

## LEGISLATIVE BILL 99

Approved by the Governor March 29, 2017

Introduced by Stinner, 48.

A BILL FOR AN ACT relating to business entities; to amend sections 67-447 and 67-448, Reissue Revised Statutes of Nebraska, and sections 21-2,129, 21-2,130, 21-2,135, 21-2,140, 21-2,146, 67-448.01, and 67-448.02, Revised Statutes Cumulative Supplement, 2016; to change provisions relating to the conversion of unincorporated entities, corporations, partnerships, limited partnerships, and limited liability partnerships into other business entities; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 21-2,129, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,129 (MBCA 9.22) (a) After the domestication of a foreign business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication in this state.

(b) The articles of domestication shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication shall be delivered to the Secretary of State for filing, and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of domestication take effect, a foreign business corporation becoming a domestic business corporation shall send written notice of domestication to the last-known address of any holder of a security interest in collateral of such foreign business corporation.

(d) If the foreign corporation is authorized to transact business in this state under sections 21-2,203 to 21-2,220, its certificate of authority shall be canceled automatically on the effective date of its domestication.

Sec. 2. Section 21-2,130, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,130 (MBCA 9.23) (a) Whenever a domestic business corporation has adopted and approved, in the manner required by sections 21-2,127 to 21-2,132, a plan of domestication providing for the corporation to be domesticated in a foreign jurisdiction, articles of charter surrender shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles of charter surrender shall set forth:

(1) The name of the corporation;

(2) A statement that the articles of charter surrender are being filed in connection with the domestication of the corporation in a foreign jurisdiction;

(3) A statement that the domestication was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation; and

(4) The corporation's new jurisdiction of incorporation.

(b) The articles of charter surrender shall be delivered by the corporation to the Secretary of State for filing. The articles of charter surrender shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of charter surrender take effect, a domestic business corporation becoming domesticated in a foreign jurisdiction shall send written notice of charter surrender to the last-known address of any holder of a security interest in collateral of such domestic business corporation.

Sec. 3. Section 21-2,135, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,135 (MBCA 9.32) (a) After a plan of nonprofit conversion providing for the conversion of a domestic business corporation to a domestic nonprofit corporation has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of nonprofit conversion shall be signed on

behalf of the corporation by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of nonprofit conversion and if that name does not satisfy the requirements of the Nebraska Nonprofit Corporation Act, or the corporation desires to change its name in connection with the conversion, a name that satisfies the requirements of the Nebraska Nonprofit Corporation Act; and

(2) A statement that the plan of nonprofit conversion was duly approved by the shareholders in the manner required by the Nebraska Model Business Corporation Act and the articles of incorporation.

(b) The articles of nonprofit conversion shall either contain all of the provisions that the Nebraska Nonprofit Corporation Act requires to be set forth in articles of incorporation of a domestic nonprofit corporation and any other desired provisions permitted by the Nebraska Nonprofit Corporation Act or shall have attached articles of incorporation that satisfy the requirements of the Nebraska Nonprofit Corporation Act. In either case, provisions that would not be required to be included in restated articles of incorporation of a domestic nonprofit corporation may be omitted.

(c) The articles of nonprofit conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of nonprofit conversion take effect, a domestic business corporation converting into a domestic nonprofit corporation shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of such domestic business corporation.

Sec. 4. Section 21-2,140, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,140 (MBCA 9.41) (a) After the conversion of a foreign nonprofit corporation to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of domestication and conversion shall be signed by any officer or other duly authorized representative. The articles shall set forth:

(1) The name of the corporation immediately before the filing of the articles of domestication and conversion and, if that name is unavailable for use in this state or the corporation desires to change its name in connection with the domestication and conversion, a name that satisfies the requirements of section 21-230;

(2) The jurisdiction of incorporation of the corporation immediately before the filing of the articles of domestication and conversion and the date the corporation was incorporated in that jurisdiction; and

(3) A statement that the domestication and conversion of the corporation in this state was duly authorized as required by the laws of the jurisdiction in which the corporation was incorporated immediately before its domestication and conversion in this state.

(b) The articles of domestication and conversion shall either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or shall have attached articles of incorporation. In either case, provisions that would not be required to be included in restated articles of incorporation may be omitted.

(c) The articles of domestication and conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of domestication and conversion take effect, a foreign nonprofit corporation converting into a domestic business corporation shall send written notice of domestication and conversion to the last-known address of any holder of a security interest in collateral of such foreign nonprofit corporation.

(d) If the foreign nonprofit corporation is authorized to transact business in this state under the foreign qualification provision of the Nebraska Nonprofit Corporation Act, its certificate of authority shall be canceled automatically on the effective date of its domestication and conversion.

Sec. 5. Section 21-2,146, Revised Statutes Cumulative Supplement, 2016, is amended to read:

21-2,146 (MBCA 9.53) (a) After the conversion of a domestic business corporation to a domestic unincorporated entity has been adopted and approved as required by the Nebraska Model Business Corporation Act, articles of entity conversion shall be signed on behalf of the corporation by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the corporation immediately before the filing of the articles of entity conversion and the name to which the name of the corporation is to be changed, which shall be a name that satisfies the organic law of the surviving entity;

(2) State the type of unincorporated entity that the surviving entity will be;

(3) Set forth a statement that the plan of entity conversion was duly approved by the shareholders in the manner required by the act and the articles of incorporation; and

(4) If the surviving entity is a filing entity, either contain all of the provisions required to be set forth in its public organic document and any other desired provisions that are permitted or have attached a public organic document; except that, in either case, provisions that would not be required to

be included in a restated public organic document may be omitted.

(b) After the conversion of a domestic unincorporated entity to a domestic business corporation has been adopted and approved as required by the organic law of the unincorporated entity, articles of entity conversion shall be signed on behalf of the unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth a statement that the plan of entity conversion was duly approved in accordance with the organic law of the unincorporated entity; and

(3) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(c) After the conversion of a foreign unincorporated entity to a domestic business corporation has been authorized as required by the laws of the foreign jurisdiction, articles of entity conversion shall be signed on behalf of the foreign unincorporated entity by any officer or other duly authorized representative. The articles shall:

(1) Set forth the name of the unincorporated entity immediately before the filing of the articles of entity conversion and the name to which the name of the unincorporated entity is to be changed which shall be a name that satisfies the requirements of section 21-230;

(2) Set forth the jurisdiction under the laws of which the unincorporated entity was organized immediately before the filing of the articles of entity conversion and the date on which the unincorporated entity was organized in that jurisdiction;

(3) Set forth a statement that the conversion of the unincorporated entity was duly approved in the manner required by its organic law; and

(4) Either contain all of the provisions that subsection (a) of section 21-220 requires to be set forth in articles of incorporation and any other desired provisions that subsection (b) of section 21-220 permits to be included in articles of incorporation or have attached articles of incorporation; except that, in either case, provisions that would not be required to be included in restated articles of incorporation of a domestic business corporation may be omitted.

(d) The articles of entity conversion shall be delivered to the Secretary of State for filing and shall take effect at the effective time provided in section 21-206. Within ten business days after the articles of entity conversion take effect, the converting entity shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of the converting entity. Articles of entity conversion under subsection (a) or (b) of this section may be combined with any required conversion filing under the organic law of the domestic unincorporated entity if the combined filing satisfies the requirements of both this section and the other organic law.

(e) If the converting entity is a foreign unincorporated entity that is authorized to transact business in this state under a provision of law similar to sections 21-2,203 to 21-2,220, its certificate of authority or other type of foreign qualification shall be canceled automatically on the effective date of its conversion.

Sec. 6. Section 67-447, Reissue Revised Statutes of Nebraska, is amended to read:

67-447 (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(a) A statement that the partnership was converted to a limited partnership from a partnership;

(b) Its former name; and

(c) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate. Within ten business days after the certificate of limited partnership takes effect, a partnership converting to a limited partnership shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of such partnership.

(5) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner

is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Nebraska Uniform Limited Partnership Act.

Sec. 7. Section 67-448, Reissue Revised Statutes of Nebraska, is amended to read:

67-448 (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all of the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.

(4) The conversion takes effect when the certificate of limited partnership is canceled. Within ten business days after the certificate of limited partnership is canceled, a limited partnership converting into a partnership shall send written notice of conversion to the last-known address of any holder of a security interest in collateral of such limited partnership.

(5) A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. Except as otherwise provided in section 67-418, the partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.

Sec. 8. Section 67-448.01, Revised Statutes Cumulative Supplement, 2016, is amended to read:

67-448.01 A domestic partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic partnership into such limited liability company shall be made pursuant to a plan of conversion setting forth the information required in section 21-175 and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic partnership by partners who own in the aggregate more than fifty percent of the interests in the profits of such partnership. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion. Within ten business days after the articles of conversion take effect, a A domestic partnership converting into a domestic limited liability company or a foreign limited liability company shall, ~~at least ten business days before the articles of conversion are filed,~~ send written notice of such conversion to the last-known address of any holder of a security interest in collateral of such partnership.

Sec. 9. Section 67-448.02, Revised Statutes Cumulative Supplement, 2016, is amended to read:

67-448.02 A domestic limited liability partnership may convert into a domestic limited liability company pursuant to sections 21-170 to 21-184 and may convert into a foreign limited liability company in accordance with this section and the applicable law of the state of formation of such foreign limited liability company. In each case, the conversion of a domestic limited liability partnership into such limited liability company shall be made pursuant to a plan of conversion setting forth the information required in section 21-175 and such information required pursuant to the statute under which such conversion shall be effected. Unless otherwise provided in its organizational documents, a plan of conversion shall be approved by the domestic limited liability partnership by partners who own in the aggregate more than fifty percent of the interests in the profits of such limited liability partnership. Notwithstanding such approval, at any time before the articles of conversion are filed, a plan of conversion may be terminated or amended pursuant to a provision for such termination or amendment contained in the plan of conversion. Within ten business days after the articles of conversion take effect, a A domestic limited liability partnership converting into a domestic limited liability company or a foreign limited liability company shall, ~~at least ten business days before the articles of conversion are filed,~~ send written notice of such conversion to the last-known address of any holder of a security interest in collateral of such limited liability partnership.

Sec. 10. Original sections 67-447 and 67-448, Reissue Revised Statutes of Nebraska, and sections 21-2,129, 21-2,130, 21-2,135, 21-2,140, 21-2,146, 67-448.01, and 67-448.02, Revised Statutes Cumulative Supplement, 2016, are repealed.