

1 HB641
2 169083-1
3 By Representative Johnson (K)
4 RFD: State Government
5 First Read: 07-MAY-15

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8 SYNOPSIS: Under existing law, only corporations,
9 limited liability partnerships, and professional
10 associations are required to file any annual
11 reports to stay active.

12 This bill would require all filing entities
13 and foreign filing entities to file an annual
14 report to assist the state in determining which
15 filing entities and foreign filing entities are
16 active and which may need to be cancelled or
17 revoked through an administrative dissolution
18 process.

19 This bill would allow the Secretary of
20 State, after proper notice, to administratively
21 dissolve entities which are no longer active and
22 have not complied with filing an annual report.

23 Existing law also provides a schedule of
24 fees for annual reports for corporations, limited
25 liability partnerships, and professional
26 associations.

1 This bill would make the fee schedule
2 consistent between those business entities.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT

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8 Relating to business entities; to amend Sections
9 10A-1-4.31, 10A-2-16.22, and 10A-8-10.01, Code of Alabama
10 1975, to require all filing entities and foreign filing
11 entities to file an annual report to assist the state in
12 determining which filing entities and foreign filing entities
13 are active and which may need to be cancelled or revoked
14 through an administrative dissolution process; allow the
15 Secretary of State to administratively dissolve entities which
16 are no longer active and have not complied with filing an
17 annual report; to require notice prior to dissolution of the
18 business entity; to provide for a fee schedule that is
19 consistent between the certain business entities; and to make
20 technical changes.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 10A-1-4.31, 10A-2-16.22, and
23 10A-8-10.01, Code of Alabama 1975, are amended to read as
24 follows:

25 "§10A-1-4.31.

26 "(a) The judge of probate or the Secretary of State,
27 as the case may be, shall collect the following fees when the

1 filing instruments described in this title are delivered to
 2 him or her for filing:

	FEE FOR STATE OF ALA-	FEE FOR THE JUDGE OF
FILING INSTRUMENT	BAMA	PROBATE
(1) Certificate of formation and restated certificate of formation	\$100	\$50
(2) Amendment to certificate of formation	\$50	\$25
(3) Name reservations		
A. less than 24 hours	\$25	No fee
B. 24 hours or more	\$10	No fee
(4) Certificate of termination	\$100	\$50
(5) Certificate of merger; articles of consolidation or share exchange	\$100	\$50
(6) Foreign entity registration including registration of foreign limited liability partnership	\$150	No fee
(7) Certificate of exis-		

1	tence		
2	A. Less than 24 hours	\$25	No fee
3	B. 24 hours or more	\$10	No fee
4	(8) Registered limited		
5	liability partnership		
6	registration	\$100	\$50
7	(9) Registered limited		
8	liability partnership		
9	annual report	\$100 <u>\$75</u>	No fee
10	(10) Partnership state-		
11	ment (filing or certi-		
12	fying)	\$25	\$25
13	(11) Any other filing		
14	instrument required or		
15	permitted to be filed		
16	under this title	\$25	\$25

17 "(b) When appropriate, two checks shall accompany a
18 filing instrument delivered to the judge of probate or the
19 Secretary of State for filing, one payable to the judge of
20 probate for all charges for the judge of probate, and one
21 payable to the State of Alabama covering all charges for the
22 Secretary of State. In the case of any filing instrument
23 delivered for filing to the judge of probate accompanied by a
24 check for the charges for the Secretary of State, the check

1 for the Secretary of State shall be forwarded by the judge of
2 probate to the Secretary of State. In the case of any filing
3 instrument delivered for filing to the Secretary of State
4 accompanied by a check for the judge of probate, the check for
5 the judge of probate shall be forwarded by the Secretary of
6 State to the judge of probate.

7 "(c) There is hereby established in the State
8 Treasury a fund to be known and designated as the Secretary of
9 State Entity Fund. All funds, fees, charges, costs, and
10 collections accruing to or collected by the Secretary of State
11 under the foregoing provisions of this section or any other
12 fees collected by the Secretary of State relating to entities
13 shall be deposited into the State Treasury to the credit of
14 the Secretary of State Entity Fund except as so provided in
15 subsection (e).

16 "(d) All funds now or hereafter deposited in the
17 State Treasury to the credit of the Secretary of State Entity
18 Fund shall not be expended for any purpose whatsoever unless
19 the same shall have been allotted and budgeted in accordance
20 with the provisions of Article 4 of Chapter 4 of Title 41, and
21 only in the amounts and for the purposes provided by the
22 Legislature in the general appropriation bill or this section.

23 "(e) Seventy percent of funds collected by the
24 Secretary of State in relation to entities during the fiscal
25 year shall be deposited to the credit of the State General
26 Fund.

1 "(f) The fees herein imposed for the office of the
2 judge of probate shall be charged and paid into the
3 appropriate county treasury or to the judge of probate as may
4 be authorized or required by law.

5 "(g) The Secretary of State shall collect the
6 following fees for copying and certifying the copy of any
7 filing instrument relating to a domestic or foreign entity:

8 "(1) One dollar fifty cents (\$1.50) a page for
9 copying; and

10 "(2) Five dollars (\$5) for the certificate.

11 "(h) The judge of probate shall collect the
12 following fees for copying and certifying the copy of any
13 filing instrument relating to an entity:

14 "(1) One dollar fifty cents (\$1.50) a page for
15 copying; and

16 "(2) Five dollars (\$5) for the certificate.

17 "(i) For requests of immediate expedition of
18 documents to be obtained in less than 24 hours, other than
19 name reservations and certificates of existence, by the
20 Secretary of State regarding document filings, certifications,
21 and certificates in addition to required fees, a one hundred
22 dollar (\$100) surcharge shall be imposed.

23 "§10A-2-16.22.

24 "(a) Each domestic corporation, and each foreign
25 corporation authorized to transact business in this state,
26 shall deliver to the Secretary of State for filing an annual
27 report that sets forth all of the following:

1 "(1) The name of the corporation and the state or
2 other jurisdiction under whose law it is incorporated~~7.~~

3 "(2) The address of its registered office and the
4 name of its registered agent at that office in this state~~7.~~

5 "(3) The address of its principal office including,
6 in the case of a foreign corporation, the address of its
7 principal office in the state or other jurisdiction under
8 whose law it is incorporated~~7.~~

9 "(4) The names and respective addresses of its
10 president and secretary~~7. and.~~

11 "(5) A brief statement of the character of business
12 in which it is actually engaged in this state.

13 "(b) Information in the annual report must be
14 current as of the date the annual report is executed on behalf
15 of the corporation.

16 "(c) The first annual report must be delivered to
17 the Secretary of State between January 1 and March 15 of the
18 year following the calendar year in which a domestic
19 corporation was incorporated or a foreign corporation was
20 authorized to transact business. Subsequent annual reports
21 must be delivered to the Secretary of State between January 1
22 and March 15 of the following calendar years.

23 "(d) If an annual report does not contain the
24 information required by this section, the Secretary of State
25 shall promptly notify the reporting domestic or foreign
26 corporation in writing and return the report to it for
27 correction. If the report is corrected to contain the

1 information required by this section and delivered to the
2 Secretary of State within 30 days after the effective date of
3 notice, it is deemed to be timely filed.

4 ~~"(e) The public record information filed with the~~
5 ~~Department of Revenue, pursuant to Chapter 14A of Title 40~~
6 ~~shall constitute and be accepted in lieu of the annual report~~
7 ~~required pursuant to this section, provided that a ten dollar~~
8 ~~(\$10) fee for the State of Alabama accompany the public record~~
9 ~~information filed by the corporation annually with the~~
10 ~~Department of Revenue. The fee for the annual report specified~~
11 ~~in Section 10A-1-4.31 shall be deposited in the State Treasury~~
12 ~~to the credit of the Secretary of State Entity Fund as~~
13 ~~prescribed by Section 10A-1-4.31.~~

14 "§10A-8-10.01.

15 "(a) To become a registered limited liability
16 partnership, a partnership shall file with the judge of
17 probate in the county in which the partnership has its
18 principal office, or if the partnership is required to have a
19 registered agent, with the judge of probate in the county in
20 which the registered office is located, and with the Secretary
21 of State a registration stating all of the following:

22 ~~"(i) the (1) The name of the registered limited~~
23 ~~liability partnership.~~

24 ~~"(ii) the (2) The street, and mailing, if different,~~
25 ~~address of its principal office.~~

26 ~~"(iii) if (3) If the partnership's principal office~~
27 ~~is not located in this state, the street, and mailing, if~~

1 different, address of a registered office and the name of the
2 registered agent at that office for service of process in this
3 state which the partnership shall be required to maintain~~7~~.

4 "~~(iv)~~ a (4) A brief statement of the business in
5 which the partnership engages~~7~~.

6 "~~(v)~~ a (5) A statement that the partnership thereby
7 registers as a registered limited liability partnership~~7~~; ~~and~~.

8 "~~(vi)~~ any (6) other information the partnership
9 determines to include.

10 "(b) The registration shall be executed by one or
11 more partners authorized to execute a registration.

12 "(c) The registration shall be accompanied by a fee
13 for the judge of probate and for the Secretary of State in the
14 respective amounts prescribed by Section 10A-1-4.31.

15 "(d) The judge of probate shall register as a
16 registered limited liability partnership any partnership that
17 submits a completed registration with the required
18 registration fee.

19 "(e) A partnership registered under this section
20 shall pay each year following the year in which its
21 registration is filed, on a date specified by the Secretary of
22 State, an annual report fee in the amount prescribed by
23 Section 10A-1-4.31. The fee must be accompanied by a notice,
24 on a form provided by the Secretary of State, which shall set
25 forth any material changes in the information required to be
26 contained in the partnership's registration.

1 "(f) The registration is effective immediately on
2 the date the registration is filed with the judge of probate
3 or at any later date or time specified in the registration,
4 and remains effective until either of the following occur:

5 "~~(i) it~~ (1) It is voluntarily canceled by filing
6 with the judge of probate in the county in which the
7 registration was originally filed, with a copy to the
8 Secretary of State, a written statement of cancellation
9 executed by one or more partners authorized to execute a
10 statement of cancellation; ~~or.~~

11 ~~(ii) 180~~ (2) One hundred eighty days after receipt
12 by the partnership of a notice from the Secretary of State
13 (which notice shall be sent by certified mail, return receipt
14 requested) that the partnership has failed to make timely
15 filing of the annual notice and the payment of the annual
16 report fee specified in subsection (e), unless the notice is
17 filed and the fee is paid within the 180-day period.

18 "(g) A partnership becomes a registered limited
19 liability partnership on the date a registration is filed with
20 the judge of probate or at any later date or time specified in
21 the registration if, in either case, there has been
22 substantial compliance with the requirements of this chapter.
23 A partnership continues as a registered limited liability
24 partnership if there has been substantial compliance with the
25 requirements of this chapter. The status of the partnership as
26 a registered limited liability partnership and the liability
27 of a partner of the registered limited liability partnership

1 shall not be adversely affected by error or subsequent changes
2 in the information stated in the registration under subsection
3 (a) ~~of this section~~ or notice under subsection (e) ~~of this~~
4 ~~section~~.

5 "(h) The fact that a registration or notice is on
6 file with the Secretary of State is notice that the
7 partnership is a registered limited liability partnership and
8 as notice of all other facts set forth in the registration or
9 notice.

10 "(i) A partnership that has registered as a
11 registered limited liability partnership is for all purposes,
12 except as provided in Section 10A-8-3.06, the same entity that
13 existed before the registration and continues to be a
14 partnership under the laws of this state subject to the
15 registered limited liability partnership provisions of this
16 chapter. If a registered limited liability partnership
17 dissolves and its business or a portion of its business is
18 continued without liquidation of all of the partnership
19 affairs, a partnership which is a successor to the registered
20 limited liability partnership shall not be required to file a
21 new registration or annual notice but shall thereafter be
22 required to file annual notices and pay the annual report fees
23 pursuant to subsection (e) ~~of this section~~ and shall be deemed
24 to have filed any documents and paid all necessary fees
25 required or permitted under this section which were filed by
26 the predecessor partnership.

1 "(j) The Secretary of State may provide forms for
2 registration or notice of a registered limited liability
3 partnership.

4 "(k) A partnership's decision to file a registration
5 shall be approved by a majority of the partners of the
6 partnership, unless otherwise agreed to by the partners in a
7 partnership agreement. The decision to cancel a registration
8 shall require the approval of all of the partners of the
9 partnership, unless otherwise agreed to by the partners in a
10 partnership agreement.

11 "~~(1) (a)~~ (1) A dissolved registered limited liability
12 partnership may continue its status as a registered limited
13 liability partnership through termination either by:

14 "~~(1) continuing~~ a. Continuing to file an annual
15 notice and pay the annual report fee until termination in
16 accordance with subsection (e) of this section; ~~or.~~

17 "~~(2) filing~~ b. Filing a final annual notice and
18 paying a final annual report fee equal to the annual fee
19 provided in subsection (e) ~~of this section~~, and the final
20 annual notice shall, in addition to providing the information
21 required by subsection (e):

22 "~~(i) state~~ 1. State that the partnership is
23 dissolved and is winding up its affairs;

24 "~~(ii) identify~~ 2. Identify the cause or causes of
25 the dissolution;

1 "~~(iii) state~~ 3. State that the annual notice is the
2 final annual notice and will remain in effect until
3 termination; and

4 "~~(iv) state~~ 4. State that the partnership will
5 terminate within 12 months from the date of the final annual
6 notice.

7 "~~(b) (2)~~ When the dissolved registered limited
8 liability partnership has wound up its affairs, it shall file
9 with the judge of probate in the county in which the original
10 registration was filed and with the Secretary of State a
11 termination notice that contains the following information:

12 "~~(1) the~~ a. The name of the registered limited
13 liability partnership;

14 "~~(2) that~~ b. That the registered limited liability
15 partnership has dissolved and wound up its affairs; and

16 "~~(3) that~~ c. That the registered limited liability
17 partnership is terminated.

18 "(3) The notice must be signed by one former general
19 partner who has not wrongfully dissolved the partnership.
20 There is no fee for the termination filing.

21 "(m) The termination or winding up of a registered
22 limited liability partnership, or the cancellation of its
23 registration, does not affect the limited liability of
24 partners for debts, obligations or liabilities of the
25 partnership which occur or were incurred prior to the
26 termination or winding up of the registered limited liability
27 partnership or the cancellation of its registration."

1 Section 2. (a) Each filing entity and foreign filing
2 entity authorized to transact business in this state shall
3 deliver to the Secretary of State for filing an annual report
4 that sets forth all of the following:

5 (1) The name of the entity and the Alabama county,
6 state, or other jurisdiction under whose law it is formed.

7 (2) The address of its registered office and the
8 name of its registered agent at that office in this state.

9 (3) The address of its principal office including,
10 in the case of a foreign limited liability company, the
11 address of its principal office in the state or other
12 jurisdiction under whose law it is formed.

13 (4) A brief statement of the character of business
14 in which it is actually engaged in this state.

15 (5) Any other information required by Title 10A,
16 Code of Alabama 1975, including, without limitation, any
17 information required by the specific chapter of Title 10A,
18 Code of Alabama 1975, governing the filing entity or foreign
19 filing entity or by Article 8, Chapter 1, Title 10A, Code of
20 Alabama 1975, to be included in an annual notice or report.

21 (b) Information in the annual report must be current
22 as of the date the annual report is executed on behalf of the
23 entity.

24 (c) The first annual report must be delivered to the
25 Secretary of State between January 1 and March 15 of the year
26 following the calendar year in which a domestic filing entity
27 was formed or a foreign filing entity was authorized to

1 transact business. Subsequent annual reports must be delivered
2 to the Secretary of State between January 1 and March 15 of
3 the following calendar years.

4 (d) If an annual report does not contain the
5 information required by this section, the Secretary of State
6 shall promptly notify the reporting filing entity or foreign
7 filing entity in writing and return the report to it for
8 correction. If the report is corrected to contain the
9 information required by this section and delivered to the
10 Secretary of State within 30 days after the effective date of
11 notice, it is deemed to be timely filed.

12 (e) An entity that does not deliver its annual
13 report to the Secretary of State within 180 days after the
14 final due date may be administratively dissolved by the
15 Secretary of State.

16 (f) (1) If the Secretary of State determines that an
17 annual report has not been filed by March 15, he or she shall
18 serve the entity with written notice of his or her
19 determination.

20 (2) If the entity does not file an annual report
21 within 60 days after service of the notice is perfected
22 under Section 10A-1-5.31(b), 10A-1-5.35, or 10A-1-5.36, Code
23 of Alabama 1975, the Secretary of State shall administratively
24 dissolve the entity by signing a certificate of dissolution
25 that recites the cancellation or revocation and its effective
26 date. The Secretary of State shall file the original of the
27 certificate, deliver a copy to the judge of probate for

1 filing, and serve a copy on the filing entity or foreign
2 filing entity under Section 10A-1-5.31(b), 10A-1-5.35,
3 or 10A-1-5.36, Code of Alabama 1975.

4 (g) A filing entity or foreign filing entity
5 administratively dissolved continues its existence but may not
6 carry on any business except that necessary to wind up and
7 liquidate its business and affairs under Section 10A-2-14.05,
8 Code of Alabama 1975, and notify claimants under Sections
9 10A-1-9.21 and 10A-1-9.22, Code of Alabama 1975.

10 (h) The administrative dissolution of an entity does
11 not terminate the authority of its registered agent.

12 (i) The fee for the annual report shall be deposited
13 in the State Treasury to the credit of the Secretary of State
14 Entity Fund as prescribed by Section 10A-1-4.31, Code of
15 Alabama 1975.

16 Section 3. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.