

SECOND REGULAR SESSION

HOUSE BILL NO. 2129

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RICHARDSON AND MONACO (Co-sponsors).

Read 1st time March 7, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

5012L.011

AN ACT

To repeal sections 347.143, 351.055, 351.120, 351.140, 351.182, and 351.455, RSMo, and to enact in lieu thereof six new sections relating to governance of business organizations.

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

Section A. Sections 347.143, 351.055, 351.120, 351.140, 351.182, and 351.455, RSMo,
2 are repealed and six new sections enacted in lieu thereof, to be known as sections 347.143,
3 351.055, 351.120, 351.140, 351.182, and 351.455, to read as follows:

347.143. 1. A limited liability company may be dissolved involuntarily by a decree of
2 the circuit court for the county in which the registered office of the limited liability company is
3 situated in an action filed by the attorney general when it is established that the limited liability
4 company:

5 (1) Has procured its articles of organization through fraud;

6 (2) Has exceeded or abused the authority conferred upon it by law;

7 (3) Has carried on, conducted, or transacted its business in a fraudulent or illegal manner;

8 or

9 (4) By the abuse of its powers contrary to the public policy of the state, has become
10 liable to be dissolved.

11 2. On application by or for a member, the circuit court for the county in which the
12 registered office of the limited liability company is located may decree dissolution of a limited
13 liability company whenever:

14 (1) **The members are deadlocked in the management of the affairs of the limited**
15 **liability company and the members are unable to break the deadlock; or**

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

16 (2) It is not reasonably practicable to carry on the business in conformity with the
17 operating agreement.

351.055. The articles of incorporation shall set forth:

2 (1) The name of the corporation;

3 (2) The address, including street and number, if any, of its initial registered office in this
4 state, and the name of its initial registered agent at such address;

5 (3) The aggregate number of shares which the corporation shall have the authority to
6 issue, and the number of shares of each class, if any, that are to have a par value and the par
7 value of each share of each such class, and the number of shares of each class, if any, that are to
8 be without par value and also a statement of the preferences, qualifications, limitations,
9 restrictions, and the special or relative rights including convertible rights, if any, in respect of the
10 shares of each class;

11 (4) The extent, if any, to which the preemptive right of a shareholder to acquire
12 additional shares is limited or denied;

13 (5) The name and place of residence of each incorporator;

14 (6) Either (a) the number of directors to constitute the first board of directors and a
15 statement to the effect that thereafter the number of directors shall be fixed by, or in the manner
16 provided in, the bylaws of the corporation, and that any changes shall be reported to the secretary
17 of state within thirty calendar days of such change, or (b) the number of directors to constitute
18 the board of directors, except that the number of directors to constitute the board of directors
19 must be stated in the articles of incorporation if the corporation is to have less than three
20 directors. The persons to constitute the first board of directors may, but need not, be named;

21 (7) The number of years the corporation is to continue, which may be any number or
22 perpetual;

23 (8) The purposes for which the corporation is formed;

24 (9) If the incorporators, the directors pursuant to subsection 1 of section 351.090 or the
25 shareholders pursuant to subsection 2 of section 351.090 choose to do so, a provision eliminating
26 or limiting the personal liability of a director to the corporation or its shareholders for monetary
27 damages for breach of fiduciary duty as a director, provided that such provision shall not
28 eliminate or limit the liability of a director (a) for any breach of the director's duty of loyalty to
29 the corporation or its shareholders, (b) for acts or omissions not in subjective good faith or which
30 involve intentional misconduct or a knowing violation of law, (c) pursuant to section 351.345
31 or (d) for any transaction from which the director derived an improper personal benefit. No such
32 provision shall eliminate or limit the liability of a director for any act or omission occurring prior
33 to the date when such provision becomes effective. **On motion to dismiss, a person**
34 **challenging the applicability of such a provision shall plead facts challenging such**

35 **applicability with particularity, and on motion for summary judgment shall have the**
36 **burden of proving that the provision does not apply.** All references in this subdivision to a
37 director shall also be deemed to refer (e) to a member of the governing body of a corporation
38 which is not authorized to issue capital stock and (f) to such other person or persons, if any, who,
39 pursuant to a provision of the articles of incorporation in accordance with this chapter, exercise
40 or perform any of the powers or duties otherwise conferred or imposed upon the board of
41 directors by this chapter;

42 (10) Any other provisions, not inconsistent with law, which the incorporators, the
43 directors pursuant to subsection 1 of section 351.090 or the shareholders pursuant to subsection
44 2 of section 351.090 may choose to insert.

351.120. **1.** Every corporation organized pursuant to the laws of this state, including
2 corporations organized pursuant to or subject to this chapter, and every foreign corporation
3 licensed to do business in this state, whether such license shall have been issued pursuant to this
4 chapter or not, other than corporations exempted from taxation by the laws of this state, shall file
5 an annual corporation registration report [stating its].

6 **2. The annual corporate registration report shall state the** corporate name, the name
7 of its registered agent and such agent's Missouri address, giving street and number, or building
8 and number, or both, as the case may require, the name and correct business or residence address
9 of its officers and directors, and the mailing address of the corporation's principal place of
10 business or corporate headquarters.

11 **3.** The annual [corporation] **corporate** registration report shall be due on the date that
12 the corporation's franchise tax report is due as required in section 147.020, RSMo, or within
13 thirty days of the date of incorporation of the corporation[; but]. Any extension of time for filing
14 the franchise tax report shall not apply to the due date of the annual corporation registration
15 report. Any corporation that is not required to file a franchise tax report shall still be required
16 to file an annual corporation registration report.

17 **4.** In the event of any change in the names and addresses of the officers and directors set
18 forth in an annual registration report following the required date of its filing and the date of the
19 next such required report, the corporation may correct such information by filing a certificate of
20 correction pursuant to section 351.049.

21 **5. A corporation may change the corporation's registered office or registered agent**
22 **with the filing of the corporation's annual registration report. To change the corporation's**
23 **registered agent with the filing of the annual registration report, the corporation must**
24 **include the new registered agent's written consent to the appointment as registered agent**
25 **and a written consent stating that such change in registered agents was authorized by**
26 **resolution duly adopted by the board of directors. The written consent must be signed by**

27 **the new registered agent and must include such agent's address. If the annual corporate**
28 **registration report is not completed correctly, the secretary of state may reject the filing**
29 **of such report.**

30 **6. A corporation's annual registration report must be filed in a format as**
31 **prescribed by the secretary of state.**

351.140. Each registration required by section 351.120 shall be on a form to be supplied
2 by the secretary of state and shall be [signed] **executed** subject to the penalties of making a false
3 declaration under section 575.060, RSMo, by the president, a vice president, the secretary, an
4 assistant secretary, the treasurer or an assistant treasurer of the corporation. Whenever any
5 corporation is in the hands of an assignee or receiver, it shall be the duty of such assignee or
6 receiver, or one of them, if there be more than one, to register such corporation and otherwise
7 comply with the requirements of this chapter. The forms shall bear a notice stating that false
8 statements made therein are punishable under section 575.060, RSMo.

351.182. 1. Subject to any provisions in the articles of incorporation, every corporation
2 may create and issue, whether or not in connection with the issue and sale of any shares of stock
3 or other securities of the corporation, rights or options entitling the holders thereof to purchase
4 from the corporation any shares of its capital stock of any class or classes, such rights or options
5 to be evidenced by or in such instrument or instruments as is approved by the board of directors.
6 If at the time the corporation issues rights or options, there is insufficient authorized and
7 unissued shares to provide the shares needed if and when the rights or options are exercised, the
8 granting of the rights or options shall not be invalid solely by reason of the lack of sufficient
9 authorized but unissued shares.

10 2. The terms upon which any such shares may be purchased from the corporation upon
11 the exercise of any such right or option, shall be as stated in the articles of incorporation, or in
12 a resolution adopted by the board of directors providing for the creation and issue of such rights
13 or options, and, in every case, shall be set forth or incorporated by reference in the instrument
14 or instruments evidencing such rights or options. Such terms may include, but not be limited to:

15 (1) The duration of such rights or options, which may be limited or unlimited;

16 (2) The price or prices at which any such shares may be purchased from the corporation
17 upon the exercise of any such right or option;

18 (3) The holders by whom such rights or options may be exercised;

19 (4) The conditions to or which may preclude or limit the exercise, transfer or receipt of
20 such rights or options, or which may invalidate or void such rights or options, including without
21 limitation conditions based upon a specified number or percentage of outstanding shares, rights,
22 options, convertible securities, or obligations of the corporation as to which any person or
23 persons or their transferees own or offer to acquire; and

24 (5) The conditions upon which such rights or options may be redeemed.

25

26 Such terms may be made dependent upon facts ascertainable outside the documents evidencing
27 the rights, or the resolution providing for the issue of the rights or options adopted by the board
28 of directors, if the manner in which the facts shall operate upon the exercise of the rights or
29 options is clearly and expressly set forth in the document evidencing the rights or options, or in
30 the resolution. In the absence of actual fraud in the transaction, the judgment of the directors as
31 to the consideration for the issuance of such rights or options and the sufficiency thereof and the
32 terms of such rights or options shall be conclusive. In case the shares of stock of the corporation
33 to be issued upon the exercise of such rights or options shall be shares having a par value, the
34 price or prices so to be received therefor shall not be less than the par value thereof. In case the
35 shares of stock so to be issued shall be shares of stock without par value, the consideration
36 therefor shall be determined in the manner provided in section 351.185. Nothing contained in
37 subsection 1 of section 351.180 shall be deemed to limit the authority of the board of directors
38 to determine, in its sole discretion, the terms of the rights or options issuable pursuant to this
39 section.

40 **3. The board of directors may, by a resolution adopted by the board, authorize one**
41 **or more officers of the corporation to do one or both of the following:**

42 **(1) Designate officers and employees of the corporation or of any of its subsidiaries**
43 **to be recipients of such rights or options created by the corporation; and**

44 **(2) Determine the number of such rights or options to be received by such officers**
45 **and employees;**

46

47 **provided, however that the resolution so authorizing such officer or officers shall specify**
48 **the total number of rights or options such officer or officers may so award. The board of**
49 **directors may not authorize an officer to designate himself or herself as a recipient of any**
50 **such rights or options.**

51 351.455. 1. If a shareholder of a corporation which is a party to a merger or
52 consolidation [shall file with such corporation, prior to or], **and in the case of a shareholder**
53 **owning voting stock is entitled to vote** at the meeting of shareholders at which the plan of
54 merger or consolidation is submitted to a vote, **shall file with such corporation prior to or at**
55 **such meeting** a written objection to such plan of merger or consolidation, and shall not vote in
56 favor thereof, and such shareholder, within twenty days after the merger or consolidation is
57 effected, shall make written demand on the surviving or new corporation for payment of the fair
58 value of his shares as of the day prior to the date on which the vote was taken approving the
59 merger or consolidation, the surviving or new corporation shall pay to such shareholder, upon

60 surrender of his certificate or certificates representing said shares, the fair value thereof. Such
61 demand shall state the number and class of the shares owned by such dissenting shareholder.
62 Any shareholder failing to make demand within the twenty day period shall be conclusively
63 presumed to have consented to the merger or consolidation and shall be bound by the terms
64 thereof.

65 2. If within thirty days after the date on which such merger or consolidation was effected
66 the value of such shares is agreed upon between the dissenting shareholder and the surviving or
67 new corporation, payment therefor shall be made within ninety days after the date on which such
68 merger or consolidation was effected, upon the surrender of his certificate or certificates
69 representing said shares. Upon payment of the agreed value the dissenting shareholder shall
70 cease to have any interest in such shares or in the corporation.

71 3. If within such period of thirty days the shareholder and the surviving or new
72 corporation do not so agree, then the dissenting shareholder may, within sixty days after the
73 expiration of the thirty day period, file a petition in any court of competent jurisdiction within
74 the county in which the registered office of the surviving or new corporation is situated, asking
75 for a finding and determination of the fair value of such shares, and shall be entitled to judgment
76 against the surviving or new corporation for the amount of such fair value as of the day prior to
77 the date on which such vote was taken approving such merger or consolidation, together with
78 interest thereon to the date of such judgment. The judgment shall be payable only upon and
79 simultaneously with the surrender to the surviving or new corporation of the certificate or
80 certificates representing said shares. Upon the payment of the judgment, the dissenting
81 shareholder shall cease to have any interest in such shares, or in the surviving or new
82 corporation. Such shares may be held and disposed of by the surviving or new corporation as it
83 may see fit. Unless the dissenting shareholder shall file such petition within the time herein
84 limited, such shareholder and all persons claiming under him shall be conclusively presumed to
85 have approved and ratified the merger or consolidation, and shall be bound by the terms thereof.

86 4. The right of a dissenting shareholder to be paid the fair value of his shares as herein
87 provided shall cease if and when the corporation shall abandon the merger or consolidation.

88 **5. When the remedy provided for pursuant to this section is available with respect**
89 **to a transaction, it shall be the exclusive remedy of the shareholder as to that transaction**
90 **except in the case of fraud or lack of authorization for the transaction.**