

Senate File 2347 - Introduced

SENATE FILE 2347
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 3147)

A BILL FOR

1 An Act providing for limited liability companies, providing for
2 fees, and including effective date provisions.

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

1 Section 1. Section 489.102, subsection 13, Code 2024, is
2 amended to read as follows:

3 13. *“Limited liability company”*, except in the phrase
4 *“foreign limited liability company”*, and in [subchapter X](#) means
5 an entity formed under [this chapter](#) or which becomes subject to
6 this chapter under [subchapter X](#) or section ~~489.110~~ [489.1207](#).

7 Sec. 2. Section 489.103, subsection 4, paragraph b,
8 subparagraph (3), Code 2024, is amended to read as follows:

9 (3) The limited liability company’s participation in a
10 merger, interest exchange, conversion, or domestication,
11 ninety days after ~~articles~~ the statement of merger, interest
12 exchange, conversion, or domestication under [subchapter X](#)
13 become effective.

14 Sec. 3. Section 489.109, subsection 2, paragraph a, Code
15 2024, is amended to read as follows:

16 a. Delivering to the secretary of state for filing a
17 statement of change under [section 489.116](#), an amendment to the
18 certificate under [section 489.202](#), a statement of correction
19 under [section 489.209](#), a biennial report under section ~~489.211A~~
20 [489.212](#), a statement of withdrawal or a statement of rescission
21 under [section 489.703](#), or a statement of termination under
22 section 489.702, subsection 2, paragraph “b”, subparagraph (6).

23 Sec. 4. Section 489.116, subsection 2, paragraph b, Code
24 2024, is amended to read as follows:

25 b. A similar filing changing the registered agent or
26 ~~registered office~~ address of the registered agent, if any, of
27 the limited liability company in any other jurisdiction.

28 Sec. 5. Section 489.119, subsection 2, unnumbered paragraph
29 1, Code 2024, is amended to read as follows:

30 If a limited liability company or registered foreign limited
31 liability company ceases to have a registered agent, or if its
32 registered agent cannot with reasonable diligence be served,
33 the limited liability company or registered foreign limited
34 liability company may be served by registered or certified
35 mail, return receipt requested, or by similar commercial

1 delivery service, addressed to the limited liability company or
2 registered foreign limited liability company at its principal
3 office. The address of the principal office must be as shown
4 on the limited liability company's or registered foreign
5 limited liability company's most recent biennial report filed
6 with the secretary of state pursuant to section ~~489.211A~~
7 489.212. Service is effected under this subsection on the
8 earliest of any of the following:

9 Sec. 6. Section 489.122, subsection 1, paragraphs b, g, l,
10 and s, Code 2024, are amended to read as follows:

- 11 b. Statement of withdrawal under section 489.208, subsection
12 1 No fee
- 13 g. Statement of change of registered agent or address of the
14 registered office agent or both No fee
- 15 l. ~~Articles~~ Statement of merger or interest exchange . \$ 50
- 16 s. Statement of ~~cancellation~~ withdrawal under section
17 489.907 or section 489.909, subsection 1 \$ 10

18 Sec. 7. Section 489.122, subsection 1, Code 2024, is amended
19 by adding the following new paragraphs:

- 20 NEW PARAGRAPH. *Om*. Statement of domestication ... \$ 50
- 21 NEW PARAGRAPH. *Oom*. Statement of conversion \$ 50

22 Sec. 8. Section 489.122, subsection 4, Code 2024, is amended
23 to read as follows:

24 4. The secretary of state may impose, assess, and collect
25 a filing fee as a condition to accepting a biennial report as
26 provided in section ~~489.211A~~ 489.212.

27 Sec. 9. Section 489.206, subsection 6, paragraph f, Code
28 2024, is amended to read as follows:

29 f. The biennial report required by section ~~489.211A~~ 489.212.

30 Sec. 10. Section 489.211, subsection 2, paragraph e, Code
31 2024, is amended to read as follows:

32 e. That the most recent biennial report required by section
33 ~~489.211A~~ 489.212 has been delivered to the secretary of state
34 for filing.

35 Sec. 11. Section 489.211A, subsection 1, paragraphs b and d,

1 Code 2024, are amended to read as follows:

2 *b.* The name of the registered agent and street address of
3 the ~~company's registered office, the name of its~~ registered
4 agent ~~at that office~~, and the consent of any new registered
5 agent.

6 *d.* In the case of a foreign limited liability company, the
7 state or other jurisdiction under whose law the foreign company
8 is formed and any alternate name adopted under section ~~489.805~~
9 489.906, subsection 1.

10 Sec. 12. Section 489.211A, subsection 5, Code 2024, is
11 amended to read as follows:

12 5. The secretary of state may provide for the change
13 of registered office agent or address of the registered
14 agent on the form prescribed by the secretary of state for
15 the biennial report, provided that the form contains the
16 information required in [section 489.116](#). If the secretary of
17 state determines that a biennial report does not contain the
18 information required in [this section](#) but otherwise meets the
19 requirements of [section 489.116](#) for the purpose of changing the
20 registered office or registered agent, the secretary of state
21 shall file the statement of change for the registered ~~office~~
22 agent or address of the registered agent, effective as provided
23 in [section 489.207, subsection 3](#), before returning the biennial
24 report to the limited liability company as provided in this
25 section. A statement of change of registered office agent or
26 address of the registered agent accomplished pursuant to this
27 subsection shall be executed by a person authorized to execute
28 the biennial report.

29 Sec. 13. Section 489.302, subsection 10, Code 2024, is
30 amended to read as follows:

31 10. A statement of authority filed by the secretary of state
32 under section ~~489.207~~ 489.206, subsection 1, is effective until
33 amended or canceled as provided in [subsection 2](#), unless an
34 earlier cancellation date is specified in the statement.

35 Sec. 14. Section 489.708, subsections 2 and 4, Code 2024,

1 are amended to read as follows:

2 2. The limited liability company does not deliver its
3 biennial report required by section ~~489.211A~~ 489.212 to the
4 secretary of state within sixty days after it is due.

5 4. The secretary of state has not been notified within sixty
6 days that the limited liability company's registered agent or
7 place of business of the registered agent has been changed, or
8 that its registered agent has resigned, or that ~~its~~ the address
9 of the registered office agent has been discontinued.

10 Sec. 15. Section 489.710, subsection 1, unnumbered
11 paragraph 1, Code 2024, is amended to read as follows:

12 A limited liability company administratively dissolved under
13 section ~~489.708~~ 489.709 may apply to the secretary of state
14 for reinstatement at any time after the effective date of
15 dissolution. The application must meet all of the following
16 requirements:

17 Sec. 16. Section 489.711, subsection 2, Code 2024, is
18 amended to read as follows:

19 2. The limited liability company may appeal the denial of
20 reinstatement to the district court of the county where the
21 company's principal office or, if none in this state, where its
22 registered ~~office~~ agent is located within thirty days after
23 service of the notice of denial is effected. The company
24 appeals by petitioning the court to set aside the dissolution
25 and attaching to the petition copies of the secretary of
26 state's certificate of dissolution, the company's application
27 for reinstatement, and the secretary of state's notice of
28 denial.

29 Sec. 17. Section 489.804, Code 2024, is amended to read as
30 follows:

31 **489.804 Pleading.**

32 In a derivative action under [section 489.802](#), the complaint
33 must state with particularity ~~any of the following:~~

34 ~~1.—The~~ the date and content of the plaintiff's demand and
35 the response to the demand by the managers or other members.

1 ~~2. Why demand should be excused as futile.~~

2 Sec. 18. Section 489.911, subsection 1, paragraph d, Code
3 2024, is amended to read as follows:

4 *d.* The secretary of state has not been notified within
5 sixty days that the foreign limited liability company's
6 registered agent or the registered agent's place of business
7 has been changed, that its registered agent has resigned, or
8 that ~~its~~ the address of the registered office agent has been
9 discontinued.

10 Sec. 19. Section 489.1005, subsection 2, paragraph b, Code
11 2024, is amended to read as follows:

12 *b.* The address of the registered office agent of any entity.

13 Sec. 20. Section 489.1207, subsection 2, Code 2024, is
14 amended to read as follows:

15 2. A limited liability company that has published notice of
16 its dissolution and requested persons having claims against the
17 limited liability company to present them in accordance with
18 the notice pursuant to section ~~489.704~~ 489.705 as that section
19 existed immediately prior to January 1, 2024, shall be subject
20 to the requirements set forth in that section as it existed
21 immediately prior to January 1, 2024, including the right of
22 a claim by a person that is commenced within five years after
23 publication of the notice.

24 Sec. 21. Section 489.1036, subsection 1, paragraph a, Code
25 2024, is amended to read as follows:

26 *a.* The interests in the acquired limited liability company
27 which are the subject of the interest exchange are converted,
28 and the members holding those interests are entitled only to
29 the rights provided to them under the plan of interest exchange
30 and to any appraisal rights they have under section ~~486.1006~~
31 489.1006.

32 Sec. 22. Section 489.14201, subsections 3 and 4, Code 2024,
33 are amended to read as follows:

34 3. A protected series is established when the protected
35 series designation takes effect under section ~~489.205~~ 489.207.

1 4. To amend a protected series designation, a series limited
2 liability company shall deliver to the secretary of state
3 for filing a statement of designation change, signed by the
4 company, that changes the name of the company, the name of the
5 protected series to which the designation applies, or both.
6 The change takes effect when the statement of designation
7 change takes effect under section ~~489.205~~ 489.207.

8 Sec. 23. Section 489.14205, subsection 1, paragraph a,
9 subparagraph (2), unnumbered paragraph 1, Code 2024, is amended
10 to read as follows:

11 The company has delivered to the secretary of state for
12 filing the most recent biennial report required by section
13 ~~489.211A~~ 489.212 and the report includes the name of the
14 protected series, unless any of the following applies:

15 Sec. 24. Section 489.14206, subsection 1, unnumbered
16 paragraph 1, Code 2024, is amended to read as follows:

17 In the biennial report required by section ~~489.211A~~ 489.212,
18 a series limited liability company shall include the name of
19 each protected series of the company for which all of the
20 following apply:

21 Sec. 25. Section 489.14604, unnumbered paragraph 1, Code
22 2024, is amended to read as follows:

23 A series limited liability company may be party to a merger
24 in accordance with ~~sections 489.1001 through 489.1005~~
25 subchapter X, parts 1 and 2, this section, and sections
26 489.14605 through 489.14608 only if all of the following apply:

27 Sec. 26. Section 489.14605, subsection 1, Code 2024, is
28 amended to read as follows:

29 1. Comply with section ~~489.1002~~ subchapter X, parts 1 and 2.

30 Sec. 27. Section 489.14606, unnumbered paragraph 1, Code
31 2024, is amended to read as follows:

32 In a merger under section 489.14604, the articles statement
33 of merger must do all of the following:

34 Sec. 28. Section 489.14606, subsection 1, Code 2024, is
35 amended to read as follows:

1 1. Comply with ~~section 489.1004~~ subchapter X, parts 1 and 2.

2 Sec. 29. Section 489.14607, unnumbered paragraph 1, Code
3 2024, is amended to read as follows:

4 When a merger under section 489.14604 becomes effective, in
5 addition to the effects stated in section ~~489.1005~~ 489.1026,
6 all of the following apply:

7 Sec. 30. CODE EDITOR DIRECTIVE.

8 1. The Code editor is directed to make the following
9 transfer:

10 Section 489.211A to section 489.212.

11 2. The Code editor shall correct internal references in the
12 Code and in any enacted legislation as necessary due to the
13 enactment of this section.

14 Sec. 31. EFFECTIVE DATE. This Act, being deemed of
15 immediate importance, takes effect upon enactment.

16 EXPLANATION

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

19 GENERAL. This bill amends provisions in the uniform limited
20 liability company Act (Code chapter 489) originally enacted
21 in 2008 and rewritten during the 2023 legislative session
22 (2023 Iowa Acts, chapter 152). The 2023 Iowa Act was based on
23 a proposed Act (model legislation) approved and recommended
24 by the national conference on commissioners on uniform state
25 laws, also named the uniform law commissioners (ULC), which
26 includes commissioners appointed by the Governor (Code chapter
27 5). A limited liability company (LLC), or simply "company",
28 is a type of unincorporated business entity formed for the
29 acquisition of capital (contributions) from, and the payout of
30 receipts (distributions) to, its investors (members). Although
31 an LLC is sometimes compared to other types of unincorporated
32 entities, and specifically a limited partnership (Code chapter
33 488) or general partnership (Code chapter 486A), it also
34 resembles a corporation (Code chapter 490).

35 BILL — TERMINOLOGY CHANGES, SECTION TRANSFER, AND INTERNAL

1 REFERENCE CORRECTIONS. The bill makes changes in terminology
2 to be consistent with the model legislation, including
3 references from "articles of merger" to "statement of merger",
4 and from "office of the registered agent" to "address of the
5 registered agent". The bill corrects a number of internal
6 references due to the transfer or rewriting of the Code
7 sections. The bill transfers a Code section providing for
8 biennial reports to correspond to the model legislation (from
9 Code section 489.211A to 489.212) and makes new corresponding
10 changes to internal references. Many of the internal
11 reference corrections are in Code chapter 489, subchapter XIV,
12 the uniform protected series Act, which is separate model
13 legislation approved and recommended by the ULC and enacted in
14 2019 and unamended by the model legislation or the 2023 Iowa
15 Act.

16 BILL — CORRESPONDING CHANGE — DERIVATIVE ACTIONS. The
17 bill includes a corresponding change in Code chapter 489,
18 subchapter VIII, providing for derivative actions by members.
19 The 2023 Iowa Act departed from the model legislation by
20 removing an option that allowed a member to maintain a
21 derivative action (Code section 489.802). A derivative action
22 is a type of cause of action brought by one or more members of
23 an LLC acting on behalf of the LLC to enforce a right held by
24 the LLC. Under the model legislation, a member may maintain a
25 derivative action only after the member first makes a demand on
26 the LLC to enforce the right. The model legislation allowed
27 the member to skip this demand requirement if it would be
28 futile. The 2023 Iowa Act eliminated this exception. However,
29 it retained a corresponding provision in the model legislation
30 (Code section 489.804) requiring the member in its pleading to
31 state how the member satisfied the notice requirements in Code
32 section 489.802. The bill eliminates the corresponding futile
33 exception in the pleading requirement.

34 BILL — FEES. The model legislation does not include a fee
35 schedule for filing documents with the secretary of state, but

1 such a schedule has been part of Code chapter 489 since it
2 was enacted and the schedule resembles those in Code chapters
3 providing for other types of business entities (see Code
4 section 490.122 for corporations). The bill adds a fee of
5 \$50 for filing a statement of domestication or statement of
6 conversion.

7 EFFECTIVE DATE. The bill takes effect upon enactment.