

SECOND REGULAR SESSION

SENATE BILL NO. 680

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS WIGGINS, KLARICH AND MATHEWSON.

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TERRY L. SPIELER, Secretary.

L3176.011

AN ACT

To amend chapter 351, RSMo, relating to corporations by adding thereto one new section relating to the merger of a domestic corporation with a direct or indirect wholly owned subsidiary without an election of shareholders.

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

Section A. Chapter 351, RSMo, is amended by adding thereto one new section, to be known as section 351.448, to read as follows:

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 direct or indirect wholly owned subsidiary of such domestic corporation if:

(1) Such domestic corporation and the direct or 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, 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 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.

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