

(P. 562) 3-11-93 Senate Committee
(P. 927) 3-31-93 Do Pass

FEB 25 1993

Place On Calendar

HOUSE FILE 327
BY COMMITTEE ON JUDICIARY AND
LAW ENFORCEMENT

(SUCCESSOR TO HSB 136)

Passed House, ^(P. 522) Date 3-8-93 Passed Senate, ^(P. 1162) Date 4-14-93
Vote: Ayes 90 Nays 7 Vote: Ayes 49 Nays 1
Approved April 26, 1993

A BILL FOR

1 An Act relating to limited liability companies.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

HF 327

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

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

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

9 NEW SUBSECTION. 3A. "Authorized limited liability
10 company" means a limited liability company other than a family
11 farm limited liability company founded for the purpose of
12 farming and the ownership of agricultural land in which all of
13 the following apply:

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

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

20 5. ~~The term "beneficial"~~ "Beneficial ownership" includes
21 interests held by a nonresident alien individual directly or
22 indirectly holding or acquiring a ten percent or greater share
23 in the partnership, limited partnership, corporation, limited
24 liability company, or trust, or directly or indirectly through
25 two or more such entities. In addition, the term beneficial
26 ownership shall include interests held by all nonresident
27 alien individuals if the nonresident alien individuals in the
28 aggregate directly or indirectly hold or acquire twenty-five
29 percent or more of the partnership, limited partnership,
30 corporation, limited liability company, or trust.

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

33 NEW SUBSECTION. 8A. "Family farm limited liability
34 company" means a limited liability company which meets all of
35 the following conditions:

1 a. The limited liability company is founded for the
2 purpose of farming and the ownership of agricultural land in
3 which the majority of the members are persons related to each
4 other as spouse, parent, grandparent, lineal ascendants of
5 grandparents or their spouses and other lineal descendants of
6 the grandparents or their spouses, or persons acting in a
7 fiduciary capacity for persons so related.

8 b. All of the members of the limited liability company are
9 natural persons or persons acting in a fiduciary capacity for
10 the benefit of natural persons or family trusts.

11 c. Sixty percent of the gross revenues of the limited
12 liability company over the last consecutive three-year period
13 comes from farming.

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

16 In order to preserve free and private enterprise, prevent
17 monopoly, and protect consumers, it is unlawful for any
18 processor of beef or pork or limited partnership in which a
19 processor holds partnership shares as a general partner or
20 partnership shares as a limited partner, or limited liability
21 company in which a processor is a member, to own, control or
22 operate a feedlot in Iowa in which hogs or cattle are fed for
23 slaughter. In addition, a processor shall not directly or
24 indirectly control the manufacturing, processing, or
25 preparation for sale of pork products derived from swine if
26 the processor contracted for the care and feeding of the swine
27 in this state. However, this section does not apply to a
28 cooperative association organized under chapter 497, 498, or
29 499, if the cooperative association contracts for the care and
30 feeding of swine with a member of the cooperative association
31 who is actively engaged in farming. This section does not
32 apply to an association organized as a cooperative in which
33 another cooperative association organized under chapter 497,
34 498, or 499 is a member, if the association contracts with a
35 member which is a cooperative association organized under

1 chapter 497, 498, or 499, which contracts for the care and
2 feeding of swine with a member of the cooperative who is
3 actively engaged in farming. This section shall not preclude
4 a processor, or limited partnership, or limited liability
5 company from contracting for the purchase of hogs or cattle,
6 provided that where the contract sets a date for delivery
7 which is more than twenty days after the making of the
8 contract it shall:

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

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

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

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

34 Sec. 8. Section 9H.4, subsection 2, paragraph a, Code
35 1993, is amended to read as follows:

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

10 Sec. 9. Section 9H.4, subsection 2, paragraph c, Code
11 1993, is amended to read as follows:

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

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

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

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

1 hundred forty acres.

2 (4) The corporation or limited liability company must
3 deliver a copy of the lease to the secretary of state. The
4 secretary of state shall notify the lessee of receipt of the
5 copy of the lease. However, this subparagraph does not apply
6 to a domestic corporation organized under chapter 504 or 504A.

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

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

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

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

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

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

31 8. A corporation or its subsidiary organized under chapter
32 490 or a limited liability company organized under chapter
33 490A and to which section 312.8 is applicable.

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

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

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

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

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

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

- 33 a. A stockholder of an authorized farm corporation.
34 b. A beneficiary of an authorized trust.
35 c. A limited partner in a limited partnership which owns

1 or leases agricultural land.

2 d. A member of an authorized limited liability company.

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

5 Sec. 16. Section 9H.5, subsection 3, paragraph a, Code
6 1993, is amended to read as follows:

7 a. An authorized farm corporation, authorized trust,
8 authorized limited liability company, or limited partnership
9 violating this section shall be assessed a civil penalty of
10 not more than twenty-five thousand dollars and shall divest
11 itself of any land held in violation of this section within
12 one year after judgment. A civil penalty of not more than one
13 thousand dollars may be imposed on a person who becomes a
14 stockholder of an authorized farm corporation, beneficiary of
15 an authorized trust, member of an authorized limited liability
16 company, or limited partner in a limited partnership in
17 violation of this section. The person shall divest the
18 interest held by the person in the corporation, trust, limited
19 liability company, or limited partnership to comply with this
20 section. The court may determine the method of divesting an
21 interest held by a person found to be in violation of this
22 chapter. A financial gain realized by a person who disposes
23 of an interest held in violation of this chapter shall be
24 forfeited to the state's general fund. All court costs and
25 fees shall be paid by the person holding the interest in
26 violation of this chapter.

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

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

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

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

9 a. Whether the reporting entity represents a corporation,
10 trust, limited liability company, or limited partnership. If
11 the reporting entity represents a corporation or limited
12 liability company the report shall specify if the corporation
13 or limited liability company is foreign or domestic, profit or
14 nonprofit, or an authorized farm corporation or authorized
15 limited liability company. If the reporting entity represents
16 a trust the report shall specify if the trust is an authorized
17 trust.

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

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

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

29 e. The approximate number of acres of agricultural land
30 which is owned and operated by the corporation, limited
31 liability company, or limited partnership; the approximate
32 number of acres of agricultural land which is leased by the
33 corporation, limited liability company, limited partnership,
34 or trust as a lessee; the approximate number of acres of
35 agricultural land which is leased from the corporation,

1 limited liability company, limited partnership, or trust as a
2 lessor; and the approximate number of acres of agricultural
3 land which is held in fee and operated by a trust.

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

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

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

14 9H.10 SIGNING REPORTS.

15 Reports by corporations shall be signed by the president or
16 other officer or authorized representative. Reports by
17 limited liability companies shall be signed by a manager or
18 other authorized representative. Reports by limited
19 partnerships shall be signed by the president or other
20 authorized representative of the partnership. Reports by
21 individuals shall be signed by the individual or an authorized
22 representative.

23 Sec. 20. Section 9H.14, Code 1993, is amended to read as
24 follows:

25 9H.14 DUTIES OF SECRETARY OF STATE.

26 The secretary of state shall notify the attorney general
27 when the secretary of state has reason to believe a violation
28 of this chapter has occurred. It is the intent of this
29 section that information shall be made available to members of
30 the general assembly and appropriate committees of the general
31 assembly in order to determine the extent of farming being
32 carried out in this state by corporations and other business
33 entities and the effect of such farming practices upon the
34 economy of this state. The reports of corporations, limited
35 liability companies, limited partnerships, trusts,

1 contractors, and processors required in this chapter shall be
2 confidential reports except as to the attorney general for
3 review and appropriate action when necessary. The secretary
4 of state shall assist any committee of the general assembly
5 existing or established for the purposes of studying the
6 effects of this chapter and the practices this chapter seeks
7 to study and regulate.

8 Sec. 21. Section 490A.124, subsection 1, paragraph u, Code
9 1993, is amended to read as follows:

10 u. Application for certificate of ~~withdrawal~~ cancellation
11 \$ 10

12 Sec. 22. Section 490A.202, Code 1993, is amended by adding
13 the following new subsection:

14 NEW SUBSECTION. 17. a. Except as provided in paragraph
15 "d", indemnify an individual made a party to a proceeding
16 because the individual is or was a member or manager against
17 liability incurred in the proceeding if all of the following
18 apply:

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

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

1 subdivision (b).

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

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

10 (1) In connection with a proceeding by or in the right of
11 the limited liability company in which the member or manager
12 was adjudged liable to the limited liability company.

13 (2) In connection with any other proceeding charging
14 improper personal benefit to the member or manager, whether or
15 not involving action in the member's or manager's official
16 capacity, in which the member or manager was adjudged liable
17 on the basis that personal benefit was improperly received by
18 the member or manager.

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

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

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

28 a. The dissolution and winding up of the limited liability
29 company.

30 b. The sale, exchange, lease, mortgage, pledge, or other
31 transfer of all or substantially all of the assets of the
32 limited liability company other than in the ordinary course of
33 business.

34 c. Merger of the limited liability company with another
35 entity.

1 ~~d.--An-amendment-to-the-articles-of-organization-or~~
2 ~~operating-agreement:~~

3 Sec. 24. Section 490A.701, Code 1993, is amended by adding
4 the following new subsection:

5 NEW SUBSECTION. 3. Unless otherwise provided in the
6 articles of organization or an operating agreement, a
7 unanimous vote shall be required to approve an amendment to
8 the articles of organization or operating agreement.

9 Sec. 25. Section 490A.702, Code 1993, is amended to read
10 as follows:

11 490A.702 MANAGEMENT OF LIMITED LIABILITY COMPANY.

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

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

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

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

34 b. Every manager is an agent of the limited liability
35 company for the purpose of its business or affairs. The act

1 of any manager, including, but not limited to, the execution
2 in the name of the limited liability company of any
3 instrument, for apparently carrying on in the ordinary course
4 the business or affairs of the limited liability company shall
5 bind the limited liability company, unless the manager so
6 acting has, in fact, no authority to act for the limited
7 liability company in the particular matter, and the person
8 with whom the manager is dealing has knowledge of the fact
9 that the manager has no such authority.

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

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

19 Sec. 26. Section 490A.704, Code 1993, is amended to read
20 as follows:

21 490A.704 WITHDRAWAL OF MEMBER.

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

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

34 490A.707 LIMITATION OF LIABILITY OF MANAGERS.

35 The articles of organization may contain a provision

1 eliminating or limiting the personal liability of a manager to
2 the limited liability company or to its members or of the
3 members with whom the management of the limited liability
4 company is vested pursuant to section 490A.702, to the limited
5 liability company or to its members for monetary damages for
6 breach of fiduciary duty as a manager or a member with whom
7 management of the limited liability company is vested, if the
8 provision does not eliminate or limit the liability of a
9 manager or a member with whom management of the limited
10 liability company is vested for any of the following:

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

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

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

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

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

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

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

31 Any one or more limited liability companies of this state
32 may merge with or into one or more foreign limited liability
33 companies, foreign corporations, or foreign limited
34 partnerships, or any one or more foreign limited liability
35 companies, foreign corporations, or foreign limited

1 partnerships may merge with or into any one or more limited
2 liability companies of this state, if all of the following
3 apply:

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

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

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

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

22 Sec. 32. Section 490A.1402, unnumbered paragraph 1, Code
23 1993, is amended to read as follows:

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

30 Sec. 33. Section 490A.1406, unnumbered paragraph 1, Code
31 1993, is amended to read as follows:

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

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

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

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

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

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

14 490A.1516 DISSOLUTION OR LIQUIDATION.

15 Violation of any provision of this subchapter by a
16 professional limited liability company or any of its members
17 or managers shall be cause for its involuntary dissolution, or
18 liquidation of its assets and business by the district court,
19 as provided in section 490A.1302. Upon the death of the last
20 remaining member of a professional limited liability company,
21 or when the last remaining member is not licensed or ceases to
22 be licensed to practice a profession in this state which the
23 professional limited liability company is authorized to
24 practice, or when any person other than the member of record
25 becomes entitled to have all membership interests of the last
26 remaining member of the professional limited liability company
27 transferred into that person's name or to exercise voting
28 rights, except as a proxy, with respect to such membership
29 interests, the professional limited liability company shall
30 not practice any profession and it shall be promptly
31 dissolved. However, if prior to dissolution all outstanding
32 membership interests of the professional limited liability
33 company are acquired by one two or more persons licensed to
34 practice a profession in this state which the professional
35 limited liability company is authorized to practice, the

1 professional limited liability company need not be dissolved
2 and may practice the profession as provided in this
3 subchapter.

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

5 EXPLANATION

6 This bill provides that limited liability companies may own
7 and lease agricultural land to the same extent as
8 corporations. The bill also authorizes a limited liability
9 company to indemnify a member or manager, that unless
10 specified in the articles of organization, every member of a
11 limited liability company is an agent of the company, that the
12 articles of organization may limit or eliminate the liability
13 not only of managers, but members who have been given
14 management duties, and that the articles of organization or
15 operating agreement may provide for the manner in which the
16 limited liability company may continue in operation following
17 the departure of a member.

18 In addition, the bill corrects several technical errors,
19 provides that certain decisions affecting a limited liability
20 company can be made by majority vote of the members instead of
21 unanimous consent, and provides that the articles of
22 organization or an operating agreement may prohibit the
23 withdrawal of a member from a limited liability company.

24 Finally, the bill repeals the complete prohibition on
25 limited liability companies owning or leasing agricultural
26 land.

27
28
29
30
31
32
33
34
35

HSB 136

Judiciary & Law Enforcement

Hurley, Chair
Martin
Brammer

HOUSE FILE 327
BY (PROPOSED COMMITTEE ON
JUDICIARY AND LAW
ENFORCEMENT BILL BY
CHAIRPERSON McNEAL)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to limited liability companies.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

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

3 1. "Actively engaged in farming" means that a natural
4 person who is a shareholder and an officer, director or
5 employee of the corporation or who is a member or manager of
6 the limited liability company either:

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

9 NEW SUBSECTION. 3A. "Authorized limited liability
10 company" means a limited liability company other than a family
11 farm limited liability company founded for the purpose of
12 farming and the ownership of agricultural land in which all of
13 the following apply:

14 a. The members do not exceed twenty-five in number.

15 b. The members are all natural persons or persons acting
16 in a fiduciary capacity for the benefit of natural persons or
17 nonprofit corporations.

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

20 5. ~~The term "beneficial"~~ Beneficial ownership" includes
21 interests held by a nonresident alien individual directly or
22 indirectly holding or acquiring a ten percent or greater share
23 in the partnership, limited partnership, corporation, limited
24 liability company, or trust, or directly or indirectly through
25 two or more such entities. In addition, the term beneficial
26 ownership shall include interests held by all nonresident
27 alien individuals if the nonresident alien individuals in the
28 aggregate directly or indirectly hold or acquire twenty-five
29 percent or more of the partnership, limited partnership,
30 corporation, limited liability company, or trust.

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

33 NEW SUBSECTION. 8A. "Family farm limited liability
34 company" means a limited liability company which meets all of
35 the following conditions:

1 a. The limited liability company is founded for the
2 purpose of farming and the ownership of agricultural land in
3 which the majority of the members are persons related to each
4 other as spouse, parent, grandparent, lineal ascendants of
5 grandparents or their spouses and other lineal descendants of
6 the grandparents or their spouses, or persons acting in a
7 fiduciary capacity for persons so related.

8 b. All of the members of the limited liability company are
9 natural persons or persons acting in a fiduciary capacity for
10 the benefit of natural persons or family trusts.

11 c. Sixty percent of the gross revenues of the limited
12 liability company over the last consecutive three-year period
13 comes from farming.

14 Sec. 5. Section 9H.1, Code 1993, is amended by adding the
15 following new subsection:

16 NEW SUBSECTION. 13A. "Limited liability company" means a
17 limited liability company as defined in section 490A.102,
18 subsection 10 or 13, which owns or leases agricultural land or
19 is engaged in farming.

20 Sec. 6. Section 9H.2, unnumbered paragraph 1, Code 1993,
21 is amended to read as follows:

22 In order to preserve free and private enterprise, prevent
23 monopoly, and protect consumers, it is unlawful for any
24 processor of beef or pork or limited partnership in which a
25 processor holds partnership shares as a general partner or
26 partnership shares as a limited partner, or limited liability
27 company in which a processor is a member, to own, control or
28 operate a feedlot in Iowa in which hogs or cattle are fed for
29 slaughter. In addition, a processor shall not directly or
30 indirectly control the manufacturing, processing, or
31 preparation for sale of pork products derived from swine if
32 the processor contracted for the care and feeding of the swine
33 in this state. However, this section does not apply to a
34 cooperative association organized under chapter 497, 498, or
35 499, if the cooperative association contracts for the care and

1 feeding of swine with a member of the cooperative association
2 who is actively engaged in farming. This section does not
3 apply to an association organized as a cooperative in which
4 another cooperative association organized under chapter 497,
5 498, or 499 is a member, if the association contracts with a
6 member which is a cooperative association organized under
7 chapter 497, 498, or 499, which contracts for the care and
8 feeding of swine with a member of the cooperative who is
9 actively engaged in farming. This section shall not preclude
10 a processor, or limited partnership, or limited liability
11 company from contracting for the purchase of hogs or cattle,
12 provided that where the contract sets a date for delivery
13 which is more than twenty days after the making of the
14 contract it shall:

15 Sec. 7. Section 9H.2, subsection 2, Code 1993, is amended
16 to read as follows:

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

30 Sec. 8. Section 9H.4, unnumbered paragraph 1, Code 1993,
31 is amended to read as follows:

32 No A corporation, limited liability company, or trust,
33 other than a family farm corporation, authorized farm
34 corporation, family farm limited liability company, authorized
35 limited liability company, family trust, authorized trust or

1 testamentary trust shall not, either directly or indirectly,
2 acquire or otherwise obtain or lease any agricultural land in
3 this state. However, the restrictions provided in this
4 section shall not apply to the following:

5 Sec. 9. Section 9H.4, subsection 2, paragraph a, Code
6 1993, is amended to read as follows:

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

16 Sec. 10. Section 9H.4, subsection 2, paragraph c, Code
17 1993, is amended to read as follows:

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

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

35 (2) A term or condition of sale, including resale, of

1 breeding stock must not relate to the direct or indirect
2 control by the corporation or limited liability company of the
3 breeding stock or breeding stock progeny subsequent to the
4 sale.

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

8 (4) The corporation or limited liability company must
9 deliver a copy of the lease to the secretary of state. The
10 secretary of state shall notify the lessee of receipt of the
11 copy of the lease. However, this subparagraph does not apply
12 to a domestic corporation organized under chapter 504 or 504A.

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

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

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

27 Sec. 12. Section 9H.4, subsection 5, Code 1993, is amended
28 to read as follows:

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

35 Sec. 13. Section 9H.4, subsection 8, Code 1993, is amended

1 to read as follows:

2 8. A corporation or its subsidiary organized under chapter
3 490 or a limited liability company organized under chapter
4 490A and to which section 312.8 is applicable.

5 Sec. 14. Section 9H.4, unnumbered paragraph 2, Code 1993,
6 is amended to read as follows:

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

19 Sec. 15. Section 9H.5, subsection 1, unnumbered paragraph
20 1, Code 1993, is amended to read as follows:

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

31 Sec. 16. Section 9H.5, subsection 2, Code 1993, is amended
32 to read as follows:

33 2. A person shall not, after July 1, 1988, become a
34 stockholder of an authorized farm corporation, a beneficiary
35 of an authorized trust, member of an authorized limited

1 liability company, or a limited partner in a limited
2 partnership which owns or leases agricultural land if the
3 person is also any of the following:

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

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

11 Sec. 17. Section 9H.5, subsection 3, paragraph a, Code
12 1993, is amended to read as follows:

13 a. An authorized farm corporation, authorized trust,
14 authorized limited liability company, or limited partnership
15 violating this section shall be assessed a civil penalty of
16 not more than twenty-five thousand dollars and shall divest
17 itself of any land held in violation of this section within
18 one year after judgment. A civil penalty of not more than one
19 thousand dollars may be imposed on a person who becomes a
20 stockholder of an authorized farm corporation, beneficiary of
21 an authorized trust, member of an authorized limited liability
22 company, or limited partner in a limited partnership in
23 violation of this section. The person shall divest the
24 interest held by the person in the corporation, trust, limited
25 liability company, or limited partnership to comply with this
26 section. The court may determine the method of divesting an
27 interest held by a person found to be in violation of this
28 chapter. A financial gain realized by a person who disposes
29 of an interest held in violation of this chapter shall be
30 forfeited to the state's general fund. All court costs and
31 fees shall be paid by the person holding the interest in
32 violation of this chapter.

33 Sec. 18. Section 9H.5A, subsection 2, Code 1993, is
34 amended by adding the following new paragraph:

35 NEW PARAGRAPH. d. A person who is a member, manager, or

1 authorized representative of a limited liability company,
2 other than a family farm limited liability company, including
3 an authorized limited liability company, owning or leasing
4 agricultural land or engaged in farming in this state.

5 Sec. 19. Section 9H.5A, subsection 3, Code 1993, is
6 amended to read as follows:

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

15 a. Whether the reporting entity represents a corporation,
16 trust, limited liability company, or limited partnership. If
17 the reporting entity represents a corporation or limited
18 liability company the report shall specify if the corporation
19 or limited liability company is foreign or domestic, profit or
20 nonprofit, or an authorized farm corporation or authorized
21 limited liability company. If the reporting entity represents
22 a trust the report shall specify if the trust is an authorized
23 trust.

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

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

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

35 e. The approximate number of acres of agricultural land

1 which is owned and operated by the corporation, limited
2 liability company, or limited partnership; the approximate
3 number of acres of agricultural land which is leased by the
4 corporation, limited liability company, limited partnership,
5 or trust as a lessee; the approximate number of acres of
6 agricultural land which is leased from the corporation,
7 limited liability company, limited partnership, or trust as a
8 lessor; and the approximate number of acres of agricultural
9 land which is held in fee and operated by a trust.

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

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

18 Sec. 20. Section 9H.10, Code 1993, is amended to read as
19 follows:

20 9H.10 SIGNING REPORTS.

21 Reports by corporations shall be signed by the president or
22 other officer or authorized representative. Reports by
23 limited liability companies shall be signed by a manager or
24 other authorized representative. Reports by limited
25 partnerships shall be signed by the president or other
26 authorized representative of the partnership. Reports by
27 individuals shall be signed by the individual or an authorized
28 representative.

29 Sec. 21. Section 9H.14, Code 1993, is amended to read as
30 follows:

31 9H.14 DUTIES OF SECRETARY OF STATE.

32 The secretary of state shall notify the attorney general
33 when the secretary of state has reason to believe a violation
34 of this chapter has occurred. It is the intent of this
35 section that information shall be made available to members of

1 the general assembly and appropriate committees of the general
2 assembly in order to determine the extent of farming being
3 carried out in this state by corporations and other business
4 entities and the effect of such farming practices upon the
5 economy of this state. The reports of corporations, limited
6 liability companies, limited partnerships, trusts,
7 contractors, and processors required in this chapter shall be
8 confidential reports except as to the attorney general for
9 review and appropriate action when necessary. The secretary
10 of state shall assist any committee of the general assembly
11 existing or established for the purposes of studying the
12 effects of this chapter and the practices this chapter seeks
13 to study and regulate.

14 Sec. 22. Section 490A.124, subsection 1, paragraph u, Code
15 1993, is amended to read as follows:

16 u. Application for certificate of ~~withdrawal~~ cancellation
17 \$ 10

18 Sec. 23. Section 490A.202, Code 1993, is amended by adding
19 the following new subsection:

20 NEW SUBSECTION. 17. a. Except as provided in paragraph
21 "d", indemnify an individual made a party to a proceeding
22 because the individual is or was a member or manager against
23 liability incurred in the proceeding if all of the following
24 apply:

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

1 was unlawful.

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

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

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

16 (1) In connection with a proceeding by or in the right of
17 the limited liability company in which the member or manager
18 was adjudged liable to the limited liability company.

19 (2) In connection with any other proceeding charging
20 improper personal benefit to the member or manager, whether or
21 not involving action in the member's or manager's official
22 capacity, in which the member or manager was adjudged liable
23 on the basis that personal benefit was improperly received by
24 the member or manager.

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

29 Sec. 24. Section 490A.701, subsection 2, Code 1993, is
30 amended to read as follows:

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

34 a. The dissolution and winding up of the limited liability
35 company.

1 b. The sale, exchange, lease, mortgage, pledge, or other
2 transfer of all or substantially all of the assets of the
3 limited liability company other than in the ordinary course of
4 business.

5 c. Merger of the limited liability company with another
6 entity.

7 ~~d. An amendment to the articles of organization or~~
8 ~~operating agreement.~~

9 Sec. 25. Section 490A.701, Code 1993, is amended by adding
10 the following new subsection:

11 NEW SUBSECTION. 3. Unless otherwise provided in the
12 articles of organization or an operating agreement, a
13 unanimous vote shall be required to approve an amendment to
14 the articles of organization or operating agreement.

15 Sec. 26. Section 490A.702, Code 1993, is amended to read
16 as follows:

17 490A.702 MANAGEMENT OF LIMITED LIABILITY COMPANY.

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

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

35 3. If the articles of organization provide that management

1 of the limited liability company is vested in a manager or
2 managers the following apply:

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

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

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

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

25 Sec. 27. Section 490A.704, Code 1993, is amended to read
26 as follows:

27 490A.704 WITHDRAWAL OF MEMBER.

28 A member may withdraw from a limited liability company at
29 the time or upon the happening of events specified in writing
30 in the articles of organization or an operating agreement. If
31 the articles of organization or an operating agreement does
32 not specify in writing the time or the events upon the
33 happening of which a member may withdraw, a member may
34 withdraw upon not less than six months' prior written notice
35 to each member at the member's address on the books of the

1 limited liability company. The articles of organization or an
2 operating agreement may prohibit withdrawal by a member.

3 Sec. 28. Section 490A.707, Code 1993, is amended to read
4 as follows:

5 490A.707 LIMITATION OF LIABILITY OF MANAGERS.

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

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

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

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

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

29 Sec. 29. Section 490A.1203, subsection 2, paragraph a,
30 Code 1993, is amended to read as follows:

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

35 Sec. 30. Section 490A.1206, subsection 1, unnumbered

1 paragraph 1, Code 1993, is amended to read as follows:

2 Any one or more limited liability companies of this state
3 may merge with or into one or more foreign limited liability
4 companies, foreign corporations, or foreign limited
5 partnerships, or any one or more foreign limited liability
6 companies, foreign corporations, or foreign limited
7 partnerships may merge with or into any one or more limited
8 liability companies of this state, if all of the following
9 apply:

10 Sec. 31. Section 490A.1301, subsection 1, Code 1993, is
11 amended to read as follows:

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

15 Sec. 32. Section 490A.1301, subsection 3, Code 1993, is
16 amended to read as follows:

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

28 Sec. 33. Section 490A.1402, unnumbered paragraph 1, Code
29 1993, is amended to read as follows:

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

1 Sec. 34. Section 490A.1406, unnumbered paragraph 1, Code
2 1993, is amended to read as follows:

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

7 Sec. 35. Section 490A.1407, subsection 2, paragraph b,
8 Code 1993, is amended to read as follows:

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

12 Sec. 36. Section 490A.1410, subsection 1, unnumbered
13 paragraph 1, Code 1993, is amended to read as follows:

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

18 Sec. 37. Section 490A.1516, Code 1993, is amended to read
19 as follows:

20 490A.1516 DISSOLUTION OR LIQUIDATION.

21 Violation of any provision of this subchapter by a
22 professional limited liability company or any of its members
23 or managers shall be cause for its involuntary dissolution, or
24 liquidation of its assets and business by the district court,
25 as provided in section 490A.1302. Upon the death of the last
26 remaining member of a professional limited liability company,
27 or when the last remaining member is not licensed or ceases to
28 be licensed to practice a profession in this state which the
29 professional limited liability company is authorized to
30 practice, or when any person other than the member of record
31 becomes entitled to have all membership interests of the last
32 remaining member of the professional limited liability company
33 transferred into that person's name or to exercise voting
34 rights, except as a proxy, with respect to such membership
35 interests, the professional limited liability company shall

1 not practice any profession and it shall be promptly
2 dissolved. However, if prior to dissolution all outstanding
3 membership interests of the professional limited liability
4 company are acquired by ~~one~~ two or more persons licensed to
5 practice a profession in this state which the professional
6 limited liability company is authorized to practice, the
7 professional limited liability company need not be dissolved
8 and may practice the profession as provided in this
9 subchapter.

10

EXPLANATION

11 This bill provides that limited liability companies may own
12 and lease agricultural land to the same extent as
13 corporations. The bill also authorizes a limited liability
14 company to indemnify a member or manager, that unless
15 specified in the articles of organization, every member of a
16 limited liability company is an agent of the company, that the
17 articles of organization may limit or eliminate the liability
18 not only of managers, but members who have been given
19 management duties, and that the articles of organization or
20 operating agreement may provide for the manner in which the
21 limited liability company may continue in operation following
22 the departure of a member.

23 In addition, the bill corrects several technical errors,
24 provides that certain decisions affecting a limited liability
25 company can be made by majority vote of the members instead of
26 unanimous consent, and provides that the articles of
27 organization or an operating agreement may prohibit the
28 withdrawal of a member from a limited liability company.

29

30

31

32

33

34

35

HOUSE FILE 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.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 327, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 26, 1993

TERRY E. BRANSTAD
Governor

HF 327