effective upon the filing of the statement by the secretary of state.]

3. If a registered agent changes the street address of his business office, he may change the street address of the registered office of any corporation for which he is the registered agent by notifying the corporation in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subdivisions (1) to (6) of subsection 1 of this section and recites that the corporation has been notified of the change. The change of address of the registered office

shall become effective upon the filing of the statement to the secretary of 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.

359.041. 1. Each limited partnership shall continuously maintain in this state:

- (1) A registered office which may be, but need not be, a place of its business in this state; and
- (2) A registered agent for service of process on the limited partnership, which agent may be either an individual, resident in this state, whose business office is identical with such registered office, or a domestic corporation or a foreign corporation authorized to do business in this state, whose business office is identical with such registered office.

2. A limited partnership may from time to time change the address of its registered office. A limited partnership shall change its registered agent if the office of registered agent shall become vacant for any reason, if its registered agent becomes disqualified or incapacitated to act, or if the limited partnership revokes the appointment of its registered agent. A limited partnership may change the address of its registered office or change its registered agent, or both, by filing in the office of the secretary of state, on a form approved by the secretary of state, a statement setting forth:

- (1) The name of the limited partnership;
- (2) The address, including street and number, if any, of its then registered office;
- (3) If the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;
- (4) The name of its then registered agent;
- (5) If its registered agent be changed, the name of its successor registered agent **and the successor registered agent's written consent to the appointment either on the statement or attached thereto;**

(6) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(7) That such change was authorized by the limited partnership.

3. Such statement shall be executed in duplicate by the limited partnership by a general partner, [verified by the general partner] and delivered to the secretary of state. **The execution of such a statement by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.** If the secretary of state finds that such statement conforms to the provisions of this chapter, the secretary of state shall file the same, keeping the original and returning the other copy to the limited partnership or to its representative.

4. The change of address of the registered office, or the change of the registered agent, or both, as the case may be, shall become effective upon the filing of such statement by the secretary of state. The location or residence of any limited partnership shall be deemed for all purposes to be in the county where its registered office is maintained.

5. [In the event a registered agent for one or more limited partnerships changes the address of his business office, which office is the registered office of one or more limited partnerships, the registered office of the limited partnership may be changed without action of the limited partnership upon the filing by the registered agent in the office of the secretary of state of a statement, on a form approved by the secretary of state, setting forth:

- (1) The name of the registered agent;
- (2) The address of the business office of the registered agent before the change;
- (3) The address of the business office of the registered agent after the change;
- (4) The names of the limited partnerships which have designated the agent as their registered agent and which have their registered office at the business office of the registered agent;

(5) That notice in writing of the change has been mailed by the registered agent to each of the limited partnerships; and

(6) That the address of the registered office of each of the limited partnerships and the address of the business office of the registered agent, as changed, will be identical. The statement shall be executed by the registered agent in the registered agent's individual name but if the agent is a corporation, the statement shall be executed by its president or a vice president and verified by him, and the corporate seal shall be thereto affixed, attested by its secretary or an assistant secretary. The registered agent shall execute two copies of the statement for each limited partnership listed in the statement, and the executed copies shall be delivered to the secretary of state for filing. If the secretary of state finds that the statement conforms to the provisions of this chapter, the secretary of state shall file the same, keeping the original executed copy for each limited partnership listed on the statement and returning the remaining executed copy to the registered agent. The change of address of the registered office shall become effective upon the filing of the statement by the secretary of state.] **If a registered agent changes the street address of his business office, he may change the**

street address of the registered office of any limited partnership for which he is the registered agent by notifying the limited partnership in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement of change that complies with the requirements of subsection 2 of this section and recites that the limited partnership has been notified of the change. The change of address of the registered office shall become effective upon the filing of the statement to the secretary of state.

6. In the event that a limited partnership shall fail to appoint or maintain a registered agent in this state, then the secretary of state, as long as such default exists, shall be automatically appointed as an agent of such limited partnership upon whom any process, notice, or demand required or permitted by law to be served upon the limited partnership may be served. Service on the secretary of state of any process, notice or demand against a limited partnership shall be made by delivering to and leaving with the secretary of state, or with any clerk having charge of the limited partnership department of the secretary of state's office, a copy of such process, notice or demand. In the event that any process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by registered mail, addressed to the limited partnership at its registered office in this state. Nothing herein contained shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.

Section 1. 1. Any statement, document or notice required or permitted to be filed with or transmitted by the secretary of state, or any judicial decree requiring the filing of such document, except any document or judicial decree relating to his or her statutory or constitutional duties relating to elections, 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 are 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 shall 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 penalties 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 these 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.

Section B. Sections 351.604, 355.716 and 355.813, RSMo 1994, are repealed and three new sections enacted in lieu thereof, to be known as sections 351.604, 355.716 and 355.813, to read as follows:

351.604. 1. A foreign corporation may apply to the secretary of state for reinstatement [within two years after the effective date of revocation of its certificate of authority]. The application shall:

- (1) Recite the name of the corporation and the effective date of its administrative revocation;
- (2) State that the ground or grounds for revocation either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of section 351.110;
- (4) Contain a certificate from the department of revenue reciting that all taxes owed by the corporation have been paid or a tax payback plan has been arranged with the department of revenue; and
- (5) Contain a reinstatement fee in the amount of fifty dollars plus any delinquent fees, penalties and charges that might have accrued.

2. If the secretary of state determines that the application contains the information and fees required by subsection 1 of this section and that the information and fees are correct, he shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites his determination and the effective date of reinstatement, file the original of the certificate, and give notice to the corporation.

3. A foreign corporation may appeal the secretary of state's revocation of its certificate of authority as provided under section 351.670. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

4. The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

5. The court's final decision may be appealed as in other civil proceedings.

355.716. 1. A corporation administratively dissolved under section 355.711 may apply to the secretary of state for reinstatement [within two years after the effective date of dissolution]. The application must:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated;
- (3) State that the corporation's name satisfies the requirements of section 355.146; and
- (4) Contain a certificate from the director of revenue reciting that all taxes owed by the corporation have been paid if the corporation pays taxes.

2. If the secretary of state determines that the application contains the information required by subsection 1 of this section and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement reciting that determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under section 355.176.

3. When reinstatement is effective, it relates back to and takes effect as of the effective date

of the administrative dissolution and the corporation shall resume carrying on its activities as if the administrative dissolution had never occurred.

355.813. A foreign corporation administratively revoked under section 355.811 may apply to the secretary of state of reinstatement [within two years after the effective date of the revocation]. The application shall:

(1) Recite the name of the foreign corporation and the effective date of its administrative revocation;

(2) State that the grounds for the administrative revocation did not exist or have been eliminated;

(3) State that the foreign corporation's name satisfies the requirements of section 355.776; and

(4) Contain a certificate from the director of revenue reciting that all taxes owed by the corporation have been paid if the corporation pays taxes.

Section C. Because immediate action is necessary for fair and efficient business regulation, section B of this act is deemed necessary for the immediate preservation of the public health, welfare, peace and safety, and is hereby declared to be an emergency act within the meaning of the constitution, and section B of this act shall be in full force and effect upon its passage and approval.

Bill

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