

## LEGISLATIVE BILL 383

Approved by the Governor February 7, 2008

Introduced by Pahls, 31.

FOR AN ACT relating to partnerships; to amend sections 67-236, 67-240, 67-241, 67-281, 67-283, and 67-415, Reissue Revised Statutes of Nebraska, and sections 67-454, 67-456, and 67-458, Revised Statutes Cumulative Supplement, 2006; to modify provisions relating to the address of the agent for partnerships under the Nebraska Uniform Limited Partnership Act and the Uniform Partnership Act of 1998; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 67-236, Reissue Revised Statutes of Nebraska, is amended to read:

67-236 (a) Each limited partnership shall have and maintain in this state:

(1) An office which may but need not be a place of its business in this state; and

(2) An agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state.

(b) The agent for service of process may change his, her, or its street address and post office box number, if any, to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the limited partnerships represented by the agent, the street address and post office box number, if any, at which the agent has maintained his, her, or its office as agent for each of such limited partnerships, and the new street address and post office box number, if any, to which the office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office in this state of the agent for service of process for each of the limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership. Any agent filing a certificate under this section shall promptly, upon the filing, deliver a copy of such certificate to each limited partnership affected thereby.

(c) The agent of one or more limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such limited partnerships as have ratified and approved such substitution and the successor agent's address, as stated in such certificate, shall become the address of each such limited partnership's office in this state. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the certificate of limited partnership of each limited partnership affected thereby, and each such limited partnership shall not be required to take any further action to amend its certificate of limited partnership.

(d) The agent of one or more limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to the certificate

an affidavit of the agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of the agent was sent by certified or registered mail to each limited partnership for which the agent is resigning as agent at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request the agent was appointed for such limited partnership. After receipt of the notice of the resignation of its agent, the limited partnership for which the agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If the limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, the certificate of such limited partnership shall be deemed to be canceled.

Sec. 2. Section 67-240, Reissue Revised Statutes of Nebraska, is amended to read:

67-240 (a) In order to form a limited partnership, all persons who initially will be the general partners shall execute a certificate of limited partnership. The certificate shall be filed in the office of the Secretary of State and set forth:

- (1) The name of the limited partnership;
- (2) The address of its office and the name and street address and post office box number, if any, of the agent for service of process required to be maintained by section 67-236;
- (3) The name and the business, residence, or mailing address of each general partner; and
- (4) Any other matters the partners determine to include therein.

(b) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the Secretary of State or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

Sec. 3. Section 67-241, Reissue Revised Statutes of Nebraska, is amended to read:

67-241 (a) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall be executed by any person who will be a general partner upon the effective date of the certificate of amendment and shall set forth:

- (1) The name of the limited partnership;
  - (2) The date of filing the certificate; and
  - (3) The amendment to the certificate.
- (b) Within ninety days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events shall be filed by any person who will be a general partner upon the effective date of the certificate of amendment and by each other general partner designated in the certificate of amendment as a new general partner:

- (1) The admission of a new general partner;
- (2) A general partner ceases to be a general partner as provided in section 67-255; or
- (3) A change in the name of the limited partnership, a change in the address of its registered office, or a change in the name or street address or post office box number, if any, of the registered agent for service of process required to be maintained by section 67-236 which is not reflected in a certificate filed pursuant to section 67-236.

(c) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any matter described has changed, making the certificate false in any respect, shall promptly amend the certificate.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

(e) No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (b) of this section if the amendment is filed within the ninety-day period specified in subsection (b) of this section.

(f) A certificate of amendment shall be effective at the time of its filing with the Secretary of State or at any later time specified in the certificate of amendment if, in either case, there has been substantial compliance with the requirements of this section.

(g) A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

(h) If after the dissolution of a limited partnership but prior to the filing of a certificate of cancellation as provided in section 67-242:

(1) A certificate of limited partnership has been amended to reflect the withdrawal of all general partners of a limited partnership, the certificate of limited partnership shall be amended to set forth the name and the business, residence, or mailing address of each person winding up the limited partnership affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment; or

(2) A person shown on a certificate of limited partnership as a general partner is not winding up the limited partnership's affairs, the certificate of limited partnership shall be amended to add the name and the business, residence, or mailing address of each person winding up the limited partnership's affairs, each of whom shall execute and file such certificate of amendment, and each of whom shall not be subject to liability as a general partner by reason of such amendment.

Sec. 4. Section 67-281, Reissue Revised Statutes of Nebraska, is amended to read:

67-281 (a) Before transacting business in this state, a foreign limited partnership shall register with the Secretary of State. In order to register, a foreign limited partnership shall submit to the Secretary of State, in duplicate, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state;

(2) The state or country and date of its formation;

(3) A statement that the Secretary of State is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed under subdivision (4) of this subsection, if an agent has been appointed but the agent's authority has been revoked, or if an agent has been appointed but cannot be found or served with the exercise of reasonable diligence;

(4) The name and street address and post office box number, if any, of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint. The agent must be an individual resident of this state, a domestic corporation, a foreign corporation having a place of business in and authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company having a place of business in and authorized to do business in this state;

(5) The address of the office required to be maintained in the state or country of its organization by the laws of that state or country or, if not so required, of the principal office of the foreign limited partnership; and

(6) The name and business, residence, or mailing address of each of the general partners.

(b) A foreign limited partnership or a partnership, limited liability company, or corporation formed or organized under the laws of any foreign country or other foreign jurisdiction or the laws of any state other than this state shall not be deemed to be doing business in this state solely by reason of its being a partner in a domestic limited partnership.

Sec. 5. Section 67-283, Reissue Revised Statutes of Nebraska, is amended to read:

67-283 (a) A foreign limited partnership may register with the Secretary of State under any name, whether or not it is the name under which it is registered in its state or country of organization, that includes the words limited partnership or limited or the abbreviations L.P. or Ltd. and that could be registered by a domestic limited partnership. A foreign limited partnership may register under any name which is deceptively similar to, upon the records in the office of the Secretary of State, the name of any domestic or foreign corporation, limited liability company, or limited partnership reserved, registered, or organized under the laws of this state with the consent of the other corporation, limited liability company, or limited partnership or with the transfer of such name by the other corporation, limited liability company, or limited partnership, which written consent or transfer shall be filed with the Secretary of State.

(b) Each foreign limited partnership shall have and maintain in this state an agent for service of process on the limited partnership, which agent may be either an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic

limited liability company, or a foreign limited liability company authorized to do business in this state. The appointment of the Secretary of State as agent for service of process pursuant to subdivision (a)(3) of section 67-281 shall not relieve a foreign limited partnership from its obligations pursuant to this section or from the consequences of failure to discharge its obligations under this section.

(c) An agent may change his, her, or its street address and post office box number, if any, for service of process to another street address and post office box number, if any, in this state by paying a fee as set forth in section 67-293 and filing with the Secretary of State a certificate, executed by the agent, setting forth the names of the foreign limited partnerships represented by the agent, the street address and post office box number, if any, at which such agent has maintained his, her, or its office as agent for each of such foreign limited partnerships, and the new street address and post office box number, if any, to which his, her, or its office will be changed on a given day, at which new street address and post office box number, if any, the agent will thereafter maintain his, her, or its office as agent for each of the foreign limited partnerships recited in the certificate. Upon the filing of the certificate, the Secretary of State shall furnish to the agent a copy of the same, and thereafter or until further change of street address or post office box number, if any, as authorized by law, the office of the agent in this state for each of the foreign limited partnerships recited in the certificate shall be located at the new street address and post office box number, if any. Filing of the certificate shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration. Any agent filing a certificate under this section shall promptly, upon filing, deliver a copy of such certificate to each foreign limited partnership affected thereby.

(d) The agent of one or more foreign limited partnerships may resign and appoint a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State, stating that the agent is resigning and the name and street address and post office box number, if any, of the successor agent. There shall be attached to such certificate a statement executed by each affected foreign limited partnership ratifying and approving such change of agent. Upon such filing, the successor agent shall become the agent of such foreign limited partnerships as have ratified and approved such substitution. The Secretary of State shall furnish to the successor agent a copy of the certificate of resignation. Filing of the certificate of resignation shall be deemed to be an amendment of the registration of each foreign limited partnership affected thereby, and each such foreign limited partnership shall not be required to take any further action to amend its registration.

(e) The agent of one or more foreign limited partnerships may resign without appointing a successor agent by paying a fee as set forth in section 67-293 and filing a certificate with the Secretary of State stating that the agent is resigning as agent for the foreign limited partnerships identified in the certificate, but such resignation shall not become effective until one hundred twenty days after the certificate is filed. There shall be attached to such certificate an affidavit of such agent, if an individual, or of the president, a vice president, or the secretary, if a corporation, or of the manager or a member, if a limited liability company, that, at least thirty days prior to the date of filing of the certificate, notice of the resignation of such agent was sent, by certified or registered mail, to each foreign limited partnership for which such agent is resigning as agent, at the principal office thereof within or outside this state if known to such agent or, if not, to the last-known address of the attorney or other individual at whose request such agent was appointed for such foreign limited partnership. After receipt of the notice of the resignation of its agent, the foreign limited partnership for which such agent was acting shall obtain and designate a new agent to take the place of the agent so resigning. If such foreign limited partnership fails to obtain and designate a new agent prior to the expiration of the period of one hundred twenty days after the filing of the certificate of resignation, such foreign limited partnership shall not be permitted to do business in this state and its registration shall be deemed to be canceled.

Sec. 6. Section 67-415, Reissue Revised Statutes of Nebraska, is amended to read:

67-415 (1) A partnership may file a statement of partnership authority, which:

(a) Must include:

(i) The name of the partnership;  
 (ii) The street address of its chief executive office and of one office in this state, if there is one;  
 (iii) The names and mailing addresses of all of the partners or the name and street address and post office box number, if any, of an agent appointed and maintained by the partnership for the purpose of subsection (2) of this section; and

(iv) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to subsection (3) of section 67-406 and states the name of the partnership but does not contain all of the other information required by subsection (1) of this section, the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5) of this section.

(4) Except as otherwise provided in subsection (7) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority; and

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office of the register of deeds is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office of the register of deeds. The recording in the office of the register of deeds of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office of the register of deeds.

(6) Except as otherwise provided in subsections (4) and (5) of this section and sections 67-437 and 67-443, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the Secretary of State.

Sec. 7. Section 67-454, Revised Statutes Cumulative Supplement, 2006, is amended to read:

67-454 (1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(3) After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State. The statement must contain:

- (a) The name of the partnership;
- (b) The street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;
- (c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process;
- (d) A statement that the partnership elects to be a limited liability partnership; and
- (e) A deferred effective date, if any.

(4) The agent of a limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(5) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(6) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.

(7) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(8) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(9) Any limited liability partnership engaging in the practice of law in this state shall file with the Secretary of State, along with its statement of qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the limited liability partnership with its annual report required by section 67-456.

Sec. 8. Section 67-456, Revised Statutes Cumulative Supplement, 2006, is amended to read:

67-456 (1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report in the office of the Secretary of State which contains:

(a) The name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) If the partnership does not have an office in this state, the name and street address and post office box number, if any, of the partnership's current agent for service of process.

(2) Any limited liability partnership, or foreign limited liability partnership authorized to transact business in this state, engaging in the practice of law in this state shall file with its annual report a current certificate of authority from the Nebraska Supreme Court.

(3) An annual report and certificate of authority, if applicable, must be filed between January 1 and April 1 of each year following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state.

(4) The Secretary of State may revoke the statement of qualification of a partnership that fails to file an annual report and certificate of authority, if applicable, when due or pay the required filing fee provided in section 67-462. To do so, the Secretary of State shall provide the partnership at least sixty days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report or certificate of authority, if applicable, that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report and certificate of authority, if applicable, is filed and the fee is paid before the effective date of the revocation.

(5) A revocation under subsection (4) of this section only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(6) A partnership whose statement of qualification has been revoked may apply to the Secretary of State for reinstatement within two years after the effective date of the revocation. The application must state:

(a) The name of the partnership and the effective date of the revocation; and

(b) That the ground for revocation either did not exist or has been corrected.

(7) A reinstatement under subsection (6) of this section relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Sec. 9. Section 67-458, Revised Statutes Cumulative Supplement, 2006, is amended to read:

67-458 (1) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification. The statement must contain:

(a) The name of the foreign limited liability partnership which (i) satisfies the requirements of the state or other jurisdiction under whose law it is formed, (ii) ends with "registered limited liability partnership", "limited liability partnership", "R.L.L.P.", "RLLP", "L.L.P.", "LLP", or similar words or abbreviations as required by the jurisdiction under whose law it is formed, and (iii) complies with the requirements of a domestic limited liability partnership as provided in subdivisions (1)(b) and (c) and subsection (2) of section 67-455;

(b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any;

(c) If there is no office of the partnership in this state, the name and street address and post office box number, if any, of the partnership's agent for service of process; and

(d) A deferred effective date, if any.

(2) The agent of a foreign limited liability partnership for service of process must be an individual who is a resident of this state or other person authorized to do business in this state.

(3) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to subsection (4) of section 67-406 or revoked pursuant to section 67-456.

(4) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

(5) Any foreign limited liability partnership engaged in the practice of law in this state shall file with the Secretary of State, along with its statement of foreign qualification, a certificate of authority issued by the Nebraska Supreme Court. In addition, such certificate of authority shall be renewed annually and filed by the foreign limited liability partnership with its annual report required by section 67-456.

Sec. 10. Original sections 67-236, 67-240, 67-241, 67-281, 67-283, and 67-415, Reissue Revised Statutes of Nebraska, and sections 67-454, 67-456, and 67-458, Revised Statutes Cumulative Supplement, 2006, are repealed.