

**CHAPTER 39****LIMITED LIABILITY COMPANIES***H.F. 327*

**AN ACT** relating to limited liability companies.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 9H.1, subsection 1, unnumbered paragraph 1, Code 1993, is amended to read as follows:

“Actively engaged in farming” means that a natural person who is a shareholder and an officer, director or employee of the corporation or who is a member or manager of the limited liability company either:

Sec. 2. Section 9H.1, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. “Authorized limited liability company” means a limited liability company other than a family farm limited liability company founded for the purpose of farming and the ownership of agricultural land in which all of the following apply:

- a. The members do not exceed twenty-five in number.
- b. The members are all natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or nonprofit corporations.

Sec. 3. Section 9H.1, subsection 5, Code 1993, is amended to read as follows:

5. The term “beneficial Beneficial ownership” includes interests held by a nonresident alien individual directly or indirectly holding or acquiring a ten percent or greater share in the partnership, limited partnership, corporation, limited liability company, or trust, or directly or indirectly through two or more such entities. In addition, the term beneficial ownership shall include interests held by all nonresident alien individuals if the nonresident alien individuals in the aggregate directly or indirectly hold or acquire twenty-five percent or more of the partnership, limited partnership, corporation, limited liability company, or trust.

Sec. 4. Section 9H.1, Code 1993, is amended by adding the following new subsection:

NEW SUBSECTION. 8A. “Family farm limited liability company” means a limited liability company which meets all of the following conditions:

- a. The limited liability company is founded for the purpose of farming and the ownership of agricultural land in which the majority of the members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related.
- b. All of the members of the limited liability company are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons or family trusts.
- c. Sixty percent of the gross revenues of the limited liability company over the last consecutive three-year period comes from farming.

Sec. 5. Section 9H.2, unnumbered paragraph 1, Code 1993, is amended to read as follows:

In order to preserve free and private enterprise, prevent monopoly, and protect consumers, it is unlawful for any processor of beef or pork or limited partnership in which a processor holds partnership shares as a general partner or partnership shares as a limited partner, or limited liability company in which a processor is a member, to own, control or operate a feedlot in Iowa in which hogs or cattle are fed for slaughter. In addition, a processor shall not directly or indirectly control the manufacturing, processing, or preparation for sale of pork products derived from swine if the processor contracted for the care and feeding of the swine in this state. However, this section does not apply to a cooperative association organized under chapter 497, 498, or 499, if the cooperative association contracts for the care and feeding of swine with a member of the cooperative association who is actively engaged in farming. This section does

not apply to an association organized as a cooperative in which another cooperative association organized under chapter 497, 498, or 499 is a member, if the association contracts with a member which is a cooperative association organized under chapter 497, 498, or 499, which contracts for the care and feeding of swine with a member of the cooperative who is actively engaged in farming. This section shall not preclude a processor, or limited partnership, or limited liability company from contracting for the purchase of hogs or cattle, provided that where the contract sets a date for delivery which is more than twenty days after the making of the contract it shall:

Sec. 6. Section 9H.2, subsection 2, Code 1993, is amended to read as follows:

2. Specify the month for the delivery, and shall allow the farmer to set the week for the delivery within such month and the processor, or limited partnership, or limited liability company to set the date for delivery within such week. This section shall not prevent processors or educational institutions from carrying on legitimate research, educational, or demonstration activities, nor shall it prevent processors from owning and operating facilities to provide normal care and feeding of animals for a period not to exceed ten days immediately prior to slaughter, or for a longer period in an emergency. Any processor or limited partnership which owns, controls, or operates a feedlot on August 15, 1975 shall have until July 1, 1985 to dispose of the property.

Sec. 7. Section 9H.4, unnumbered paragraph 1, Code 1993, is amended to read as follows:

No A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust or testamentary trust shall not, either directly or indirectly, acquire or otherwise obtain or lease any agricultural land in this state. However, the restrictions provided in this section shall not apply to the following:

Sec. 8. Section 9H.4, subsection 2, paragraph a, Code 1993, is amended to read as follows:

a. Research and experimental activities are undertaken on the agricultural land and commercial sales of products produced from farming the agricultural land do not occur or are incidental to the research or experimental purposes of the corporation or limited liability company. Commercial sales are incidental to the research or experimental purposes of the corporation or limited liability company when such sales are less than twenty-five percent of the gross sales of the primary product of the research.

Sec. 9. Section 9H.4, subsection 2, paragraph c, Code 1993, is amended to read as follows:

c. The agricultural land is used by a corporation, or limited liability company, including any trade or business which is under common control, as provided in 26 U.S.C. § 414 for the primary purpose of testing, developing, or producing animals for sale or resale to farmers as breeding stock. However, after July 1, 1989, to qualify under this paragraph, the following conditions must be satisfied:

(1) The corporation or limited liability company must not hold the agricultural land other than as a lessee. The term of the lease must be for not more than twelve years. The corporation or limited liability company shall not renew a lease. The corporation or limited liability company shall not enter into a lease under this paragraph, if the corporation or limited liability company has ever entered into another lease under this paragraph "c", whether or not the lease is in effect. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

(2) A term or condition of sale, including resale, of breeding stock must not relate to the direct or indirect control by the corporation or limited liability company of the breeding stock or breeding stock progeny subsequent to the sale.

(3) The number of acres of agricultural land held by the corporation or limited liability company must not exceed six hundred forty acres.

(4) The corporation or limited liability company must deliver a copy of the lease to the secretary of state. The secretary of state shall notify the lessee of receipt of the copy of the

lease. However, this subparagraph does not apply to a domestic corporation organized under chapter 504 or 504A.

Culls and test animals may be sold under this paragraph "c". For a three-year period beginning on the date that the corporation or limited liability company acquires an interest in the agricultural land, the gross sales for any year shall not be greater than five hundred thousand dollars. After the three-year period ends, the gross sales for any year shall not be greater than twenty-five percent of the gross sales for that year of the breeding stock, or five hundred thousand dollars, whichever is less.

Sec. 10. Section 9H.4, subsection 4, Code 1993, is amended to read as follows:

4. Agricultural land acquired by a corporation or limited liability company for immediate or potential use in nonfarming purposes.

Sec. 11. Section 9H.4, subsection 5, Code 1993, is amended to read as follows:

5. Agricultural land acquired by a corporation or limited liability company by process of law in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

Sec. 12. Section 9H.4, subsection 8, Code 1993, is amended to read as follows:

8. A corporation or its subsidiary organized under chapter 490 or a limited liability company organized under chapter 490A and to which section 312.8 is applicable.

Sec. 13. Section 9H.4, unnumbered paragraph 2, Code 1993, is amended to read as follows:

A corporation, limited liability company, or trust, other than a family farm corporation, authorized farm corporation, family farm limited liability company, authorized limited liability company, family trust, authorized trust or testamentary trust, violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. The courts of this state may prevent and restrain violations of this section through the issuance of an injunction. The attorney general or a county attorney shall institute suits on behalf of the state to prevent and restrain violations of this section.

Sec. 14. Section 9H.5, subsection 1, unnumbered paragraph 1, Code 1993, is amended to read as follows:

An authorized farm corporation, authorized limited liability company, or authorized trust shall not, on or after July 1, 1987, and a limited partnership other than a family farm limited partnership shall not, on or after July 1, 1988, either directly or indirectly, acquire or otherwise obtain or lease agricultural land, if the total agricultural land either directly or indirectly owned or leased by the authorized farm corporation, authorized limited liability company, limited partnership, or authorized trust would then exceed one thousand five hundred acres.

Sec. 15. Section 9H.5, subsection 2, Code 1993, is amended to read as follows:

2. A person shall not, after July 1, 1988, become a stockholder of an authorized farm corporation, a beneficiary of an authorized trust, member of an authorized limited liability company, or a limited partner in a limited partnership which owns or leases agricultural land if the person is also any of the following:

- a. A stockholder of an authorized farm corporation.
- b. A beneficiary of an authorized trust.
- c. A limited partner in a limited partnership which owns or leases agricultural land.
- d. A member of an authorized limited liability company.

However, this subsection shall not apply to limited partners in a family farm limited partnership.

Sec. 16. Section 9H.5, subsection 3, paragraph a, Code 1993, is amended to read as follows:

- a. An authorized farm corporation, authorized trust, authorized limited liability company,

or limited partnership violating this section shall be assessed a civil penalty of not more than twenty-five thousand dollars and shall divest itself of any land held in violation of this section within one year after judgment. A civil penalty of not more than one thousand dollars may be imposed on a person who becomes a stockholder of an authorized farm corporation, beneficiary of an authorized trust, member of an authorized limited liability company, or limited partner in a limited partnership in violation of this section. The person shall divest the interest held by the person in the corporation, trust, limited liability company, or limited partnership to comply with this section. The court may determine the method of divesting an interest held by a person found to be in violation of this chapter. A financial gain realized by a person who disposes of an interest held in violation of this chapter shall be forfeited to the state's general fund. All court costs and fees shall be paid by the person holding the interest in violation of this chapter.

Sec. 17. Section 9H.5A, subsection 2, Code 1993, is amended by adding the following new paragraph:

**NEW PARAGRAPH.** d. A person who is a member, manager, or authorized representative of a limited liability company, other than a family farm limited liability company, including an authorized limited liability company, owning or leasing agricultural land or engaged in farming in this state.

Sec. 18. Section 9H.5A, subsection 3, Code 1993, is amended to read as follows:

3. The report shall contain information for the last year regarding the reporting entity's corporation, limited partnership, limited liability company, or trust, and the agricultural land owned, leased, or held. However, this subsection shall not apply to a family farm corporation, a family farm limited partnership, a family farm limited liability company, or a family trust. The report shall contain the following information, if applicable:

a. Whether the reporting entity represents a corporation, trust, limited liability company, or limited partnership. If the reporting entity represents a corporation or limited liability company the report shall specify if the corporation or limited liability company is foreign or domestic, profit or nonprofit, or an authorized farm corporation or authorized limited liability company. If the reporting entity represents a trust the report shall specify if the trust is an authorized trust.

b. The name of the reporting entity and the name and address of the person supervising the daily operations on the agricultural land.

c. The name, address, and citizenship if not from the United States, of each shareholder, limited partner, member, or beneficiary of a corporation, trust, limited liability company, or limited partnership.

d. The total approximate number of acres, and the approximate number of acres by named county, of agricultural land which is owned, leased, or held by the corporation, trust, limited liability company, or limited partnership.

e. The approximate number of acres of agricultural land which is owned and operated by the corporation, limited liability company, or limited partnership; the approximate number of acres of agricultural land which is leased by the corporation, limited liability company, limited partnership, or trust as a lessee; the approximate number of acres of agricultural land which is leased from the corporation, limited liability company, limited partnership, or trust as a lessor; and the approximate number of acres of agricultural land which is held in fee and operated by a trust.

f. The approximate number of acres of agricultural land which the corporation, limited liability company, trust, or limited partnership used for the production of row crops.

g. The approximate number of livestock, including cattle, sheep, swine, or poultry, owned, contracted for, or kept by the corporation, limited liability company, trust, or limited partnership, and the approximate number of offspring produced from the livestock.

Sec. 19. Section 9H.10, Code 1993, is amended to read as follows:

#### 9H.10 SIGNING REPORTS.

Reports by corporations shall be signed by the president or other officer or authorized representative. Reports by limited liability companies shall be signed by a manager or other

authorized representative. Reports by limited partnerships shall be signed by the president or other authorized representative of the partnership. Reports by individuals shall be signed by the individual or an authorized representative.

Sec. 20. Section 9H.14, Code 1993, is amended to read as follows:  
9H.14 DUTIES OF SECRETARY OF STATE.

The secretary of state shall notify the attorney general when the secretary of state has reason to believe a violation of this chapter has occurred. It is the intent of this section that information shall be made available to members of the general assembly and appropriate committees of the general assembly in order to determine the extent of farming being carried out in this state by corporations and other business entities and the effect of such farming practices upon the economy of this state. The reports of corporations, limited liability companies, limited partnerships, trusts, contractors, and processors required in this chapter shall be confidential reports except as to the attorney general for review and appropriate action when necessary. The secretary of state shall assist any committee of the general assembly existing or established for the purposes of studying the effects of this chapter and the practices this chapter seeks to study and regulate.

Sec. 21. Section 490A.124, subsection 1, paragraph u, Code 1993, is amended to read as follows:

u. Application for certificate of ~~withdrawal~~ cancellation .....\$ 10

Sec. 22. Section 490A.202, Code 1993, is amended by adding the following new subsection:  
NEW SUBSECTION. 17. a. Except as provided in paragraph "d", indemnify an individual made a party to a proceeding because the individual is or was a member or manager against liability incurred in the proceeding if all of the following apply:

- (1) The individual acted in good faith.
- (2) The individual reasonably believed:
  - (a) In the case of conduct in the individual's official capacity with the limited liability company, that the individual's conduct was in the limited liability company's best interests.
  - (b) In all other cases, that the individual's conduct was at least not opposed to the limited liability company's best interests.
- (3) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.

b. A member's or manager's conduct with respect to an employee benefit plan for a purpose the member or manager reasonably believed to be in the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of paragraph "a", subparagraph (2), subparagraph subdivision (b).

c. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in this subsection.

d. A limited liability company shall not indemnify a member or manager under this subsection in either of the following circumstances:

- (1) In connection with a proceeding by or in the right of the limited liability company in which the member or manager was adjudged liable to the limited liability company.
- (2) In connection with any other proceeding charging improper personal benefit to the member or manager, whether or not involving action in the member's or manager's official capacity, in which the member or manager was adjudged liable on the basis that personal benefit was improperly received by the member or manager.

e. Indemnification permitted under this subsection in connection with a proceeding by or in the right of the limited liability company is limited to reasonable expenses incurred in connection with the proceeding.

Sec. 23. Section 490A.701, subsection 2, Code 1993, is amended to read as follows:

2. Unless otherwise provided in the articles of organization or an operating agreement, a unanimous majority vote shall be required to approve the following matters:

- a. The dissolution and winding up of the limited liability company.
- b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company other than in the ordinary course of business.
- c. Merger of the limited liability company with another entity.
- d. An amendment to the articles of organization or operating agreement.

Sec. 24. Section 490A.701, Code 1993, is amended by adding the following new subsection: NEW SUBSECTION. 3. Unless otherwise provided in the articles of organization or an operating agreement, a unanimous vote shall be required to approve an amendment to the articles of organization or operating agreement.

Sec. 25. Section 490A.702, Code 1993, is amended to read as follows:  
490A.702 MANAGEMENT OF LIMITED LIABILITY COMPANY.

1. Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

2. Unless otherwise provided in the articles of organization and except as provided in subsection 3, every member is an agent of the limited liability company for the purpose of its business or affairs. The act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

3. If the articles of organization provide that management of the limited liability company is vested in a manager or managers the following apply:

a. A member, acting solely in the capacity as a member, is not an agent of the limited liability company.

b. Every manager is an agent of the limited liability company for the purpose of its business or affairs. The act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

4. An act of a manager or a member which is not apparently for the carrying on in the ordinary course of business of the limited liability company does not bind the limited liability company unless authorized in accordance with the articles of organization or an operating agreement, at the time of the transaction or at any other time.

5. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

Sec. 26. Section 490A.704, Code 1993, is amended to read as follows:  
490A.704 WITHDRAWAL OF MEMBER.

A member may withdraw from a limited liability company at the time or upon the happening of events specified in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member at the member's address on the books of the limited liability company. The articles of organization or an operating agreement may prohibit withdrawal by a member.

Sec. 27. Section 490A.707, Code 1993, is amended to read as follows:

**490A.707 LIMITATION OF LIABILITY OF MANAGERS.**

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for monetary damages for breach of fiduciary duty as a manager or a member with whom management of the limited liability company is vested, if the provision does not eliminate or limit the liability of a manager or a member with whom management of the limited liability company is vested for any of the following:

1. Breach of the manager's or member's duty of loyalty to the limited liability company or to its members.

2. Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

3. Transaction from which the manager or member derives an improper personal benefit or a wrongful distribution in violation of section 490A.807.

A provision shall not eliminate or limit the liability of a manager or member with whom management of the limited liability company is vested for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

Sec. 28. Section 490A.1203, subsection 2, paragraph a, Code 1993, is amended to read as follows:

a. By the ~~unanimous~~ majority consent of the members of each limited liability company that is a constituent entity, unless the articles of organization or an operating agreement of any such limited liability company provides otherwise.

Sec. 29. Section 490A.1206, subsection 1, unnumbered paragraph 1, Code 1993, is amended to read as follows:

Any one or more limited liability companies of this state may merge with or into one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships, or any one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships may merge with or into any one or more limited liability companies of this state, if all of the following apply:

Sec. 30. Section 490A.1301, subsection 1, Code 1993, is amended to read as follows:

1. At the time or on the happening of an event specified in this chapter or in the articles of organization or an operating agreement to cause dissolution.

Sec. 31. Section 490A.1301, subsection 3, Code 1993, is amended to read as follows:

3. ~~Upon~~ Unless otherwise provided in the articles of organization or an operating agreement, upon the death, withdrawal, expulsion, bankruptcy, or dissolution of a member or occurrence of any other event, except assignment of a membership interest voluntarily or by operation of law, that terminates the continued membership of a member in the limited liability company, unless the business of the limited liability company is continued by the unanimous consent of the remaining members in the manner stated in the articles of organization or an operating agreement or if not so stated, by the unanimous consent of the remaining members.

Sec. 32. Section 490A.1402, unnumbered paragraph 1, Code 1993, is amended to read as follows:

A foreign limited liability company may apply for a certificate of ~~registration authority~~ to transact business in this state by delivering an application to the secretary of state for filing. An application for registration as a foreign limited liability company shall set forth all of the following:

Sec. 33. Section 490A.1406, unnumbered paragraph 1, Code 1993, is amended to read as follows:

A foreign limited liability company may cancel its certificate of ~~registration authority~~ by delivering to the secretary of state for filing a certificate of cancellation which shall set forth all of the following:

Sec. 34. Section 490A.1407, subsection 2, paragraph b, Code 1993, is amended to read as follows:

b. Holding meetings of the members or managers or carrying on other activities concerning internal corporate company affairs.

Sec. 35. Section 490A.1410, subsection 1, unnumbered paragraph 1, Code 1993, is amended to read as follows:

The certificate of ~~registration~~ authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of the following:

Sec. 36. Section 490A.1516, Code 1993, is amended to read as follows:

**490A.1516 DISSOLUTION OR LIQUIDATION.**

Violation of any provision of this subchapter by a professional limited liability company or any of its members or managers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in section 490A.1302. Upon the death of the last remaining member of a professional limited liability company, or when the last remaining member is not licensed or ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, or when any person other than the member of record becomes entitled to have all membership interests of the last remaining member of the professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such membership interests, the professional limited liability company shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding membership interests of the professional limited liability company are acquired by ~~one~~ two or more persons licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the professional limited liability company need not be dissolved and may practice the profession as provided in this subchapter.

Sec. 37. Section 9H.3A, Code 1993, is repealed.

Approved April 26, 1993

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## CHAPTER 40

### INSPECTION AND REGULATION OF LAWN SEED

*H.F. 453*

**AN ACT** relating to the inspection and regulation of lawn seed, and providing an effective date.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 199.11, subsection 1, paragraphs a and b, Code 1993, are amended to read as follows:

a. Sample, inspect, analyze, and test agricultural seed ~~other than lawn seed~~, if the agricultural seed is transported, sold, offered, or exposed for sale within this state for sowing. The department shall perform these duties at a time and place and to an extent necessary to determine whether the agricultural seed is in compliance with this chapter. The department shall promptly notify the person who transported, sold, offered, or exposed the seed for sale, of a violation.

b. Adopt rules governing methods of sampling, inspecting, analyzing, testing, and examining agricultural seed ~~other than lawn seed~~. The rules shall include tolerances to be followed in the administration of this chapter, which shall be in general accord with officially prescribed