

# State of South Dakota

EIGHTIETH  
LEGISLATIVE ASSEMBLY, 2005

337L0128

## HOUSE BILL NO. 1009

Introduced by: The Committee on Judiciary at the request of the Office of the Secretary of State

1 FOR AN ACT ENTITLED, An Act to revise certain filing requirements for limited liability  
2 companies and to repeal certain obsolete provisions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-34A-202.1 be amended to read as follows:

5 47-34A-202.1. (a) One or more persons may organize a limited liability company, consisting  
6 of one or more members, by delivering articles of organization to the Office of the Secretary of  
7 State for filing.

8 (b) Unless a delayed effective date is specified in accordance with § 47-34A-206(d), the  
9 existence of a limited liability company begins when the articles of organization ~~and the first~~  
10 ~~annual report as required in section 211(c)~~ are filed.

11 (c) The original and one exact or conforming copy of the articles of organization ~~and the first~~  
12 ~~annual report~~ shall be delivered to the secretary of state. If the secretary of state finds that the  
13 articles of organization ~~and the annual report~~ conform to law, the secretary of state shall, when  
14 all fees have been paid as prescribed:

15 (1) Endorse both the original and the exact or conforming copy with the word, Filed, and



1 the month, date, and year of the filing;

2 (2) File the original;

3 (3) Issue a certificate of organization and affix to the certificate, the exact or conforming  
4 copy.

5 The certificate of organization, together with the exact or conforming copy of the articles  
6 of organization affixed to it by the secretary of state, shall be returned to the principal office of  
7 the limited liability company or to its representative.

8 Section 2. That § 47-34A-211 be amended to read as follows:

9 47-34A-211. (a) A limited liability company, and a foreign limited liability company  
10 authorized to transact business in this state, except a bank organized pursuant to § 51A-3-1.1,  
11 shall deliver to the secretary of state for filing an annual report that sets forth:

12 (1) The name of the company and the state or country under whose law it is organized;

13 (2) The address of its registered office and the name and address of its registered agent  
14 for service of process in this state;

15 (3) The address of its principal office;

16 (4) The names and business addresses of any managers;

17 ~~(5) The dollar amount of the total agreed contributions to the limited liability company.~~

18 (b) Information in an annual report must be current as of the date the annual report is signed  
19 on behalf of the limited liability company.

20 (c) The first annual report ~~must~~ shall be delivered to the secretary of state ~~concurrent with~~  
21 ~~the filing of the articles of organization . Subsequent annual reports must be delivered to the~~  
22 ~~secretary of state before the first day of the second month following the anniversary month of~~  
23 ~~the filing date~~ before the first day of the second month of the year following the year in which  
24 a limited liability company was organized or a foreign company was authorized to transact

1 business. The subsequent annual report shall be delivered to the secretary of state by the same  
2 date each subsequent year.

3 (d) If an annual report does not contain the information required in subsection (a) or the fees  
4 required by § 47-34A-212, the secretary of state shall promptly notify the reporting limited  
5 liability company or foreign limited liability company and return the report to it for correction.  
6 If the report is corrected to contain the information required in subsection (a) or the fees  
7 required by § 47-34A-212 and delivered to the secretary of state within thirty days after the  
8 effective date of the notice, it is timely filed.

9 Section 3. That § 47-34A-212 be amended to read as follows:

10 47-34A-212. The secretary of state shall charge and collect for:

11 (a) Filing the ~~first annual report~~ articles of organization in the case of a domestic limited  
12 liability company, a filing fee of one hundred twenty-five dollars. Filing the ~~first~~  
13 ~~annual report~~ articles of organization in the case of a foreign limited liability  
14 company, a filing fee of five hundred fifty dollars;

15 (b) Deleted by SL 2004, ch 279, § 2.

16 (c) A reporting fee of fifty dollars, due and payable with the filing of ~~an~~ each annual  
17 report, ~~after the first annual report required in § 47-34A-211(e).~~

18 Section 4. That § 47-34A-811 be amended to read as follows:

19 47-34A-811. (a) A limited liability company administratively dissolved may apply to the  
20 secretary of state for reinstatement after the effective date of dissolution. The applicant shall  
21 submit with the application the appropriate filing fee. The secretary of state shall base filing fees  
22 ~~on the total agreed contribution of the limited liability company as provided in § 47-34A-212,~~  
23 ~~plus~~ any delinquent annual reports and fees for the period prior to the reinstatement application.

24 The application must:

1 (1) Recite the name of the company and the effective date of its administrative  
2 dissolution;

3 (2) State that the ground for dissolution either did not exist or have been eliminated;

4 (3) State that the company's name satisfies the requirements of § 47-34A-105; and

5 (4) Contain a certificate from the appropriate state authority reciting that all taxes owed  
6 by the company have been paid.

7 (b) If the secretary of state determines that the application contains the information required  
8 by subsection (a) and that the information is correct, the secretary of state shall cancel the  
9 certificate of dissolution and prepare a certificate of reinstatement that recites this determination  
10 and the effective date of reinstatement, file the original of the certificate, and serve the company  
11 with a copy of the certificate.

12 (c) When reinstatement is effective, it relates back to and takes effect as of the effective date  
13 of the administrative dissolution and the company may resume its business as if the  
14 administrative dissolution had never occurred.

15 Section 5. That §§ 47-34-1 to 47-34-59, inclusive, be repealed.