

SECOND REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 844

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KLARICH.

Read 1st time January 28, 1998, and 1,000 copies ordered printed.

Read 2nd time February 5, 1998, and referred to the Committee on Financial and Governmental Organization.

Reported from the Committee March 2, 1998, with recommendation that the bill do pass with Senate Committee Amendment No. 1 and be placed on the Consent Calendar.

Senate Committee Amendment No. 1 adopted March 24, 1998.

Taken up March 24, 1998. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

S3403.01P

AN ACT

To repeal sections 347.030, 347.153, 351.375 and 359.041, RSMo 1994, and section 358.470, RSMo Supp. 1997, relating to registration of certain business entities, and to enact in lieu thereof five new sections relating to the same subject, with penalty provisions.

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

Section A. Sections 347.030, 347.153, 351.375 and 359.041, RSMo 1994, and section 358.470, RSMo Supp. 1997, are repealed and five new sections enacted in lieu thereof, to be known as sections 347.030, 347.153, 351.375, 358.470 and 359.041, to read as follows: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

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

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;
- (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 and 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.

347.153. 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.

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.

358.470. 1. Each registered limited liability partnership and each foreign registered limited liability partnership shall have and maintain in the state of Missouri:

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

(2) A registered agent for service of process on the registered limited liability partnership or foreign registered limited liability partnership, which agent may be either an individual resident of the state of Missouri whose business office is identical with the registered limited liability partnership's or foreign registered limited liability partnership's registered office, or a domestic corporation, or a foreign corporation authorized to do business in the state of Missouri, having a business office identical with such registered office or the registered limited liability partnership or foreign registered limited liability partnership itself; **provided, however, that the combined fee for filing by a registered agent of more than one certificate of change of address of registered office reporting the same change or changes of address furnished by the agent shall not exceed twenty dollars.**

2. A registered agent may change the address of the registered office of the registered limited liability partnerships or foreign registered limited liability partnerships for which the agent is the registered agent to another address in the state of Missouri by paying a fee in the amount of ten dollars, and a further fee in the amount of two dollars for each registered limited liability partnership or foreign registered limited liability partnership affected thereby, to the secretary of state and filing with the secretary of state a certificate, executed by such registered agent, setting forth the names of all the registered limited liability partnerships or foreign registered limited liability partnerships represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such registered limited liability partnerships or foreign registered limited liability partnerships, and further certifying to the new address to which such registered office will be changed on a given day, and at which new address such registered agent will thereafter maintain the registered office for each of the registered limited liability partnerships or foreign registered limited liability partnerships recited in the certificate. Upon the filing of such certificate, the secretary of state shall furnish to the registered agent a certified copy of the same under the secretary of state's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the registered office in the state of Missouri of each of the registered limited liability partnerships or foreign registered limited liability partnerships recited in the certificate shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a registered limited liability partnership or foreign registered limited liability partnership, such registered agent shall file with the secretary of state a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, the names of all the registered limited liability partnerships or foreign registered limited liability partnerships represented by such registered agent, and the address at which such registered agent has maintained the registered office for each of such registered limited liability partnerships or foreign registered limited liability partnerships, and shall pay a fee in the amount of twenty-five dollars, and a further fee in the amount of two dollars for each registered limited liability partnership or foreign registered limited liability partnership affected thereby, to the secretary of state. Upon the filing of such certificate, the secretary of state shall furnish to the registered agent a certified copy of the same under the secretary of state's hand and seal of office. Filing a certificate under this section shall be deemed to be an amendment of the application, renewal application or notice filed pursuant to subsection 19 of section 358.440, as the case may be, of each registered limited liability partnership or foreign registered limited liability partnership affected thereby, and each such registered limited liability partnership or foreign registered limited liability partnership shall not be required to take any further action with respect thereto to amend its application, renewal application or notice filed, as the case may be, pursuant to section 358.440. Any registered agent

filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each registered limited liability partnership or foreign registered limited liability partnership affected thereby.

3. The registered agent of one or more registered limited liability partnerships or foreign registered limited liability partnerships may resign and appoint a successor registered agent by paying a fee in the amount of fifty dollars, and a further fee in the amount of two dollars for each registered limited liability partnership or foreign registered limited liability partnership affected thereby, to the secretary of state and filing a certificate with the secretary of state, stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement executed by each affected registered limited liability partnership or foreign registered limited liability partnership ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such registered limited liability partnerships or foreign registered limited liability partnerships as have ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such registered limited liability partnership's or foreign registered limited liability partnership's registered office in the state of Missouri. The secretary of state shall furnish to the successor registered agent a certified copy of the certificate of resignation. Filing of such certificate of resignation shall be deemed to be an amendment of the application, renewal application or notice filed pursuant to subsection 19 of section 358.440, as the case may be, of each registered limited liability partnership or foreign registered limited liability partnership affected thereby, and each such registered limited liability partnership or foreign registered limited liability partnership shall not be required to take any further action with respect thereto, to amend its application, renewal application or notice filed pursuant to subsection 19 of section 358.440, as the case may be, pursuant to section 358.440.

4. The registered agent of a registered limited liability partnership or foreign registered limited liability partnership may resign without appointing a successor registered agent by paying a fee in the amount of ten dollars to the secretary of state and filing a certificate with the secretary of state stating that it resigns as registered agent for the registered limited liability partnership or foreign registered limited liability partnership identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such registered agent, if an individual, or the president, a vice president or the secretary thereof if a corporation, that at least thirty days prior to and on or about the date of the filing of the certificate, notices were sent by certified or registered mail to the registered limited liability partnership or foreign registered limited liability partnership for which such registered agent is resigning as registered agent, at the principal office thereof within or outside the state of Missouri, if known to such registered agent or, if not, to the last known address of the attorney or other individual at whose request such registered agent was

appointed for such registered limited liability partnership or foreign registered limited liability partnership, of the resignation of such registered agent. After receipt of the notice of the resignation of its registered agent, the registered limited liability partnership or foreign registered limited liability partnership for which such registered agent was acting shall obtain and designate a new registered agent, to take the place of the registered agent so resigning. If such registered limited liability partnership or foreign registered limited liability partnership fails to obtain and designate a new registered agent prior to the expiration of the period of one hundred twenty days after the filing by the registered agent of the certificate of resignation, the application, renewal application or notice filed pursuant to subsection 19 of section 358.440 of such registered limited liability partnership or foreign registered limited liability partnership shall be deemed to be canceled.

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.

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