

House File 2478 - Introduced

HOUSE FILE 2478
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 714)

A BILL FOR

1 An Act relating to business organizations, including limited
2 liability companies and business corporations, and providing
3 for fees.

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

1 DIVISION I
2 LIMITED LIABILITY COMPANIES

3 Section 1. Section 489.102, subsection 20, Code 2009, is
4 amended to read as follows:

5 20. *“Registered office”* means ~~any of the following:~~

6 ~~a. The~~ the office that a limited liability company or
7 foreign limited liability company is required to designate and
8 maintain under section 489.113.

9 ~~b. The principal office of a foreign limited liability~~
10 ~~company.~~

11 Sec. 2. Section 489.113, Code 2009, is amended to read as
12 follows:

13 **489.113 Registered office and registered agent for service**
14 **of process.**

15 ~~1. A limited liability company or a foreign limited~~
16 liability company that has a certificate of authority under
17 section 489.802 shall designate and continuously maintain in
18 this state all of the following:

19 ~~a. 1.~~ A registered office, which need not be a place of its
20 activity in this state.

21 ~~b. 2.~~ A registered agent for service of process, who may
22 be any of the following:

23 a. An individual who resides in this state and whose
24 business office is identical with the registered office.

25 b. A domestic corporation, limited liability company, or
26 not-for-profit domestic corporation whose business office is
27 identical with the registered office.

28 c. A foreign corporation, foreign limited liability company,
29 or not-for-profit foreign corporation authorized to transact
30 business in this state whose business office is identical with
31 the registered office.

32 ~~2. A foreign limited liability company that has a~~
33 ~~certificate of authority under section 489.802 shall designate~~
34 ~~and continuously maintain in this state a registered agent for~~
35 ~~service of process.~~

1 ~~3. A registered agent for service of process of a limited~~
2 ~~liability company or foreign limited liability company must be~~
3 ~~an individual who is a resident of this state or other person~~
4 ~~with authority to transact business in this state.~~

5 Sec. 3. Section 489.114, Code 2009, is amended to read as
6 follows:

7 **489.114 Change of registered office or registered agent for**
8 **service of process.**

9 1. A limited liability company or foreign limited liability
10 company may change its registered office, or its registered
11 agent for service of process, ~~or the address of its registered~~
12 ~~agent for service of process~~ by delivering to the secretary of
13 state for filing a statement of change containing that sets
14 forth all of the following:

15 a. The name of the company.

16 ~~b. The street and mailing addresses of its current~~
17 ~~registered office.~~

18 ~~e. b.~~ If the current registered office is to be changed,
19 the street and mailing addresses of the new registered office.

20 c. If the current registered agent is to be changed, the
21 name of the new registered agent and the new agent's consent to
22 the appointment. The agent's consent may be on the statement
23 or attached to it.

24 ~~d. The name and street and mailing addresses of its current~~
25 ~~registered agent for service of process~~ That after the change
26 or changes are made, the street address of its registered
27 office and the business office of its registered agent will be
28 identical.

29 ~~e. If the current registered agent for service of process~~
30 ~~or an address of the registered agent is to be changed, the new~~
31 ~~information.~~

32 2. If a registered agent changes the street address of
33 the registered agent's business office, the registered agent
34 may change the street address of the registered office of any
35 limited liability company or foreign limited liability company

1 for which the person is the registered agent by notifying the
2 limited liability company or foreign limited liability company
3 in writing of the change and signing, either manually or in
4 facsimile, and delivering to the secretary of state for filing
5 a statement that complies with the requirements of subsection
6 1 and recites that the limited liability company or foreign
7 limited liability company has been notified of the change.

8 3. If a registered agent changes the registered agent's
9 business address to another place, the registered agent may
10 change the business address and the address of the registered
11 agent by filing a statement as required by subsection 2 for
12 each limited liability company or foreign limited liability
13 company, or a single statement of all limited liability
14 companies or all foreign limited liability companies named
15 in the notice, except that it need be signed only by the
16 registered agent and need not include the name of the new
17 registered agent and need not be responsive to subsection 1,
18 paragraph "c", and must recite that a copy of the statement
19 has been mailed to each limited liability company or foreign
20 limited liability company named in the notice.

21 4. A limited liability company or foreign limited liability
22 company may also change its registered office or registered
23 agent in its biennial report as provided in section 489.209.

24 5. Subject to section 489.205, subsection 3, a statement of
25 change is effective when filed by the secretary of state.

26 **Sec. 4. Section 489.115, Code 2009, is amended by striking**
27 **the section and inserting in lieu thereof the following:**

28 **489.115 Resignation of registered agent for service of**
29 **process.**

30 **1. A registered agent may resign an agency appointment by**
31 **signing and delivering to the secretary of state for filing the**
32 **signed original statement of resignation. The statement of**
33 **resignation may include a statement that the registered office**
34 **is also discontinued. The registered agent shall send a copy**
35 **of the statement of resignation by registered or certified**

1 mail, return receipt requested, to the limited liability
2 company or foreign limited liability company at its principal
3 office and to the registered office, if not discontinued. The
4 registered agent shall certify to the secretary of state that
5 the copies have been sent to the limited liability company
6 or foreign limited liability company, including the date the
7 copies were sent.

8 2. The agency appointment is terminated, and the registered
9 office discontinued if so provided, on the date on which the
10 statement was filed.

11 Sec. 5. Section 489.116, Code 2009, is amended to read as
12 follows:

13 **489.116 Service of process.**

14 1. A limited liability company's or foreign limited
15 liability company's registered agent ~~for service of process~~
16 ~~appointed by a limited liability company or foreign limited~~
17 ~~liability company is an~~ is the company's agent of the
18 company for service of any process, notice, or demand required
19 or permitted by law to be served on the company.

20 2. If a limited liability company or foreign limited
21 liability company has no registered agent, or the agent
22 cannot with reasonable diligence be served, the ~~limited~~
23 ~~liability~~ company may be served by registered or certified
24 mail, return receipt requested, addressed to the ~~limited~~
25 ~~liability~~ company at its principal office. Service is
26 perfected at the earliest of any of the following:

27 ~~3. Service is effected under subsection 2 at the earliest~~
28 ~~of any of the following:~~

29 a. The date the limited liability company or foreign limited
30 liability company receives the ~~process, notice, or demand~~ mail.

31 b. The date shown on the return receipt, if signed on behalf
32 of the company.

33 c. Five days after ~~the process, notice, or demand is~~
34 ~~deposited with its deposit in~~ the United States postal service,
35 if mail, as evidenced by the postmark, if mailed postpaid

1 and correctly addressed and with sufficient postage.

2 4. ~~This section does not affect the right to serve process,~~
3 ~~notice, or demand in any other manner provided by law. A~~
4 limited liability company or foreign limited liability company
5 may be served pursuant to this section, as provided in another
6 provision of this chapter, or as provided in sections 617.3
7 through 617.6, unless the manner of service is otherwise
8 specifically provided for by another provision of law.

9 Sec. 6. Section 489.117, subsection 1, paragraphs e and f,
10 Code 2009, are amended by striking the paragraphs.

11 Sec. 7. Section 489.117, Code 2009, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 4. The secretary of state may impose,
14 assess, and collect a filing fee as a condition to accepting a
15 biennial report as provided in section 489.209.

16 Sec. 8. Section 489.201, subsection 2, paragraph b, Code
17 2009, is amended to read as follows:

18 b. The street ~~and mailing addresses~~ address of the
19 initial registered office and the name ~~and street and mailing~~
20 ~~addresses~~ of the initial registered agent for service of
21 process ~~of~~ on the company.

22 Sec. 9. Section 489.208, subsection 1, paragraph b, Code
23 2009, is amended to read as follows:

24 b. That the company was duly formed under the laws of this
25 state, ~~and~~ the date of its formation, and the period of its
26 duration if less than perpetual.

27 Sec. 10. Section 489.209, Code 2009, is amended to read as
28 follows:

29 **489.209 Biennial report for secretary of state.**

30 1. A limited liability company or a foreign limited
31 liability company authorized to transact business in this state
32 shall deliver to the secretary of state for filing a biennial
33 report that states all of the following:

34 a. The name of the company.

35 b. The street ~~and mailing addresses~~ address of the company's

1 registered office, ~~and the name and street and mailing~~
2 ~~addresses~~ of its registered agent ~~for service of process~~
3 ~~in this state~~ at that office, and the consent of any new
4 registered agent.

5 c. ~~The street and mailing addresses~~ address of its principal
6 office.

7 d. In the case of a foreign limited liability company, the
8 state or other jurisdiction under whose law the company is
9 formed and any alternate name adopted under section 489.805,
10 subsection 1.

11 2. Information in a biennial report under this section
12 must be current as of the date the report is delivered to the
13 secretary of state for filing. The report shall be executed
14 on behalf of the limited liability company or foreign limited
15 liability company and signed as provided in section 489.203.

16 3. The first biennial report under this section must be
17 delivered to the secretary of state between January 1 and
18 April 1 of the first odd-numbered year following the calendar
19 year in which a limited liability company was formed or a
20 foreign limited liability company was authorized to transact
21 business. A subsequent biennial report must be delivered
22 to the secretary of state between January 1 and April 1 of
23 each following odd-numbered calendar year. A filing fee for
24 the biennial report shall be determined by the secretary of
25 state pursuant to section 489.117. Each biennial report shall
26 contain information related to the two-year period immediately
27 preceding the calendar year in which the report is filed.

28 4. If a biennial report ~~under this section~~ does not contain
29 the information required in ~~subsection 1~~ this section, the
30 secretary of state shall promptly notify the reporting limited
31 liability company or foreign limited liability company in
32 writing and return the report to it for correction. ~~If the~~
33 ~~report is corrected to contain the information required in~~
34 ~~subsection 1 and delivered to the secretary of state within~~
35 ~~thirty days after the effective date of the notice, it is~~

1 ~~timely delivered.~~

2 5. ~~If a biennial report under this section contains an~~
3 ~~address of a registered office or the name or address of a~~
4 ~~registered agent for service of process which differs from the~~
5 ~~information shown in the records of the secretary of state~~
6 ~~immediately before the biennial report becomes effective, the~~
7 ~~differing information in the biennial report is considered~~
8 ~~a statement of change under section 489.114. The secretary~~
9 ~~of state may provide for the change of registered office or~~
10 ~~registered agent on the form prescribed by the secretary of~~
11 ~~state for the biennial report, provided that the form contains~~
12 ~~the information required in section 489.114. If the secretary~~
13 ~~of state determines that a biennial report does not contain the~~
14 ~~information required in this section but otherwise meets the~~
15 ~~requirements of section 489.114 for the purpose of changing~~
16 ~~the registered office or registered agent, the secretary of~~
17 ~~state shall file the statement of change for the registered~~
18 ~~office or registered agent, effective as provided in section~~
19 ~~489.205, subsection 3, before returning the biennial report to~~
20 ~~the limited liability company as provided in this section. A~~
21 ~~statement of change of registered office or registered agent~~
22 ~~accomplished pursuant to this subsection shall be executed by a~~
23 ~~person authorized to execute the biennial report.~~

24 Sec. 11. Section 489.302, subsection 1, paragraph a, Code
25 Supplement 2009, is amended to read as follows:

26 a. It must include the name of the company and the street
27 ~~and mailing addresses~~ address of its registered principal
28 office.

29 Sec. 12. Section 489.302, subsection 2, paragraph b, Code
30 Supplement 2009, is amended to read as follows:

31 b. The street ~~and mailing addresses~~ address of the company's
32 registered principal office.

33 Sec. 13. Section 489.303, Code 2009, is amended by adding
34 the following new subsection:

35 NEW SUBSECTION. 3. Certifies to the secretary of state that

1 the person denying authority has sent a copy of the statement
2 of denial to the limited liability company, including the date
3 on which the copy was sent.

4 Sec. 14. Section 489.705, subsection 1, Code 2009, is
5 amended to read as follows:

6 1. The secretary of state may commence a proceeding under
7 this section to administratively dissolve a limited liability
8 company administratively, ~~if the company does not do~~ any of the
9 following apply:

10 a. ~~Pay,~~ The limited liability company has not delivered
11 a biennial report to the secretary of state in a form that
12 meets the requirements of 489.209 within sixty days after it is
13 due, or has not paid within sixty days after the due date, any
14 fee, tax, or penalty due to the secretary of state under this
15 chapter or law other than this chapter.

16 b. ~~Deliver, within sixty days after the due date, its~~
17 ~~biennial report to the secretary of state.~~ The limited
18 liability company is without a registered office or registered
19 agent in this state for sixty days or more.

20 c. The limited liability company does not notify the
21 secretary of state within sixty days that its registered agent
22 or registered office has been changed, that its registered
23 agent has resigned, or that its registered office has been
24 discontinued.

25 d. The limited liability company's period of duration stated
26 in its certificate of organization has expired.

27 Sec. 15. Section 489.802, subsection 1, paragraph d, Code
28 2009, is amended to read as follows:

29 d. ~~The name and street and mailing addresses of the~~
30 ~~company's initial registered agent for service of process in~~
31 ~~this state.~~

32 Sec. 16. Section 489.806, subsection 1, paragraphs c and d,
33 Code 2009, are amended to read as follows:

34 c. ~~Appoint and maintain a registered agent for service of~~
35 ~~process and registered office~~ as required by section 489.113,

1 ~~subsection~~ subsections 1 and 2.

2 *d.* Deliver for filing a statement of a change under section
3 489.114 within thirty days after a change has occurred in the
4 ~~name or address of the~~ of its registered agent or the address
5 of its registered office.

6 Sec. 17. Section 489.806, subsection 2, unnumbered
7 paragraph 1, Code 2009, is amended to read as follows:

8 To revoke a certificate of authority of a foreign limited
9 liability company, the secretary of state must prepare,
10 sign, and file a notice of revocation and send a copy to
11 the company's registered agent for service of process in
12 this state, or if the company does not appoint and maintain
13 a proper registered agent in this state, to the company's
14 ~~registered~~ principal office. The notice must state all of the
15 following:

16 DIVISION II

17 BUSINESS CORPORATIONS

18 Sec. 18. Section 490.1420, subsection 1, Code 2009, is
19 amended to read as follows:

20 1. The corporation has not delivered a biennial report to
21 the secretary of state in a form that meets the requirements of
22 section 490.1622, within sixty days after it is due, or has not
23 ~~paid the filing fee as determined by any fee, tax, or penalty~~
24 due to the secretary of state under this chapter or law other
25 than this chapter, within sixty days after it is due.

26 Sec. 19. Section 490.1622, subsection 2, Code 2009, is
27 amended to read as follows:

28 2. Information in the biennial report must be current as
29 ~~of the first day of January of the year in which the report~~
30 ~~is due~~ the date the report is delivered to the secretary of
31 state for filing. The report shall be executed on behalf of
32 the corporation and signed as provided in section 490.120 or by
33 any other person authorized by the board of directors of the
34 corporation.

35 EXPLANATION

1 DIVISION I — LIMITED LIABILITY COMPANIES. This bill amends
2 provisions regulating the formation and management of a limited
3 liability company (LLC) under Code chapter 489.

4 REGISTERED OFFICES AND REGISTERED AGENTS. The bill provides
5 that a registered office is the same for an LLC regardless of
6 whether it is formed in this state or in another jurisdiction.
7 In both cases an LLC must have a certificate of organization
8 (Code section 489.201) or a certificate of authority (Code
9 section 489.802) to do business in the state, and must
10 designate a registered office and name a registered agent for
11 purposes of accepting service of process in a court action
12 (Code sections 489.113 and 489.116). The bill provides that in
13 both cases a registered agent must be an individual who resides
14 in the state, or a business organized in this state or another
15 state, and maintain a business office which is the company's
16 registered office.

17 CHANGES IN A REGISTERED OFFICE OR REGISTERED AGENT. The
18 bill provides for changes in an LLC's registered office or
19 registered agent (Code section 489.114), provided that the
20 street address of its registered office and the business
21 office of its registered agent will be identical. It also
22 requires a registered agent to notify the secretary of state
23 and the LLC of any change in address. Likewise, the bill
24 provides that an LLC must notify the secretary of state of any
25 change in its registered office or its registered agent (Code
26 section 489.114). The LLC may notify the secretary of state by
27 filing a statement of change or by filing its biennial report
28 (Code section 489.209). The bill provides procedures for a
29 registered agent to resign by providing notice to the secretary
30 of state and the LLC (Code section 489.115).

31 SERVICE OF PROCESS. The bill provides that service of
32 process may be accomplished by mail to the LLC's principal
33 business office, and provides that service is delivered when
34 the LLC receives the mail, on the date shown on any signed
35 return receipt, or five days after its deposit in the United

1 States mail (Code section 489.116). Service may also be
2 accomplished in any other manner specified in law.

3 FEES. The bill amends provisions for the imposition of fees
4 (Code section 489.117). It eliminates references to filing
5 applications which are not provided for in the Code chapter and
6 for which no fee is assessed. It also allows the secretary of
7 state to impose and collect filing fees for biennial reports.

8 AUTHORIZATIONS. The bill requires that an LLC's certificate
9 of authority state its duration if less than perpetual (Code
10 section 489.208). The bill provides that a person who denies
11 authority to act on behalf of the LLC by filing a statement of
12 denial (Code section 489.303), must notify the LLC and certify
13 to the secretary of state that the notice was accomplished.

14 ADMINISTRATIVE DISSOLUTION. The bill amends provisions
15 allowing the secretary of state to provide for the
16 administrative dissolution of an LLC (Code section 489.705).
17 The bill provides that grounds for such an action include
18 the LLC's failure to deliver a biennial report, to have
19 a registered office or registered agent or to notify the
20 secretary of change in a registered office or registered agent,
21 or the LLC's duration expires.

22 DIVISION II — BUSINESS CORPORATIONS. The bill amends
23 provisions regulating the formation and management of business
24 corporations under Code chapter 490.

25 ADMINISTRATIVE DISSOLUTION. The bill amends provisions
26 allowing the secretary of state to provide for the
27 administrative dissolution of a business corporation (Code
28 section 490.1420). The bill provides that one cause for such
29 dissolution is the failure of the corporation to pay the
30 secretary of state any fee, tax, or penalty due under state
31 statute.

32 BIENNIAL REPORT. The bill provides that a biennial report
33 required to be filed with the secretary of state (Code section
34 490.1622), must be current on the date that it is delivered to
35 the secretary of state.