

Senate File 158 - Introduced

SENATE FILE 158
BY BOLKCOM

A BILL FOR

1 An Act providing for limited liability companies organized on a
2 low-profit basis.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 489.201, subsection 2, paragraph a, Code
2 2011, is amended to read as follows:

3 a. The name of the limited liability company, which must
4 comply with section 489.108. The name of a low-profit limited
5 liability company must also comply with section 489.1404.

6 Sec. 2. Section 489.805, Code 2011, is amended to read as
7 follows:

8 **489.805 Noncomplying name of foreign limited liability**
9 **company.**

10 1. A foreign limited liability company whose name does
11 not comply with section 489.108 or 489.1404 shall not obtain
12 a certificate of authority until it adopts, for the purpose
13 of transacting business in this state, an alternate name that
14 complies with section 489.108 and 489.1404. After obtaining
15 a certificate of authority with an alternate name, a foreign
16 limited liability company shall transact business in this state
17 under the alternate name.

18 2. If a foreign limited liability company authorized to
19 transact business in this state changes its name to one that
20 does not comply with section 489.108 or 489.1404, it may not
21 thereafter transact business in this state until it complies
22 with subsection 1 and obtains an amended certificate of
23 authority.

24 Sec. 3. NEW SECTION. **489.1401 Definitions.**

25 As used in this article, unless the context otherwise
26 requires:

27 1. "*Foreign low-profit limited liability company*" means a
28 limited liability company organized under laws other than the
29 laws of this state for a purpose for which a low-profit limited
30 liability company may be organized under section 489.1402.

31 2. "*Low-profit limited liability company*" means a limited
32 liability company subject to this article that is not a foreign
33 low-profit limited liability company.

34 Sec. 4. NEW SECTION. **489.1402 Organized.**

35 A low-profit limited liability company must be organized as

1 a limited liability company and a low-profit foreign limited
2 liability company must be organized as a foreign limited
3 liability company as provided in this chapter. In addition,
4 a low-profit limited liability company or low-profit foreign
5 limited liability company must meet the requirements of this
6 article.

7 Sec. 5. NEW SECTION. 489.1403 **Purposes.**

8 A limited liability company is not a low-profit limited
9 liability company, and a foreign limited liability company is
10 not a foreign low-profit limited liability company, unless all
11 of the following apply:

12 1. The limited liability company significantly furthers
13 the accomplishment of one or more charitable or educational
14 purposes within the meaning of section 170(c)(2)(B) of the
15 Internal Revenue Code, 26 U.S.C. § 170(c)(2)(B), and would not
16 have been formed but for its relationship to the accomplishment
17 of a charitable or educational purpose.

18 2. *a.* The limited liability company cannot have as
19 a significant purpose the production of income or the
20 appreciation of property. However, the fact that the limited
21 liability company produces significant income or capital
22 appreciation shall not, in the absence of other factors, be
23 conclusive evidence of a significant purpose involving the
24 production of income or the appreciation of property.

25 *b.* The limited liability company cannot have as a purpose
26 the accomplishment of a political or legislative purpose within
27 the meaning of section 170(c)(2)(D) of the Internal Revenue
28 Code, 26 U.S.C. § 170(c)(2)(D).

29 Sec. 6. NEW SECTION. 489.1404 **Name.**

30 1. A limited liability company is not a low-profit
31 limited liability company unless its name contains the words
32 "low-profit limited liability company" or the abbreviation
33 "L.P.L.L.C." or "LPLLC".

34 2. Subject to section 489.805, this section applies to
35 a foreign low-profit limited liability company transacting

1 business in this state which has a certificate of authority
2 to transact business in this state or which has applied for a
3 certificate of authority.

4 Sec. 7. NEW SECTION. **489.1405 Certificate of organization.**

5 1. A limited liability company is not a low-profit limited
6 liability company unless it is identified as a low-profit
7 limited liability company in its certificate of organization
8 as provided in section 489.201.

9 2. A foreign limited liability company is not a low-profit
10 foreign limited liability company unless it is identified as a
11 foreign low-profit limited liability company in its certificate
12 of organization as provided in section 489.802.

13 Sec. 8. NEW SECTION. **489.1406 Cessation.**

14 If a low-profit limited liability company or foreign
15 low-profit limited liability company fails to comply with the
16 applicable requirements of this article, including section
17 489.1403, the limited liability company shall immediately
18 cease to be a low-profit limited liability company or foreign
19 low-profit limited liability company. The cessation may
20 be either voluntary or involuntary. The limited liability
21 company shall no longer refer to itself by name as required in
22 section 489.1404. It shall no longer be a limited liability
23 company under this chapter unless it amends its certificate
24 of organization as provided in section 489.202 to remove its
25 identification as a low-profit limited liability company. It
26 shall no longer be a foreign limited liability company under
27 this chapter unless it amends its certificate of authority
28 pursuant to section 489.805, to remove its identification as a
29 foreign low-profit limited liability company.

30 Sec. 9. NEW SECTION. **489.1407 Statutory construction.**

31 Unless inconsistent with a provision in this article, a
32 low-profit limited liability company must comply with the
33 requirements in other articles of this chapter applicable to
34 a limited liability company and a foreign low-profit limited
35 liability company. Otherwise, the provisions of this article

1 shall prevail over any inconsistent provision in another
2 article.

3 Sec. 10. DIRECTIONS TO CODE EDITOR. The Code editor shall
4 codify sections 489.1401 through 489.1407 as enacted in this
5 Act, as a new article in chapter 489.

6 EXPLANATION

7 GENERAL. A limited liability company is organized or
8 recognized under Code chapter 489, and entitled the "Revised
9 Uniform Limited Liability Company Act". The Code chapter
10 is divided into a number of articles. A limited liability
11 company (L.L.C.) is a kind of business organization usually
12 perpetual in duration and formed for capital acquisition and
13 the distribution of any profits. Members and managers are
14 shielded from personal liability similar to shareholders of
15 a corporation; but unlike a corporation, taxes are "passed
16 through" to investors without being taxed at the business level
17 (i.e., no double taxation).

18 A domestic limited liability company is formed by filing a
19 certificate of organization with the secretary of state. A
20 foreign limited liability company must be issued a certificate
21 of authority by the secretary of state. The name of the
22 organization must identify it as a limited liability company,
23 which may include an abbreviation (L.L.C.).

24 BILL. This bill creates a new article in Code chapter
25 489 dedicated for Iowa and foreign low-profit limited
26 liability companies. For another example of a subclass of
27 limited liability companies, see article 11 providing for
28 professional limited liability companies. A low-profit
29 limited liability company must be formed to accomplish a
30 charitable or educational purpose recognized by the Internal
31 Revenue Code. However, the organization is not required to
32 have federal tax exemption status in order to qualify as
33 a low-profit limited liability company. The organization
34 also cannot have as a significant purpose the production
35 of income or the appreciation of property. Its name must

1 identify its legal standing under the new article (e.g.,
2 L.P.L.L.C.). Upon failing to comply with the applicable
3 requirements of the article, it immediately ceases to be a
4 low-profit limited liability company or foreign low-profit
5 limited liability company. An entity organized as a limited
6 liability company must amend its certificate of organization by
7 removing that designation, and an entity organized as a foreign
8 limited liability company must be issued a new certificate of
9 authority.