

Senate File 2054 - Introduced

SENATE FILE 2054

BY WEBSTER

A BILL FOR

1 An Act eliminating requirements providing for the payment of an
2 outstanding tax liability by dissolved business entities as
3 a condition to reinstatement.

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

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DIVISION I

LIMITED LIABILITY COMPANIES

Section 1. Section 489.710, subsections 1 and 2, Code 2024, are amended to read as follows:

1. A limited liability company administratively dissolved under [section 489.708](#) may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

a. State the name of the limited liability company at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution either did not exist or have been eliminated.

c. If the application is received more than five years after the effective date of the dissolution, state a name that satisfies the requirements of [section 489.112](#).

~~d. State the federal tax identification number of the limited liability company.~~

~~2. a. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of workforce development. The department of workforce development shall report to the secretary of state the tax status of the limited liability company. If the department reports to the secretary of state that a filing delinquency or liability exists against the company, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.~~

~~b. (1)~~ 2. a. If the secretary of state determines that the application contains the information required by subsection 1, and ~~that a delinquency or liability reported pursuant to paragraph "a" has been satisfied,~~ and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement

1 that recites the secretary of state's determination and the
2 effective date of reinstatement, file the certificate of
3 reinstatement, and deliver a copy to the limited liability
4 company under [section 489.119](#).

5 (2) b. If the limited liability company's name in
6 subsection 1, paragraph "c", is different from the name in
7 subsection 1, paragraph "a", the certificate of reinstatement
8 shall constitute an amendment to the company's certificate of
9 organization insofar as it pertains to its name. A company
10 shall not relinquish the right to retain its name if the
11 reinstatement is effective within five years of the effective
12 date of the company's dissolution.

13 DIVISION II

14 BUSINESS CORPORATIONS

15 Sec. 2. Section 490.1422, subsections 1 and 2, Code 2024,
16 are amended to read as follows:

17 1. A corporation administratively dissolved under section
18 490.1421 may apply to the secretary of state for reinstatement
19 at any time after the effective date of dissolution. The
20 application must meet all of the following requirements:

21 a. State the name of the corporation at its date of
22 dissolution and the effective date of its administrative
23 dissolution.

24 b. State that the ground or grounds for dissolution either
25 did not exist or have been eliminated.

26 c. If the application is received more than five years after
27 the effective date of dissolution, state a corporate name that
28 satisfies the requirements of [section 490.401](#).

29 ~~d. State the federal tax identification number of the~~
30 ~~corporation.~~

31 ~~2. a. The secretary of state shall refer the federal~~
32 ~~tax identification number contained in the application for~~
33 ~~reinstatement to the department of workforce development. The~~
34 ~~department shall report to the secretary of state the tax~~
35 ~~status of the corporation. If the department reports to the~~

1 ~~secretary of state that a filing delinquency or liability~~
2 ~~exists against the corporation, the secretary of state shall~~
3 ~~not cancel the certificate of dissolution until the filing~~
4 ~~delinquency or liability is satisfied.~~

5 ~~b.~~ (1) 2. a. If the secretary of state determines that
6 the application contains the information required by subsection
7 1, ~~and that a delinquency or liability reported pursuant to~~
8 ~~paragraph "a" has been satisfied,~~ and that the information is
9 correct, the secretary of state shall cancel the certificate
10 of dissolution and prepare a certificate of reinstatement
11 that recites the secretary of state's determination and the
12 effective date of reinstatement, file the certificate of
13 reinstatement, and deliver a copy to the corporation under
14 section 490.504.

15 (2) b. If the corporate name in [subsection 1](#), paragraph
16 "c", is different from the corporate name in subsection
17 1, paragraph "a", the certificate of reinstatement shall
18 constitute an amendment to the articles of incorporation
19 insofar as it pertains to the corporate name. A corporation
20 shall not relinquish the right to retain its corporate name
21 if the reinstatement is effective within five years of the
22 effective date of the corporation's dissolution.

23 DIVISION III

24 CLOSED COOPERATIVES

25 Sec. 3. Section 501.813, subsections 1 and 2, Code 2024, are
26 amended to read as follows:

27 1. A cooperative administratively dissolved under section
28 501.812 may apply to the secretary of state for reinstatement
29 at any time after the effective date of dissolution. The
30 application must meet all of the following requirements:

31 a. Recite the name of the cooperative at its date of
32 dissolution and the effective date of its administrative
33 dissolution.

34 b. State that the ground or grounds for dissolution have
35 been eliminated.

1 *c.* If the application is received more than five years after
2 the effective date of the cooperative's dissolution, state a
3 name that satisfies the requirements of [section 501.104](#).

4 ~~*d.* State the federal tax identification number of the~~
5 ~~cooperative.~~

6 ~~2. *a.* The secretary of state shall refer the federal~~
7 ~~tax identification number contained in the application for~~
8 ~~reinstatement to the department of workforce development.~~
9 ~~The department of workforce development shall report to the~~
10 ~~secretary of state the tax status of the cooperative. If the~~
11 ~~department reports to the secretary of state that a filing~~
12 ~~delinquency or liability exists against the cooperative,~~
13 ~~the secretary of state shall not cancel the certificate of~~
14 ~~dissolution until the filing delinquency or liability is~~
15 ~~satisfied.~~

16 ~~*b.* (1) 2. *a.* If the secretary of state determines that~~
17 ~~the application contains the information required by subsection~~
18 ~~1, and that a delinquency or liability reported pursuant to~~
19 ~~paragraph "a" has been satisfied, and that the information is~~
20 ~~correct, the secretary of state shall cancel the certificate~~
21 ~~of dissolution and prepare a certificate of reinstatement~~
22 ~~that recites the secretary of state's determination and the~~
23 ~~effective date of reinstatement, file the document, and deliver~~
24 ~~a copy to the cooperative under [section 501.106](#).~~

25 ~~(2) *b.* If the name of the cooperative as provided in~~
26 ~~subsection 1, paragraph "c", is different than the name in~~
27 ~~subsection 1, paragraph "a", the certificate of reinstatement~~
28 ~~shall constitute an amendment to the articles of association~~
29 ~~insofar as it pertains to the name. A cooperative shall not~~
30 ~~relinquish the right to retain its name if the reinstatement~~
31 ~~is effective within five years of the effective date of the~~
32 ~~cooperative's dissolution.~~

33 DIVISION IV

34 NONPROFIT COOPERATIVES

35 Sec. 4. Section 504.1423, subsections 1 and 2, Code 2024,

1 are amended to read as follows:

2 1. A corporation administratively dissolved under section
3 504.1422 may apply to the secretary of state for reinstatement
4 at any time after the effective date of dissolution. The
5 application must state all of the following:

6 a. The name of the corporation and the effective date of its
7 administrative dissolution.

8 b. That the ground or grounds for dissolution either did not
9 exist or have been eliminated.

10 c. If the application is received more than five years after
11 the effective date of dissolution, state the corporation's name
12 satisfies the requirements of [section 504.401](#).

13 ~~d. The federal tax identification number of the corporation.~~

14 ~~2. a. The secretary of state shall refer the federal
15 tax identification number contained in the application for
16 reinstatement to the department of workforce development.
17 The department of workforce development shall report to the
18 secretary of state the tax status of the corporation. If the
19 department reports to the secretary of state that a filing
20 delinquency or liability exists against the corporation,
21 the secretary of state shall not cancel the certificate of
22 dissolution until the filing delinquency or liability is
23 satisfied.~~

24 ~~b. (1)~~ 2. a. If the secretary of state determines
25 that the application contains the information required by
26 subsection 1, ~~that a delinquency or liability reported pursuant~~
27 ~~to paragraph "a" has been satisfied,~~ and that all of the
28 application information is correct, the secretary of state
29 shall cancel the certificate of dissolution and prepare a
30 certificate of reinstatement reciting that determination and
31 the effective date of reinstatement, file the document, and
32 deliver a copy to the corporation under [section 504.504](#).

33 ~~(2)~~ b. If the corporate name in [subsection 1](#), paragraph
34 "c", is different from the corporate name in subsection
35 1, paragraph "a", the certificate of reinstatement shall

1 constitute an amendment to the articles of incorporation
2 insofar as it pertains to the corporate name. A corporation
3 shall not relinquish the right to retain its corporate name
4 if the reinstatement is effective within five years of the
5 effective date of the corporation's dissolution.

6 EXPLANATION

7 The inclusion of this explanation does not constitute agreement with
8 the explanation's substance by the members of the general assembly.

9 BACKGROUND (TREATMENT OF BUSINESS ENTITIES). A business
10 entity may be organized on a profit, nonprofit, or cooperative
11 basis. This bill provides for each type of business entity,
12 including a limited liability company and business corporation
13 organized on a profit basis for the benefit of its investors
14 (members or shareholders), a closed cooperative (closed coop)
15 organized for the benefit of its investor-patrons (members),
16 and a nonprofit corporation organized under principles other
17 than investor benefit (members). Each of these business
18 entities is governed under its own Code chapter and a specific
19 form of organic document (e.g., articles of incorporation or
20 operating agreement) that sets forth its powers and duties.
21 These powers and duties include the rights and obligations
22 of its interest holders (e.g., exercising voting power) and
23 management (e.g., a board of directors or officers), and the
24 use or distribution of its assets including earnings with
25 related tax consequences. The business entity exercises
26 its powers and duties under the general oversight of the
27 secretary of state (secretary). The bill addresses statutory
28 requirements for the reinstatement of a dissolved business
29 entity.

30 DISSOLUTION OF A BUSINESS ENTITY. Each Code chapter
31 governing a business entity specifies how it may be dissolved
32 and its activities and affairs are wound up (e.g., its assets
33 liquidated). For dissolution procedures governing each type of
34 covered business entity, see Code chapter 489, subchapter VII,
35 for limited liability companies; Code chapter 490, subchapter

1 XIV, for business corporations; Code chapter 501, subchapter
2 VIII, for closed cooperatives; and Code chapter 504, subchapter
3 XIV, for nonprofit corporations. Generally, a dissolution may
4 be initiated by the business entity on a voluntary basis (with
5 the consent of its interest holders) or on an involuntarily
6 basis pursuant to a legal action for administrative dissolution
7 commenced by the secretary. Administrative dissolution is
8 the outcome caused by a business entity failing to comply
9 with a statutory duty (e.g., a failure to maintain a place of
10 business or be represented by a registered agent for purpose
11 of receiving service of process). Once the secretary issues
12 a certificate of dissolution, the subject business entity
13 can no longer do business in the state other than winding
14 up its affairs. The grounds for administrative dissolution
15 may be intentional or unintentional (e.g., the inadvertent
16 failure of an officer of the business entity to file a biennial
17 report with the secretary). Several escape procedures allow a
18 business entity to avoid dissolution. First, the secretary of
19 state is required to notify the business entity of its pending
20 administrative dissolution to allow the business entity to
21 cure the violation. Second, a business entity that has been
22 issued a certificate of dissolution may apply to the secretary
23 of state to cancel the certificate and be reinstated. If the
24 secretary approves the application, the secretary issues a
25 certificate of reinstatement. The effect of the cancellation
26 and reinstatement is to retroactively place the business entity
27 in the same position it would have been in if there were no
28 dissolution, subject to certain limitations (e.g., restrictions
29 on the right of the business entity to regain its name if the
30 application was not timely filed).

31 BILL'S PROVISIONS (TAX STATUS NO LONGER REQUIRED AS A
32 CONDITION FOR REINSTATEMENT). The bill eliminates provisions
33 that require any of these covered business entities to include
34 their federal tax identification number (tax ID number) in
35 its application for administrative reinstatement. Secondly,

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1 the bill eliminates a requirement that the secretary refer
2 the applicant's tax ID number to the department of workforce
3 development (department) and that the department report to the
4 secretary the applicant's tax status. The department (see
5 Code chapter 84A) is primarily responsible for administering
6 laws relating to unemployment compensation insurance supported
7 by taxes collected from employers. The provisions to be
8 eliminated currently prohibit the secretary from canceling a
9 certificate of dissolution until the business entity satisfies
10 its tax payment obligation.