

SECOND REGULAR SESSION

SENATE BILL NO. 1010

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR WHEELER.

Read 1st time February 6, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4727S.021

AN ACT

To repeal sections 347.187, 355.020, 355.171, 355.631, 355.791, 358.440, 359.041, and 359.121, RSMo, and to enact in lieu thereof eight new sections relating to filings and duties of corporations and partnerships, with a penalty clause.

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

Section A. Sections 347.187, 355.020, 355.171, 355.631, 355.791, 358.440, 2 359.041, and 359.121, RSMo, are repealed and eight new sections enacted in lieu 3 thereof, to be known as sections 347.187, 355.020, 355.171, 355.631, 355.791, 4 358.440, 359.041, and 359.121, to read as follows:

347.187. 1. A limited liability company created pursuant to sections 2 347.010 to 347.187 or entering the state pursuant to sections 347.010 to 347.187 3 and its [authorized] **responsible** persons, [or their equivalent] **as defined in** 4 **subsection 2 of this section**, shall have the duty to withhold and pay such 5 taxes as are imposed by the laws of this state or any political subdivision thereof 6 on a basis consistent with such limited liability company's classification pursuant 7 to Section 7701 of the Internal Revenue Code of 1986, as amended.

8 2. [Solely for the purposes of chapter 143, RSMo, chapter 144, RSMo, and 9 chapter 288, RSMo, a limited liability company and its members shall be 10 classified and treated on a basis consistent with the limited liability company's 11 classification for federal income tax purposes.] **For purposes of this section,** 12 **the term "responsible persons", when applied to:**

13 (1) **A limited liability company wherein management of the** 14 **company is vested in a manager or managers, shall mean the manager** 15 **or managers so designated;**

16 (2) **A limited liability company wherein management of the**

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

17 **company is not vested in a manager or managers, shall mean any**
18 **member who:**

19 **(a) Is designated as a responsible person under this section in the**
20 **company's articles of organization; or**

21 **(b) Has the direct control, supervision, or responsibility for filing**
22 **returns and making payments of the amount of tax imposed in**
23 **accordance with sections 143.191 to 143.265, RSMo, sections 144.010 to**
24 **144.745, RSMo, sections 288.010 to 288.500, RSMo, and any other laws**
25 **imposing a responsibility to make tax payments.**

26 **3. No member of a limited liability company shall be found liable**
27 **for the taxes imposed by any of the sections described in paragraph (b)**
28 **of subdivision (2) of subsection 2 of this section solely on the basis of**
29 **such member's membership in a limited liability company. Nothing in**
30 **this section shall be construed to create or extend liability for or to a**
31 **member of a limited liability company for taxes imposed under any of**
32 **the sections described in paragraph (b) of subdivision (2) of subsection**
33 **2 of this section unless such member is a responsible person as defined**
34 **in subsection 2 of this section.**

355.020. 1. The provisions of this chapter relating to domestic
2 corporations apply to:

3 (1) All corporations organized under this chapter including all domestic
4 corporations in existence on July 1, 1995, that were previously incorporated under
5 this chapter; and

6 (2) Any corporation organized under any laws of this state, including laws
7 relating to profit corporations, which is in fact a not-for-profit corporation
8 organized for a purpose or purposes for which a corporation might be organized
9 under this chapter and which accepts the provisions of this chapter as herein
10 provided. Any such corporation may accept the provisions of this chapter by:

11 (a) Adopting in the manner and upon the vote required by the law under
12 which it is organized a resolution amending its articles of incorporation or articles
13 of agreement so as:

14 a. To eliminate from its articles of incorporation or articles of agreement
15 any purpose, power or other provision thereof not authorized to be set forth in the
16 articles of incorporation of corporations organized under this chapter;

17 b. To set forth in its articles of incorporation or articles of agreement any
18 provision authorized under this chapter to be inserted in the articles of
19 incorporation of corporations organized under this chapter which the corporation

20 chooses to insert therein and the material and information required to be set
21 forth under section 355.096 in the original articles of incorporation of corporations
22 organized under this chapter except, however, the names and addresses of the
23 persons constituting the board of directors.

24 (b) If the corporation is authorized to issue shares of stock, adopting, in
25 the manner and upon the vote required by the law under which it is organized for
26 the approval of an amendment altering adversely the preferences, privileges,
27 characteristics, and special or relative rights of each class of shares then issued
28 and outstanding, a resolution:

29 a. Eliminating from its articles of incorporation all authorization for the
30 issuance of shares of stock, and canceling and extinguishing all issued and
31 outstanding shares of its stock;

32 b. Providing that each of the shareholders of the corporation is a member
33 of the corporation and if the corporation desires to have more than one class of
34 members, establishing the class in which each class of shareholders is a member;

35 c. Providing for the surrender and cancellation of all certificates for shares
36 of stock then issued and outstanding and if the corporation desires to issue
37 certificates evidencing membership therein, for the issuance of appropriate
38 certificates of membership in lieu thereof.

39 (c) Adopting a resolution, duly recommended by its board of directors and
40 approved by the affirmative vote or consent in writing of a majority of its
41 members having voting rights, if any, or if such corporation has shares of stock
42 outstanding by the affirmative vote or consent in writing of the majority of each
43 class of its outstanding shares required by the law under which it is organized for
44 approval of an amendment to its articles of incorporation adversely altering the
45 preferences, privileges, characteristics, and special or relative rights of such class
46 of shares, accepting all of the provisions of this chapter and providing that such
47 corporation shall for all purposes be thenceforth deemed to be a corporation
48 organized under this chapter.

49 (d) Filing with the secretary of state [duplicate] articles of acceptance of
50 this chapter, signed by its president or vice president and its secretary or
51 assistant secretary, which articles of acceptance, in the case of a corporation
52 organized under the provisions of chapter 352, RSMo, shall have been approved
53 by the circuit court having jurisdiction to approve amendments to the articles of
54 agreement of such corporation. The articles of acceptance shall set forth:

55 a. The name of the corporation;

56 b. The resolutions adopted pursuant to the foregoing provisions of this

57 section;

58 c. Where there are members or shareholders having voting rights, the date
59 of the meeting of members or shareholders, if any, at which the resolutions were
60 adopted, the total number of members or shares entitled to vote with respect
61 thereto, and the number voting for or consenting to the resolution, and the vote
62 by classes if the corporation has outstanding more than one class of memberships
63 or shares entitled to vote by classes thereon.

64 2. If the secretary of state finds that the resolutions provided in this
65 section have been duly adopted, that the corporation's articles of incorporation
66 have been duly amended, where necessary, to conform with the requirements of
67 this chapter, and that the articles of acceptance conform to law, he shall file [one
68 duplicate original] **a copy** of the articles of acceptance in his office, and shall
69 issue his certificate of acceptance to which he shall affix [the other duplicate
70 original] **a copy** of the articles of acceptance. The certificate of acceptance, with
71 the [duplicate original] **copy** of the articles of acceptance, shall be returned to the
72 corporation or its representative. Upon the issuance of the certificate of
73 acceptance by the secretary of state:

74 (1) The articles of incorporation or articles of agreement of the corporation
75 are deemed to be amended as provided in the resolutions set forth in the articles
76 of acceptance;

77 (2) If the corporation has been theretofore authorized to issue shares of
78 stock, all authority for the issuance of shares of stock and all shares of stock then
79 issued and outstanding is eliminated, canceled and extinguished, the shareholders
80 of the corporation are members of the corporation of the class provided in the
81 resolutions set forth in the articles of acceptance, and all rights, interests, and
82 obligations of the shareholders are changed and converted into the rights,
83 interests and obligations of members of a corporation organized under this
84 chapter; and

85 (3) The corporation is a corporation organized under this chapter and is
86 entitled to all the rights, privileges and benefits and is subject to all the
87 obligations, duties and liabilities provided in this chapter.

88 3. The provisions of this chapter relating to foreign corporations apply to
89 all foreign not-for-profit corporations conducting affairs in this state for a purpose
90 or purposes for which a corporation might be organized under this chapter.

355.171. Any registered agent of a corporation may resign as such agent
2 upon filing a written notice of the resignation[, executed in duplicate,] with the
3 secretary of state, who shall immediately mail a copy to any officer of the

4 corporation at his address as last known to the secretary of state, other than such
5 registered office. Such resignation shall become effective upon the expiration of
6 thirty days after receipt of such notice by the secretary of state.

355.631. 1. After a plan of merger is approved by the board of directors,
2 shareholders, and if required by section 355.626, by the members and any other
3 persons, the surviving or acquiring corporation shall deliver to the secretary of
4 state articles of merger setting forth:

5 (1) The names of the corporations proposing to merge, and the name of the
6 corporation into which they propose to merge, which is herein designated as "the
7 surviving corporation";

8 (2) The plan of merger;

9 (3) If approval by members was not required, a statement to that effect
10 and a statement that the plan was approved by a sufficient vote of the board of
11 directors;

12 (4) If approval by members was required:

13 (a) The designation, number of memberships outstanding, number of votes
14 entitled to be cast by each class entitled to vote separately on the plan, and
15 number of votes of each class indisputably voting on the plan; and

16 (b) Either the total number of votes cast for and against the plan by each
17 class entitled to vote separately on the plan or the total number of undisputed
18 votes cast for the plan by each class and a statement that the number cast for the
19 plan by each class was sufficient for approval by that class;

20 (5) If approval of the plan by some person or persons other than the
21 members or the board is required pursuant to subdivision (3) of subsection 1 of
22 section 355.626, a statement that the approval was obtained;

23 (6) If approval by shareholders was required, then a statement as to the
24 manner and basis of converting the shares of each merging corporation into cash,
25 property, memberships or other securities or obligations of the surviving
26 corporation, or, if any shares of any merging corporation are not to be converted
27 solely into cash, property, memberships or other securities or obligations of the
28 surviving corporation, into cash, property, shares or other securities or obligations
29 of any other domestic or foreign corporation, which cash, property, shares or other
30 securities or obligations of any other domestic or foreign corporation may be in
31 addition to or completely in lieu of cash, property, shares or other securities or
32 obligations of the surviving corporation;

33 (7) A statement of any changes in the articles of incorporation of the
34 surviving corporation to be effected by the merger.

35 2. The articles of merger shall be executed [in duplicate] by each nonprofit
36 or business corporation as follows:

37 (1) Signed as provided in subdivision (1) of subsection 6 of section 355.011
38 for nonprofit corporations;

39 (2) Signed as provided in section 351.430, RSMo, for business corporations.

355.791. 1. The registered agent of a foreign corporation may resign as
2 agent by signing and delivering to the secretary of state for filing [the] **an**
3 original [and two exact or conformed copies of a] statement of resignation. The
4 statement of resignation may include a statement that the registered office is also
5 discontinued.

6 2. The secretary of state shall immediately mail a copy to any officer of
7 the corporation at his address as last known to the secretary of state, or the
8 registered office.

9 3. The agency is terminated, and the registered office discontinued if so
10 provided, on the thirtieth day after the date on which the statement was filed.

358.440. 1. To register as a limited liability partnership pursuant to this
2 section, a written application shall be filed with the office of the secretary of
3 state. The application shall set forth:

4 (1) The name of the partnership;

5 (2) The address of a registered office and the name and address of a
6 registered agent for service of process required to be maintained by section
7 358.470;

8 (3) The number of partners in the partnership at the date of application;

9 (4) A brief statement of the principal business in which the partnership
10 engages;

11 (5) That the partnership thereby applies for registration as a registered
12 limited liability partnership; and

13 (6) Any other information the partnership determines to include in the
14 application.

15 2. The application shall be signed on behalf of the partnership by a
16 majority of the partners or by one or more partners authorized by a majority in
17 interest of the partners to sign the application on behalf of the partnership.

18 3. The application shall be accompanied by a fee payable to the secretary
19 of state of twenty-five dollars for each partner of the partnership, but the fee
20 shall not exceed one hundred dollars. All moneys from the payment of this fee
21 shall be deposited into the general revenue fund.

22 4. A person who files a document according to this section as an agent or

23 fiduciary need not exhibit evidence of the partner's authority as a prerequisite to
24 filing. Any signature on such document may be a facsimile. If the secretary of
25 state finds that the filing conforms to law, the secretary of state shall:

26 (1) Endorse on the copy the word "Filed" and the month, day and year of
27 the filing;

28 (2) File the original in the secretary of state's office; and

29 (3) Return the copy to the person who filed it or to the person's
30 representative.

31 5. A partnership becomes a registered limited liability partnership on the
32 date of the filing in the office of the secretary of state of an application that, as
33 to form, meets the requirements of subsections 1 and 2 of this section and that
34 is accompanied by the fee specified in subsection 3 of this section, or at any later
35 time specified in the application.

36 6. An initial application filed under subsection 1 of this section by a
37 partnership registered by the secretary of state as a limited liability partnership
38 expires one year after the date of registration unless earlier withdrawn or
39 revoked or unless renewed in accordance with subsection 9 of this section.

40 7. If a person is included in the number of partners of a registered limited
41 liability partnership set forth in an application, a renewal application or a
42 certificate of amendment of an application or a renewal application, the inclusion
43 of such person shall not be admissible as evidence in any action, suit or
44 proceeding, whether civil, criminal, administrative or investigative, for the
45 purpose of determining whether such person is liable as a partner of such
46 registered limited liability partnership. The status of a partnership as a
47 registered limited liability partnership and the liability of a partner of such
48 registered limited liability partnership shall not be adversely affected if the
49 number of partners stated in an application, a renewal application or a certificate
50 of amendment of an application or a renewal application is erroneously stated
51 provided that the application, renewal application or certificate of amendment of
52 an application or a renewal application was filed in good faith.

53 8. Any person who files an application or a renewal application in the
54 office of the secretary of state pursuant to this section shall not be required to file
55 any other documents pursuant to chapter 417, RSMo, which requires filing for
56 fictitious names.

57 9. An effective registration may be renewed before its expiration by filing
58 [in duplicate] with the secretary of state an application containing current
59 information of the kind required in an initial application, including the

60 registration number as assigned by the secretary of state. The renewal
61 application shall be accompanied by a fee of one hundred dollars on the date of
62 renewal plus, if the renewal increases the number of partners, fifty dollars for
63 each partner added, but the fee shall not exceed two hundred dollars. All moneys
64 from such fees shall be deposited into the general revenue fund. A renewal
65 application filed under this section continues an effective registration for one year
66 after the date the effective registration would otherwise expire.

67 10. A registration may be withdrawn by filing with the secretary of state
68 a written withdrawal notice signed on behalf of the partnership by a majority of
69 the partners or by one or more partners authorized by a majority of the partners
70 to sign the notice on behalf of the partnership. A withdrawal notice shall include
71 the name of the partnership, the date of registration of the partnership's last
72 application under this section, and a current street address of the partnership's
73 principal office in this state or outside the state, as applicable. A withdrawal
74 notice terminates the registration of the partnership as a limited liability
75 partnership as of the date of filing the notice in the office of the secretary of
76 state. The withdrawal notice shall be accompanied by a filing fee of twenty
77 dollars.

78 11. If a partnership that has registered pursuant to this section ceases to
79 be registered as provided in subsection 6 or 10 of this section, that fact shall not
80 affect the status of the partnership as a registered limited liability partnership
81 prior to the date the partnership ceased to be registered pursuant to this section.

82 12. A document filed under this section may be amended or corrected by
83 filing with the secretary of state articles of amendment, signed by a majority of
84 the partners or by one or more partners authorized by a majority of the
85 partners. The articles of amendment shall contain:

- 86 (1) The name of the partnership;
- 87 (2) The identity of the document being amended;
- 88 (3) The part of the document being amended; and
- 89 (4) The amendment or correction.

90 The articles of amendment shall be accompanied by a filing fee of twenty dollars
91 plus, if the amendment increases the number of partners, fifty dollars for each
92 partner added, but the fee shall not exceed two hundred dollars; provided that no
93 amendment of an application or a renewal application is required as a result of
94 a change after the application or renewal application is filed in the number of
95 partners of the registered limited liability partnership or in the business in which
96 the registered limited liability partnership engages. All moneys from such fees

97 shall be deposited into the general revenue fund. The status of a partnership as
98 a registered limited liability partnership shall not be affected by changes after the
99 filing of an application or a renewal application in the information stated in the
100 application or renewal application.

101 13. No later than ninety days after the happening of any of the following
102 events, an amendment to an application or a renewal application reflecting the
103 occurrence of the event or events shall be executed and filed by a majority in
104 interest of the partners or by one or more partners authorized by a majority of
105 the partners to execute an amendment to the application or renewal application:

106 (1) A change in the name of the registered limited liability partnership;

107 (2) Except as provided in subsections 2 and 3 of section 358.470, a change
108 in the address of the registered office or a change in the name or address of the
109 registered agent of the registered limited liability partnership.

110 14. Unless otherwise provided in this chapter or in the certificate of
111 amendment of an application or a renewal application, a certificate of amendment
112 of an application or a renewal application or a withdrawal notice of an application
113 or a renewal application shall be effective at the time of its filing with the
114 secretary of state.

115 15. The secretary of state may provide forms for the application specified
116 in subsection 1 of this section, the renewal application specified in subsection 9
117 of this section, the withdrawal notice specified in subsection 10 of this section,
118 and the amendment or correction specified in subsection 12 of this section.

119 16. The secretary of state may remove from its active records the
120 registration of a partnership whose registration has been withdrawn, revoked or
121 has expired.

122 17. The secretary of state may revoke the filing of a document filed under
123 this section if the secretary of state determines that the filing fee for the
124 document was paid by an instrument that was dishonored when presented by the
125 state for payment. The secretary of state shall return the document and give
126 notice of revocation to the filing party by regular mail. Failure to give or receive
127 notice does not invalidate the revocation. A revocation of a filing does not affect
128 an earlier filing.

129 18. If any person signs a document required or permitted to be filed
130 pursuant to sections 358.440 to 358.500 which the person knows is false in any
131 material respect with the intent that the document be delivered on behalf of a
132 partnership to the secretary of state for filing, such person shall be guilty of a
133 class A misdemeanor. Unintentional errors in the information set forth in an

134 application filed pursuant to subsection 1 of this section, or changes in the
135 information after the filing of the application, shall not affect the status of a
136 partnership as a registered limited liability partnership.

137 19. Before transacting business in this state, a foreign registered limited
138 liability partnership shall:

139 (1) Comply with any statutory or administrative registration or filing
140 requirements governing the specific type of business in which the partnership is
141 engaged; and

142 (2) Register as a limited liability partnership as provided in this section
143 by filing an application which shall, in addition to the other matters required to
144 be set forth in such application, include a statement:

145 (a) That the secretary is irrevocably appointed the agent of the foreign
146 limited liability partnership for service of process if the limited liability
147 partnership fails to maintain a registered agent in this state or if the agent
148 cannot be found or served with the exercise of reasonable diligence; and

149 (b) Of the address of the office required to be maintained in the
150 jurisdiction of its organization by the laws of that jurisdiction or, if not so
151 required, of the principal office of the foreign limited liability partnership.

152 20. A partnership that registers as a limited liability partnership shall not
153 be deemed to have dissolved as a result thereof and is for all purposes the same
154 partnership that existed before the registration and continues to be a partnership
155 under the laws of this state. If a registered limited liability partnership dissolves,
156 a partnership which is a successor to such registered limited liability partnership
157 and which intends to be a registered limited liability partnership shall not be
158 required to file a new registration and shall be deemed to have filed any
159 documents required or permitted under this chapter which were filed by the
160 predecessor partnership.

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

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

5 (2) A registered agent for service of process on the limited partnership,
6 which agent may be either an individual, resident in this state, whose business
7 office is identical with such registered office, or a domestic corporation or a
8 foreign corporation authorized to do business in this state, whose business office
9 is identical with such registered office.

10 2. A limited partnership may from time to time change the address of its

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

- 18 (1) The name of the limited partnership;
- 19 (2) The address, including street and number, if any, of its then registered
20 office;
- 21 (3) If the address of its registered office be changed, the address, including
22 street and number, if any, to which the registered office is to be changed;
- 23 (4) The name of its then registered agent;
- 24 (5) If its registered agent be changed, the name of its successor registered
25 agent and the successor registered agent's written consent to the appointment
26 either on the statement or attached thereto;
- 27 (6) That the address of its registered office and the address of the business
28 office of its registered agent, as changed, will be identical; and
- 29 (7) That such change was authorized by the limited partnership.

30 3. Such statement shall be executed [in duplicate] by the limited
31 partnership by a general partner, and delivered to the secretary of state. The
32 execution of such a statement by a general partner constitutes an affirmation
33 under the penalties of section 575.040, RSMo, that the facts stated therein are
34 true. If the secretary of state finds that such statement conforms to the
35 provisions of this chapter, the secretary of state shall file the same, keeping the
36 original and returning the other copy to the limited partnership or to its
37 representative.

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

43 5. If a registered agent changes the street address of his business office,
44 he may change the street address of the registered office of any limited
45 partnership for which he is the registered agent by notifying the limited
46 partnership in writing of the change and signing, either manually or in facsimile,
47 and delivering to the secretary of state for filing a statement of change that

48 complies with the requirements of subsection 2 of this section and recites that the
49 limited partnership has been notified of the change. The change of address of the
50 registered office shall become effective upon the filing of the statement to the
51 secretary of state.

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

 359.121. 1. Each certificate required by this chapter to be filed in the
2 office of the secretary of state shall be executed in the following manner:

3 (1) An original certificate of limited partnership must be signed by all
4 general partners;

5 (2) A certificate of amendment must be signed by at least one general
6 partner and by each other general partner designated in the certificate as a new
7 general partner;

8 (3) A certificate of cancellation must be signed by all general partners.

9 **2. If there is no remaining general partner as a result of an event**
10 **of withdrawal under section 359.241, and the partners agree to continue**
11 **the business of the limited partnership under subdivision (4) of section**
12 **359.451, the certificate of amendment must be signed by each general**
13 **partner designated in the certificate as a new general partner, and the**
14 **certificate of amendment must state and affirm the occurrence of the**
15 **specific event of withdrawal necessitating use of subdivision (4) of**
16 **section 359.451.**

17 **3.** Any person may sign a certificate by an attorney-in-fact, but a power
18 of attorney to sign a certificate relating to the admission of a general partner

19 shall specifically describe the admission.

20 [3.] 4. The execution of a certificate by a general partner constitutes an
21 affirmation under the penalties of section 575.040, RSMo, that the facts stated
22 therein are true.

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