

SECOND REGULAR SESSION

SENATE BILL NO. 795

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLARICH.

Read 1st time January 21, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S3404.011

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Section A. Sections 347.163 and 359.021, RSMo 1994, and section 358.510, RSMo Supp. 1997, are repealed and three new sections enacted in lieu thereof, to be known as sections 347.163, 358.510 and 359.021, to read as follows: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

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

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 [or] **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.

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