

## LEGISLATIVE BILL 647

Approved by the Governor March 22, 2006

Introduced by Brashear, 4

AN ACT relating to corporations and other companies; to amend sections 21-2601, 21-2603, 21-2606, 21-2610, 21-2613, 21-2631.01, 21-2632, and 21-2634, Reissue Revised Statutes of Nebraska, and sections 21-301, 21-304, 21-330, 21-2607, 21-2631, and 21-2639, Revised Statutes Cumulative Supplement, 2004; to change provisions relating to occupation tax biennial reports and claims for excess tax payments; to change provisions relating to the Limited Liability Company Act; to define terms; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 21-301, Revised Statutes Cumulative Supplement, 2004, is amended to read:

21-301 (1) Each corporation organized under the laws of this state, for profit, shall make a report in writing to the Secretary of State, as of January 1, of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The report and biennial fee shall be forwarded to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report or fee does not conform, the Secretary of State shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent by United States mail to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15.

Sec. 2. Section 21-304, Revised Statutes Cumulative Supplement, 2004, is amended to read:

21-304 (1) Each foreign corporation for profit, doing business in this state, owning or using a part or all of its capital or plant in this state, and subject to compliance with all other provisions of law shall, in addition to all other statements required by law, make a biennial report in writing, to the Secretary of State, as of January 1 of each even-numbered year, in such form as the Secretary of State may prescribe. The report shall be signed by one of the following: The president, a vice president, a secretary, or a treasurer of the corporation. The report and biennial fee shall be forwarded to the Secretary of State. The report and fee shall be due on March 1 of each even-numbered year and shall become delinquent if not filed and paid by April 15 of each even-numbered year. If the Secretary of State finds that such report and biennial fee conform to the requirements of the law, the Secretary of State shall file the report. If the Secretary of State finds that the report and fee do not conform, the Secretary of State shall return the report and fee to the corporation for any necessary corrections. A correction or amendment to the biennial report may be filed at any time.

(2) In each even-numbered year, the Secretary of State shall cause a notice to be sent by United States mail to each corporation for which a report and fee as described in this section has not been received as of March 1. The notice shall state that the report has not been received, that the report and fee are due on March 1, and that the corporation will be dissolved if the report and proper fee are not received by April 15 of each even-numbered year.

Sec. 3. Section 21-330, Revised Statutes Cumulative Supplement, 2004, is amended to read:

21-330 Any corporation which has paid tax in excess of the proper amount of the occupation tax imposed in sections 21-301 to 21-325 shall be entitled to a refund of such excess payment. Claims for refund shall be filed with the Secretary of State or may be submitted by the Secretary of State based on his or her own investigation. If approved or submitted by the Secretary of State, the claim shall be forwarded to the State Treasurer for payment from the General Fund. The Secretary of State shall not refund any

excess tax payment if five years have passed from the date of the excess payment.

Sec. 4. Section 21-2601, Reissue Revised Statutes of Nebraska, is amended to read:

21-2601 Sections 21-2601 to 21-2653 and sections 5, 11, and 12 of this act shall be known and may be cited as the Limited Liability Company Act.

Sec. 5. For purposes of the Limited Liability Company Act, unless the context otherwise requires:

(1) Certificate of registration or registration certificate from or by the regulating board means either a document prepared and issued by the regulating board or the electronic accessing of the regulating board's licensing records by the Secretary of State;

(2) Professional limited liability company means a limited liability company which is organized under the act for the specific purpose of rendering a professional service and which has as its members only individuals who themselves are duly licensed or otherwise legally authorized by a regulating board within this state to render the same professional service as the limited liability company;

(3) Professional service means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and which includes, but is not limited to, personal services rendered by a certified public accountant, public accountant, dentist, osteopathic physician, physician and surgeon, veterinarian, real estate broker, associate real estate broker, real estate salesperson, or attorney at law. For purposes of the act, those professions pertaining to the diagnosis, care, and treatment of humans shall be considered to be of the same profession; and

(4) Regulating board means a board which is charged with the licensing and regulating of the practice or profession which the professional limited liability company is organized to render.

Sec. 6. Section 21-2603, Reissue Revised Statutes of Nebraska, is amended to read:

21-2603 A limited liability company organized pursuant to and existing under the Limited Liability Company Act may:

(1) Sue, be sued, complain, and defend in its name;

(2) Purchase, take, receive, lease, and otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or an interest in real or personal property wherever situated;

(3) Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(4) Lend money to and otherwise assist its members;

(5) Purchase, take, receive, subscribe for, and otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, and otherwise dispose of, use, and deal in and with shares or other interests in or obligations of other limited liability companies, domestic or foreign corporations, associations, general or limited partnerships, or individuals or direct or indirect obligations of the United States or of any government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(6) Make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the limited liability company may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(7) Lend money for its proper purposes, invest and reinvest its funds, and take and hold real property and personal property for the payment of funds loaned or invested;

(8) Conduct its business, carry on its operations, and have and exercise the powers granted by the act in any state, territory, district, or possession of the United States or in any foreign country;

(9) Elect or appoint one or more managers and agents of the limited liability company and define their duties and fix their compensation;

(10) Make and alter operating agreements, not inconsistent with its articles of organization or with the laws of this state, for the administration and regulation of the affairs of the limited liability company;

(11) (a) Indemnify a member, manager, or former member or manager of the limited liability company against expenses actually and reasonably incurred in connection with the defense of a civil or criminal action, suit, or proceeding in which such person is made a party by reason of being or having been a member or manager except in matters as to which such person is adjudged in the action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty and (b) make any other indemnification

that is authorized by the articles of organization or by an article of the operating agreement or resolution adopted by the members after notice;

(12) Cease its activities and surrender its certificate of organization;

(13) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized;

(14) Become a member of a general partnership, limited partnership, joint venture or similar association, or other limited liability company; and

(15) Render a professional services service within or without this state.

Sec. 7. Section 21-2606, Reissue Revised Statutes of Nebraska, is amended to read:

21-2606 (1) The articles of organization of a limited liability company shall set forth:

(a) The name of the limited liability company;

(b) The purpose for which the limited liability company is organized but, if the limited liability company provides a professional service, the articles of organization shall contain a statement of the profession to be practiced by the limited liability company;

(c) The address of its principal place of business in this state and the name and address of its registered agent in this state;

(d) The total amount of cash contributed to stated capital and a description and agreed value of property other than cash contributed;

(e) The total additional contributions agreed to be made by all members and the times at which or events upon the happening of which the contributions will be made;

(f) The right, if given, of the members to admit additional members and the terms and conditions of the admission; and

(g) If the limited liability company is to be managed by one or more managers, the names and addresses of the persons who will serve as managers until the successor is elected, or if the management of a limited liability company is reserved to the one or more classes of members, the names and addresses of such members.

(2) The articles of organization of a limited liability company may set forth:

(a) The period of its duration, which may be perpetual. If the articles of organization do not state a period of duration, the limited liability company shall have perpetual existence; and

(b) Any other provision not inconsistent with law which the members elect to set out in the articles of organization for the regulation of the internal affairs of the limited liability company, including any provisions which are required or permitted to be set out in the operating agreement of the limited liability company.

(3) It shall not be necessary to set out in the articles of organization any of the powers enumerated in the Limited Liability Company Act.

Sec. 8. Section 21-2607, Revised Statutes Cumulative Supplement, 2004, is amended to read:

21-2607 (1) Duplicate originals of the articles of organization of a limited liability company shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the limited liability company is organized to render a professional services service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such articles of organization and fees. If the Secretary of State finds that the articles of organization conform to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(a) Endorse on each of the duplicate originals the word filed and the month, day, and year of the filing thereof;

(b) File one of the duplicate originals and any registration certificate, if applicable, in his or her office; and

(c) Issue a certificate of organization to which he or she shall affix the other duplicate original.

(2) The certificate of organization, together with a duplicate original of the articles of organization affixed to it by the Secretary of State, shall be returned to the principal office of the limited liability company or to its representative.

Sec. 9. Section 21-2610, Reissue Revised Statutes of Nebraska, is amended to read:

21-2610 (1) A limited liability company, whether foreign or domestic, may change its registered office or registered agent upon filing

with the Secretary of State a statement setting forth:

- (a) The name of the limited liability company;
- (b) The address of its current registered office;
- (c) If the address of its registered office is to be changed, the new address;
- (d) The name of its current registered agent;
- (e) If its registered agent is to be changed, the name of the successor registered agent;
- (f) That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- (g) That the change was authorized by an affirmative vote of a majority in interest of the members of the limited liability company or in any other manner authorized by the articles of organization.

(2) The statement shall be executed by an authorized representative of the limited liability company and delivered to the Secretary of State. If the Secretary of State finds that the statement conforms to the requirements of this section, he or she shall file the statement in his or her office, and upon filing, the change of address of the registered office or the appointment of a new registered agent shall be effective.

(3) A registered agent may resign as registered agent of a limited liability company upon filing a written notice, executed in duplicate, with the Secretary of State who shall mail a copy thereof to the limited liability company at its place of business if known to the Secretary of State, otherwise at its registered office. The appointment of the registered agent shall terminate upon the expiration of thirty days after receipt of notice by the Secretary of State.

(4) If a registered agent changes the street address for his or her business office, he or she may change the street address of the registered office of any limited liability company for which he or she is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited liability company has been notified of the change.

Sec. 10. Section 21-2613, Reissue Revised Statutes of Nebraska, is amended to read:

21-2613 (1) The registered agent appointed by a limited liability company shall be an agent of the limited liability company upon whom any process, notice, or demand required or permitted by law to be served may be served.

(2) If a limited liability company fails to appoint or maintain a registered agent in this state or if the registered agent cannot with reasonable diligence be found at the registered office, the limited liability company shall be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service shall be perfected under this subsection at the earliest of:

- (a) The date the limited liability company receives the mail;
- (b) The date shown on the return receipt, if signed on behalf of the limited liability company; or

(c) Five days after its deposit in the United States mail as evidenced by the postmark, if mailed postage prepaid and correctly addressed. Secretary of State shall be an agent of the limited liability company upon whom any process, notice, or demand may be served. Service on the Secretary of State shall be made by delivering to and leaving with the Secretary of State or with any clerk of his or her office duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the Secretary of State, he or she shall cause one of the copies to be sent by registered or certified mail to the limited liability company at its registered office. Any service on the Secretary of State shall be returnable in not less than thirty days.

~~(3) The Secretary of State shall keep a record of all processes, notices, and demands served upon him or her pursuant to this section and shall record the time of service and his or her action with reference thereto.~~

~~(4) (3) This section shall not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.~~

Sec. 11. (1) A limited liability company and a foreign limited liability company authorized to transact business in the state shall file a biennial report in the office of the Secretary of State which contains:

- (a) The name of the limited liability company and the state or other jurisdiction under whose laws the limited liability company or foreign limited

liability company is formed; and

(b) The street address of the limited liability company's principal place of business in this state or, if the limited liability company does not have an office in this state, the name and street address of the company's agent for service of process.

(2) Commencing on January 1, 2007, a biennial report shall be filed between January 1 and April 1 of each odd-numbered year following the year in which a limited liability company files articles of organization or a foreign limited liability company becomes authorized to transact business in this state. A correction or amendment to a biennial report may be filed at any time.

(3) The Secretary of State may dissolve a limited liability company or revoke the certificate of authority to transact business of a foreign limited liability company that fails to file a biennial report when due or pay the required filing fee provided in section 21-2634. To do so, the Secretary of State shall provide the company at least sixty days' written notice of intent to dissolve or revoke. The notice shall be mailed to the company at its principal office or the office of the agent for service of process as set forth in the articles of organization, biennial report, or other filing designating the agent for service of process, whichever was most recently filed. The notice shall specify the biennial report that has not been filed, the fee that has not been paid, and the effective date of the dissolution or revocation. The dissolution or revocation is not effective if the biennial report is filed and the fee is paid before the effective date of the dissolution or revocation.

(4) Revival or restoration of the authority of a company dissolved or whose certificate of authority has been revoked pursuant to this section shall be accomplished as provided in section 21-2611, and upon completion of such requirements for revival or restoration, the revival or restoration shall relate back to the date of dissolution or revocation as if such dissolution or revocation had not occurred.

Sec. 12. A professional limited liability company shall render only one type of professional service and such services as may be ancillary thereto and shall not engage in any other profession. No professional limited liability company organized under the Limited Liability Company Act may render a professional service except through its members, managers, and professional employees who are duly licensed or otherwise legally authorized to render such professional service within this state. This section shall not be interpreted to include in the term professional employee, as used in the act, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering a professional service to the public for which a license or other legal authorization is required.

Sec. 13. Section 21-2631, Revised Statutes Cumulative Supplement, 2004, is amended to read:

21-2631 (1) Each member, manager, employee, or agent of a limited liability company organized under the Limited Liability Company Act who renders a professional services service shall hold a valid license or otherwise be duly authorized to render ~~these professional services that professional service~~ under the law of this state if such person renders a professional services service within this state or under the law of the state, territory, or other jurisdiction in which such person renders ~~these the professional services service~~.

(2) Before rendering a professional services service, the limited liability company shall (a) (i) file with the Secretary of State a registration certificate issued to the limited liability company by the regulatory body of the particular profession for which the limited liability company is organized to do business, which certificate sets forth the name and residence address of every member as of the last day of the month preceding the filing, and (ii) certify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise authorized to perform the professional ~~services service~~ for which the limited liability company is organized or (b) comply with and qualify under the procedures set forth in subsection (2) of section 21-2631.01.

(3) The registration certificate requirements of this section and sections 21-2631.01 to 21-2632 shall apply to both domestic and foreign limited liability companies.

Sec. 14. Section 21-2631.01, Reissue Revised Statutes of Nebraska, is amended to read:

21-2631.01 (1) An application for issuance of a registration certificate shall be made by the limited liability company to the regulatory body in writing and shall contain the names of all members, managers, and

professional employees of the limited liability company, the street address at which the applicant proposes to perform a professional services service, and such other information as may be required by the regulatory body. If it appears to the regulatory body that each member, manager, and professional employee of the applicant required by law to be licensed is licensed or otherwise authorized to practice the profession of the applicant and that each member, manager, or professional employee required by law to be licensed is not otherwise disqualified from performing the professional services service of the applicant, such regulatory body shall certify in duplicate upon a form bearing its date of issuance and prescribed by such regulatory body that the proposed or existing limited liability company complies with the provisions of the Limited Liability Company Act and of the applicable rules and regulations of the regulatory body. Each applicant for such registration certificate shall pay the regulatory body a fee of twenty-five dollars for the issuance of the certificate.

One copy of such certificate shall be prominently displayed to public view upon the premises of the principal place of business of the limited liability company, and one copy shall be filed with the Secretary of State who shall charge a fee of twenty-five dollars for filing the same. The certificate shall be filed in the office of the Secretary of State with the articles of organization. A registration certificate bearing an issuance date more than twelve months old shall not be eligible for filing with the Secretary of State.

(2) When licensing records of regulating boards are electronically accessible to the Secretary of State, the Secretary of State shall access the records. The access of the records shall be made in lieu of the certificate of registration or registration certificate being prepared and issued by the regulating board. The limited liability company shall file with the Secretary of State an application setting forth the names of all members, managers, and professional employees of such limited liability company who are required by law to be licensed or otherwise authorized to practice the professional services service for which the limited liability company is organized as of the last day of the month preceding the date of application and shall file with the Secretary of State an annual update thereafter. The application shall be completed on a form prescribed by the Secretary of State and shall contain such other information as the Secretary of State may require. The application shall be accompanied by a license verification fee of fifty dollars.

The Secretary of State shall verify that all members, managers, and professional employees who are required by law to do so are duly licensed or otherwise legally authorized to render the same professional service or ancillary service as those which the limited liability company renders through electronic accessing of the regulating board's records. If any member, manager, or professional employee is not licensed or otherwise legally authorized to perform the professional service that the limited liability company was organized to render, the limited liability company shall be suspended. The suspension shall remain in effect and a biennial report shall not be filed in the office of the Secretary of State until the limited liability company attests in writing that all members, managers, or professional employees are duly licensed or otherwise legally authorized to render the appropriate service and that information is verified by the Secretary of State or all unlicensed or unauthorized members, managers, or professional employees are no longer members, managers, or professional employees of the limited liability company.

Sec. 15. Section 21-2632, Reissue Revised Statutes of Nebraska, is amended to read:

21-2632 Nothing in the Limited Liability Company Act is intended to restrict or limit in any manner the authority and duty of any regulatory body licensing professionals within the state to license such individuals rendering a professional services service or to regulate the practice of any profession that is within the jurisdiction of the regulatory body licensing such professionals within the state notwithstanding that the person is a member, manager, employee, or agent of a limited liability company and rendering ~~professional services~~ a professional service or engaging in the practice of the profession through a limited liability company.

Sec. 16. Section 21-2634, Reissue Revised Statutes of Nebraska, is amended to read:

21-2634 The filing fee for all filings pursuant to the Limited Liability Company Act, including amendments, shall be ten dollars plus the recording fees set forth in subdivision (4) of section 33-101, except that the filing fee for filing a certificate of organization and for filing an application for a certificate of authority as a foreign limited liability company shall be one hundred dollars plus such recording fees and ten dollars

for a certificate. There shall be no recording fee collected for the filing of a biennial report or any corrections or amendments thereto. A fee of one dollar per page plus ten dollars per certificate shall be paid for a certified copy of any document on file pursuant to the act. The fees for filings pursuant to the act shall be paid to the Secretary of State and remitted by him or her to the State Treasurer. ~~Until January 1, 1995, the State Treasurer shall credit the fees to the General Fund. On and after January 1, 1995, the~~ The State Treasurer shall credit two-thirds of the fees to the General Fund and one-third of the fees to the Corporation Cash Fund.

Sec. 17. Section 21-2639, Revised Statutes Cumulative Supplement, 2004, is amended to read:

21-2639 The original and a duplicate original of the application of a foreign limited liability company for a certificate of authority shall be delivered to the Secretary of State along with the filing fees required by section 21-2634. If the foreign limited liability company is organized to render a professional services service, a current registration certificate as provided in sections 21-2631 to 21-2632 shall be delivered to the Secretary of State with such application and fees. If the Secretary of State finds that the application conforms to law and, if applicable, a current registration certificate has been filed, the Secretary of State shall:

(1) Endorse on each of such documents the word filed and the month, day, and year of the filing thereof;

(2) File in his or her office the original of the application and any registration certificate, if applicable; and

(3) Issue a certificate of authority to transact business in this state to which he or she shall affix the duplicate original of the application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the Secretary of State, shall be returned to the principal office of the foreign limited liability company or its representative.

Sec. 18. Original sections 21-2601, 21-2603, 21-2606, 21-2610, 21-2613, 21-2631.01, 21-2632, and 21-2634, Reissue Revised Statutes of Nebraska, and sections 21-301, 21-304, 21-330, 21-2607, 21-2631, and 21-2639, Revised Statutes Cumulative Supplement, 2004, are repealed.