

ASSEMBLY BILL NO. 25—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE SECRETARY OF STATE)

PREFILED JANUARY 26, 2007

Referred to Committee on Judiciary

SUMMARY—Makes various changes to provisions governing business associations. (BDR 7-544)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to business associations; revising certain fees charged by the Office of the Secretary of State; revising the provisions pertaining to the name of a foreign limited partnership; making various other changes pertaining to business associations; providing for the correction of certain records filed with the Office of the Secretary of State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 **Sections 2, 3 and 6** of this bill revise the fees for filing and certifying certain
- 2 documents with the Office of the Secretary of State. (NRS 87.4318, 87.4328,
- 3 104.9525)
- 4 **Section 4** of this bill allows a foreign limited partnership to abbreviate its
- 5 name. (NRS 88.585)
- 6 **Section 7** of this bill authorizes the Secretary of State to adopt regulations
- 7 prescribing procedures for correcting certain fraudulent or false records filed with
- 8 the Office of the Secretary of State.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 86.263 is hereby amended to read as follows:
- 2 86.263 1. A limited-liability company shall, on or before the
- 3 last day of the first month after the filing of its articles of



* A B 2 5 R 2 *

1 organization with the Secretary of State, file with the Secretary of
2 State, on a form furnished by him, a list that contains:

- 3 (a) The name of the limited-liability company;
- 4 (b) The file number of the limited-liability company, if known;
- 5 (c) The names and titles of all of its managers or, if there is no
6 manager, all of its managing members;
- 7 (d) The address, either residence or business, of each manager or
8 managing member listed, following the name of the manager or
9 managing member;
- 10 (e) The name and street address of its lawfully designated
11 resident agent in this State; and
- 12 (f) The signature of a manager or managing member of the
13 limited-liability company certifying that the list is true, complete
14 and accurate.

15 2. The limited-liability company shall ~~annually~~ thereafter, on
16 or before the last day of the month in which the anniversary date of
17 its organization occurs, file with the Secretary of State, on a form
18 furnished by him, an ~~amended~~ **annual** list containing all of the
19 information required in subsection 1.

20 3. Each list required by subsections 1 and 2 must be
21 accompanied by a declaration under penalty of perjury that the
22 limited-liability company:

- 23 (a) Has complied with the provisions of NRS 360.780; and
- 24 (b) Acknowledges that pursuant to NRS 239.330, it is a category
25 C felony to knowingly offer any false or forged instrument for filing
26 in the Office of the Secretary of State.

27 4. Upon filing:

28 (a) The initial list required by subsection 1, the limited-liability
29 company shall pay to the Secretary of State a fee of \$125.

30 (b) Each annual list required by subsection 2, the limited-
31 liability company shall pay to the Secretary of State a fee of \$125.

32 5. If a manager or managing member of a limited-liability
33 company resigns and the resignation is not reflected on the annual or
34 amended list of managers and managing members, the limited-
35 liability company or the resigning manager or managing member
36 shall pay to the Secretary of State a fee of \$75 to file the resignation.

37 6. The Secretary of State shall, 90 days before the last day for
38 filing each list required by subsection 2, cause to be mailed to each
39 limited-liability company which is required to comply with the
40 provisions of this section, and which has not become delinquent, a
41 notice of the fee due under subsection 4 and a reminder to file a list
42 required by subsection 2. Failure of any company to receive a notice
43 or form does not excuse it from the penalty imposed by law.



* A B 2 5 R 2 *

7. If the list to be filed pursuant to the provisions of subsection 1 or 2 is defective or the fee required by subsection 4 is not paid, the Secretary of State may return the list for correction or payment.

8. An annual list for a limited-liability company not in default received by the Secretary of State more than 90 days before its due date shall be deemed an amended list for the previous year.

Sec. 2. NRS 87.4318 is hereby amended to read as follows:

87.4318 1. A statement may be filed in the Office of the Secretary of State. A certified copy of a statement that is filed in an office in another state may be filed in the Office of the Secretary of State. Either filing has the effect provided in NRS 87.4301 to 87.4357, inclusive, with respect to partnership property located in or transactions that occur in this State.

2. A certified copy of a statement that has been filed in the Office of the Secretary of State and recorded in the office of the applicable county recorder has the effect provided for recorded statements in NRS 87.4301 to 87.4357, inclusive. A recorded statement that is not a certified copy of a statement filed in the Office of the Secretary of State does not have the effect provided for recorded statements in NRS 87.4301 to 87.4357, inclusive.

3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by NRS 87.4301 to 87.4357, inclusive. A natural person who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate. *The fee for filing a statement of partnership authority is \$75.*

4. A person authorized by NRS 87.4301 to 87.4357, inclusive, to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement and states the substance of the amendment or cancellation. *The fee for filing an amendment or cancellation of a statement of partnership authority is \$175.*

5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

Sec. 3. NRS 87.4328 is hereby amended to read as follows:

87.4328 A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subsection 2 of NRS 87.4327 may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as



* A B 2 5 R 2 *

1 a partner. A statement of denial is a limitation on authority as
2 provided in subsections 4 and 5 of NRS 87.4327. *The fee for filing*
3 *a statement of denial is \$75.*

4 **Sec. 4.** NRS 88.585 is hereby amended to read as follows:

5 88.585 Except as otherwise provided in NRS 88.609, a foreign
6 limited partnership may register with the Secretary of State under
7 any name, whether or not it is the name under which it is registered
8 in its state of organization, that ~~[includes without abbreviation]~~
9 *contains* the words "limited partnership" *or the abbreviation "LP"*
10 *or "L.P."* and that could be registered by a domestic limited
11 partnership.

12 **Sec. 5.** NRS 92A.205 is hereby amended to read as follows:

13 92A.205 1. After a plan of conversion is approved as
14 required by this chapter, if the resulting entity is a domestic entity,
15 the constituent entity shall deliver to the Secretary of State for filing:

16 (a) Articles of conversion setting forth:

17 (1) The name and jurisdiction of organization of the
18 constituent entity and the resulting entity; and

19 (2) That a plan of conversion has been adopted by the
20 constituent entity in compliance with the law of the jurisdiction
21 governing the constituent entity.

22 (b) The charter document of the domestic resulting entity
23 required by the applicable provisions of chapter 78, 78A, ~~[82,]~~ 86,
24 88, 88A or 89 of NRS.

25 (c) A certificate of acceptance of appointment of a resident
26 agent for the resulting entity which is signed by the resident agent.

27 2. After a plan of conversion is approved as required by this
28 chapter, if the resulting entity is a foreign entity, the constituent
29 entity shall deliver to the Secretary of State for filing articles of
30 conversion setting forth:

31 (a) The name and jurisdiction of organization of the constituent
32 entity and the resulting entity;

33 (b) That a plan of conversion has been adopted by the
34 constituent entity in compliance with the laws of this State; and

35 (c) The address of the resulting entity where copies of process
36 may be sent by the Secretary of State.

37 3. If the entire plan of conversion is not set forth in the articles
38 of conversion, the filing party must include in the articles of
39 conversion a statement that the complete signed plan of conversion
40 is on file at the registered office or principal place of business of the
41 resulting entity or, if the resulting entity is a domestic limited
42 partnership, the office described in paragraph (a) of subsection 1 of
43 NRS 88.330.

44 4. If the conversion takes effect on a later date specified in the
45 articles of conversion pursuant to NRS 92A.240, the charter



* A B 2 5 R 2 *

document to be filed with the Secretary of State pursuant to paragraph (b) of subsection 1 must state the name and the jurisdiction of the constituent entity and that the existence of the resulting entity does not begin until the later date.

5. Any records filed with the Secretary of State pursuant to this section must be accompanied by the fees required pursuant to this title for filing the charter document.

Sec. 6. NRS 104.9525 is hereby amended to read as follows:

104.9525 1. Except as otherwise provided in subsection ~~[5.]~~ **6**, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection 2 of NRS 104.9502, is:

(a) Forty dollars if the record is communicated in writing and consists of one or two pages;

(b) Sixty dollars if the record is communicated in writing and consists of more than two pages, and \$2 for each page over 20 pages;

(c) Twenty dollars if the record is communicated by another medium authorized by filing-office rule; and

(d) Two dollars for each additional debtor, trade name or reference to another name under which business is done.

2. The filing officer may charge and collect \$2 for each page of copy or record of filings produced by him at the request of any person.

3. Except as otherwise provided in subsection ~~[5.]~~ **6**, the fee for filing and indexing an initial financing statement of the kind described in subsection 3 of NRS 104.9502 is ~~[-]~~

~~—(a) Sixty dollars]~~ **\$40** if the financing statement indicates that it is filed in connection with a public-finance transaction ~~[-; and~~

~~—(b) Forty dollars if the financing statement indicates that it is filed in connection with]~~ **or** a manufactured-home transaction.

4. The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(a) Forty dollars if the request is communicated in writing; and

(b) Twenty dollars if the request is communicated by another medium authorized by filing-office rule.

5. *The fee for certifying a copy of a financing statement, amendment or other record on file in the Office of the Secretary of State pursuant to chapter 104 of NRS is \$30.*

6. This section does not require a fee with respect to a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subsection 3 of NRS 104.9502. However, the



* A B 2 5 R 2 *

1 fees for recording and satisfaction which otherwise would be
2 applicable to the mortgage apply.

3 **Sec. 7.** NRS 225.084 is hereby amended to read as follows:

4 225.084 1. A person shall not willfully file, promote the
5 filing of, or cause to be filed, or attempt or conspire to file, promote
6 the filing of, or cause to be filed, any record in the Office of the
7 Secretary of State if the person has actual knowledge that the record:

8 (a) Is forged or fraudulently altered;

9 (b) Contains a false statement of material fact; or

10 (c) Is being filed in bad faith or for the purpose of harassing or
11 defrauding any person.

12 2. Any person who violates this section is liable in a civil
13 action brought pursuant to this section for:

14 (a) Actual damages caused by each separate violation of this
15 section, or \$10,000 for each separate violation of this section,
16 whichever is greater;

17 (b) All costs of bringing and maintaining the action, including
18 investigative expenses and fees for expert witnesses;

19 (c) Reasonable attorney's fees; and

20 (d) Any punitive damages that the facts may warrant.

21 3. A civil action may be brought pursuant to this section by:

22 (a) Any person who is damaged by a violation of this section,
23 including, without limitation, any person who is damaged as the
24 result of an action taken in reliance on a record filed in violation of
25 this section; or

26 (b) The Attorney General, in the name of the State of Nevada, if
27 the matter is referred to the Attorney General by the Secretary of
28 State and if the Attorney General, after due inquiry, determines that
29 a civil action should be brought pursuant to this section. Any money
30 recovered by the Attorney General pursuant to this paragraph, after
31 deducting all costs and expenses incurred by the Attorney General
32 and the Secretary of State to investigate and act upon the violation,
33 must be deposited in the State General Fund.

34 4. For the purposes of this section, each filing of a single
35 record that constitutes a violation of this section shall be deemed to
36 be a separate violation.

37 5. The rights, remedies and penalties provided pursuant to this
38 section are cumulative and do not abrogate and are in addition to
39 any other rights, remedies and penalties that may exist at law or in
40 equity, including, without limitation, any criminal penalty that may
41 be imposed pursuant to NRS 239.330.

42 6. *The Secretary of State may adopt regulations prescribing*
43 *procedures for correcting any record filed in violation of this*
44 *section.*



* A B 2 5 R 2 *

1 **7.** As used in this section, “record” means information that is:
2 (a) Inscribed on a tangible medium or that is stored in an
3 electronic or other medium and is retrievable in perceivable form;
4 and

5 (b) Filed or offered for filing by a person pursuant to any
6 provision of title 7 of NRS or Article 9 of the Uniform Commercial
7 Code.

8 **Sec. 8.** Assembly Bill No. 26 of this session is hereby
9 amended by adding thereto a new section to be designated as sec.
10 6.5, following sec. 6, to read as follows:

11 Sec. 6.5. The amendatory provisions of this act do not
12 apply to a:

13 1. Corporation that files its articles of incorporation with
14 the Secretary of State;

15 2. Foreign corporation that files the records required
16 pursuant to subsection 1 of NRS 80.010 or NRS 80.110 with
17 the Secretary of State;

18 3. Nonprofit corporation that files its articles of
19 incorporation with the Secretary of State;

20 4. Limited-liability company that files its articles of
21 organization with the Secretary of State;

22 5. Registered limited-liability partnership that files its
23 certificate of registration with the Secretary of State; or

24 6. Limited partnership that files its certificate of limited
25 partnership with the Secretary of State,

26 ↪ before the effective date of this act.

27 **Sec. 9.** 1. This section and section 8 of this act become
28 effective upon passage and approval.

29 2. Sections 1 to 6, inclusive, of this act become effective on
30 October 1, 2007.

