

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 99

Introduced by Stinner, 48.

Read first time January 05, 2017

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to business entities; to amend sections 67-447
2 and 67-448, Reissue Revised Statutes of Nebraska, and sections
3 21-2,129, 21-2,130, 21-2,135, 21-2,140, 21-2,146, 67-448.01, and
4 67-448.02, Revised Statutes Cumulative Supplement, 2016; to change
5 provisions relating to the conversion of corporations, partnerships,
6 limited partnerships, and limited liability partnerships into other
7 business entities; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

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

3 21-2,129 (MBCA 9.22) (a) After the domestication of a foreign
4 business corporation has been authorized as required by the laws of the
5 foreign jurisdiction, articles of domestication shall be signed by any
6 officer or other duly authorized representative. The articles shall set
7 forth:

8 (1) The name of the corporation immediately before the filing of the
9 articles of domestication and, if that name is unavailable for use in
10 this state or the corporation desires to change its name in connection
11 with the domestication, a name that satisfies the requirements of section
12 21-230;

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

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

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

27 (c) The articles of domestication shall be delivered to the
28 Secretary of State for filing, and shall take effect at the effective
29 time provided in section 21-206. Within ten business days after the
30 articles of domestication take effect, a foreign business corporation
31 becoming a domestic business corporation shall send written notice of

1 domestication to the last-known address of any holder of a security
2 interest in collateral of such foreign business corporation.

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

7 Sec. 2. Section 21-2,130, Revised Statutes Cumulative Supplement,
8 2016, is amended to read:

9 21-2,130 (MBCA 9.23) (a) Whenever a domestic business corporation
10 has adopted and approved, in the manner required by sections 21-2,127 to
11 21-2,132, a plan of domestication providing for the corporation to be
12 domesticated in a foreign jurisdiction, articles of charter surrender
13 shall be signed on behalf of the corporation by any officer or other duly
14 authorized representative. The articles of charter surrender shall set
15 forth:

16 (1) The name of the corporation;

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

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

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

25 (b) The articles of charter surrender shall be delivered by the
26 corporation to the Secretary of State for filing. The articles of charter
27 surrender shall take effect at the effective time provided in section
28 21-206. Within ten business days after the articles of charter surrender
29 take effect, a domestic business corporation becoming domesticated in a
30 foreign jurisdiction shall send written notice of charter surrender to
31 the last-known address of any holder of a security interest in collateral

1 of such domestic business corporation.

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

4 21-2,135 (MBCA 9.32) (a) After a plan of nonprofit conversion
5 providing for the conversion of a domestic business corporation to a
6 domestic nonprofit corporation has been adopted and approved as required
7 by the Nebraska Model Business Corporation Act, articles of nonprofit
8 conversion shall be signed on behalf of the corporation by any officer or
9 other duly authorized representative. The articles shall set forth:

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

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

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

28 (c) The articles of nonprofit conversion shall be delivered to the
29 Secretary of State for filing and shall take effect at the effective time
30 provided in section 21-206. Within ten business days after the articles
31 of nonprofit conversion take effect, a domestic business corporation

1 converting into a domestic nonprofit corporation shall send written
2 notice of conversion to the last-known address of any holder of a
3 security interest in collateral of such domestic business corporation.

4 Sec. 4. Section 21-2,140, Revised Statutes Cumulative Supplement,
5 2016, is amended to read:

6 21-2,140 (MBCA 9.41) (a) After the conversion of a foreign nonprofit
7 corporation to a domestic business corporation has been authorized as
8 required by the laws of the foreign jurisdiction, articles of
9 domestication and conversion shall be signed by any officer or other duly
10 authorized representative. The articles shall set forth:

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

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

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

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

30 (c) The articles of domestication and conversion shall be delivered
31 to the Secretary of State for filing and shall take effect at the

1 effective time provided in section 21-206. Within ten business days after
2 the articles of domestication and conversion take effect, a foreign
3 nonprofit corporation converting into a domestic business corporation
4 shall send written notice of domestication and conversion to the last-
5 known address of any holder of a security interest in collateral of such
6 foreign nonprofit corporation.

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

12 Sec. 5. Section 21-2,146, Revised Statutes Cumulative Supplement,
13 2016, is amended to read:

14 21-2,146 (MBCA 9.53) (a) After the conversion of a domestic business
15 corporation to a domestic unincorporated entity has been adopted and
16 approved as required by the Nebraska Model Business Corporation Act,
17 articles of entity conversion shall be signed on behalf of the
18 corporation by any officer or other duly authorized representative. The
19 articles shall:

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

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

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

29 (4) If the surviving entity is a filing entity, either contain all
30 of the provisions required to be set forth in its public organic document
31 and any other desired provisions that are permitted or have attached a

1 public organic document; except that, in either case, provisions that
2 would not be required to be included in a restated public organic
3 document may be omitted.

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

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

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

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

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

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

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

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

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

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

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

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

31 67-447 (1) A partnership may be converted to a limited partnership

1 pursuant to this section.

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

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

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

12 (b) Its former name; and

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

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

23 (5) A general partner who becomes a limited partner as a result of
24 the conversion remains liable as a general partner for an obligation
25 incurred by the partnership before the conversion takes effect. If the
26 other party to a transaction with the limited partnership reasonably
27 believes when entering the transaction that the limited partner is a
28 general partner, the limited partner is liable for an obligation incurred
29 by the limited partnership within ninety days after the conversion takes
30 effect. The limited partner's liability for all other obligations of the
31 limited partnership incurred after the conversion takes effect is that of

1 a limited partner as provided in the Nebraska Uniform Limited Partnership
2 Act.

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

5 67-448 (1) A limited partnership may be converted to a partnership
6 pursuant to this section.

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

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

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

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

25 Sec. 8. Section 67-448.01, Revised Statutes Cumulative Supplement,
26 2016, is amended to read:

27 67-448.01 A domestic partnership may convert into a domestic limited
28 liability company pursuant to sections 21-170 to 21-184 and may convert
29 into a foreign limited liability company in accordance with this section
30 and the applicable law of the state of formation of such foreign limited
31 liability company. In each case, the conversion of a domestic partnership

1 into such limited liability company shall be made pursuant to a plan of
2 conversion setting forth the information required in section 21-175 and
3 such information required pursuant to the statute under which such
4 conversion shall be effected. Unless otherwise provided in its
5 organizational documents, a plan of conversion shall be approved by the
6 domestic partnership by partners who own in the aggregate more than fifty
7 percent of the interests in the profits of such partnership.
8 Notwithstanding such approval, at any time before the articles of
9 conversion are filed, a plan of conversion may be terminated or amended
10 pursuant to a provision for such termination or amendment contained in
11 the plan of conversion. Within ten business days after the articles of
12 conversion take effect, a A domestic partnership converting into a
13 domestic limited liability company or a foreign limited liability company
14 shall, ~~at least ten business days before the articles of conversion are~~
15 ~~filed,~~ send written notice of such conversion to the last-known address
16 of any holder of a security interest in collateral of such partnership.

17 Sec. 9. Section 67-448.02, Revised Statutes Cumulative Supplement,
18 2016, is amended to read:

19 67-448.02 A domestic limited liability partnership may convert into
20 a domestic limited liability company pursuant to sections 21-170 to
21 21-184 and may convert into a foreign limited liability company in
22 accordance with this section and the applicable law of the state of
23 formation of such foreign limited liability company. In each case, the
24 conversion of a domestic limited liability partnership into such limited
25 liability company shall be made pursuant to a plan of conversion setting
26 forth the information required in section 21-175 and such information
27 required pursuant to the statute under which such conversion shall be
28 effected. Unless otherwise provided in its organizational documents, a
29 plan of conversion shall be approved by the domestic limited liability
30 partnership by partners who own in the aggregate more than fifty percent
31 of the interests in the profits of such limited liability partnership.

1 Notwithstanding such approval, at any time before the articles of
2 conversion are filed, a plan of conversion may be terminated or amended
3 pursuant to a provision for such termination or amendment contained in
4 the plan of conversion. Within ten business days after the articles of
5 conversion take effect, a A domestic limited liability partnership
6 converting into a domestic limited liability company or a foreign limited
7 liability company shall, ~~at least ten business days before the articles~~
8 ~~of conversion are filed,~~ send written notice of such conversion to the
9 last-known address of any holder of a security interest in collateral of
10 such limited liability partnership.

11 Sec. 10. Original sections 67-447 and 67-448, Reissue Revised
12 Statutes of Nebraska, and sections 21-2,129, 21-2,130, 21-2,135,
13 21-2,140, 21-2,146, 67-448.01, and 67-448.02, Revised Statutes Cumulative
14 Supplement, 2016, are repealed.