

1 SB481
2 169335-1
3 By Senators Figures, Smitherman, and Marsh
4 RFD: Fiscal Responsibility and Economic Development
5 First Read: 14-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21 dissolve entities which are no longer active and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

7
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; to add Division
15 F to Article 3, Chapter 1, Title 10A, Code of Alabama 1975; to
16 allow the Secretary of State to administratively dissolve
17 entities which are no longer active and have not complied with
18 filing an annual report; to require notice prior to
19 dissolution of the business entity; to provide for a fee
20 schedule that is consistent between the certain business
21 entities; and to make technical changes.

22 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§10A-1-4.31.

1 "(a) The judge of probate or the Secretary of State,
 2 as the case may be, shall collect the following fees when the
 3 filing instruments described in this title are delivered to
 4 him or her for filing:

	FEE FOR STATE OF ALA-	FEE FOR THE JUDGE OF
FILING INSTRUMENT	BAMA	PROBATE
6 (1) Certificate of for- 7 mation and restated cer- 8 tificate of formation	\$100	\$50
9 (2) Amendment to certif- 10 icate of formation	\$50	\$25
11 (3) Name reservations		
12 A. less than 24 hours	\$25	No fee
13 B. 24 hours or more	\$10	No fee
14 (4) Certificate of ter- 15 mination	\$100	\$50
16 (5) Certificate of 17 merger; articles of 18 consolidation or share 19 exchange	\$100	\$50
20 (6) Foreign entity reg- 21 istration including 22 registration of foreign 23 limited liability part-	\$150	No fee

1	nership		
2	(7) Certificate of exis-		
3	tence		
4	A. Less than 24 hours	\$25	No fee
5	B. 24 hours or more	\$10	No fee
6	(8) Registered limited		
7	liability partnership		
8	registration	\$100	\$50
9	(9) Registered limited		
10	liability partnership		
11	annual report	\$100 <u>\$75</u>	No fee
12	<u>(10) Reinstatement of</u>		
13	<u>Administratively dis-</u>		
14	<u>solved entity</u>	<u>\$100</u>	<u>No fee</u>
15	(10) <u>(11) Partnership</u>		
16	statement (filing or		
17	certifying)	\$25	\$25
18	(11) <u>(12) Any other fil-</u>		
19	ing instrument required		
20	or permitted to be filed		
21	under this title	\$25	\$25

22 "(b) When appropriate, two checks shall accompany a
23 filing instrument delivered to the judge of probate or the
24 Secretary of State for filing, one payable to the judge of

1 probate for all charges for the judge of probate, and one
2 payable to the State of Alabama covering all charges for the
3 Secretary of State. In the case of any filing instrument
4 delivered for filing to the judge of probate accompanied by a
5 check for the charges for the Secretary of State, the check
6 for the Secretary of State shall be forwarded by the judge of
7 probate to the Secretary of State. In the case of any filing
8 instrument delivered for filing to the Secretary of State
9 accompanied by a check for the judge of probate, the check for
10 the judge of probate shall be forwarded by the Secretary of
11 State to the judge of probate.

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

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

1 "(e) Seventy percent of funds collected by the
2 Secretary of State in relation to entities during the fiscal
3 year shall be deposited to the credit of the State General
4 Fund.

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

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

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

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

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

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

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

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

27 "§10A-2-16.22.

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

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

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

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

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

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

17 "(b) Information in the annual report must be
18 current as of the date the annual report is executed on behalf
19 of the corporation.

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

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

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

19 "§10A-8-10.01.

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

1 "~~(i) the~~ (1) The name of the registered limited
2 liability partnership~~;~~.

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

5 "~~(iii) if~~ (3) If the partnership's principal office
6 is not located in this state, the street, and mailing, if
7 different, address of a registered office and the name of the
8 registered agent at that office for service of process in this
9 state which the partnership shall be required to maintain~~;~~.

10 "~~(iv) a~~ (4) A brief statement of the business in
11 which the partnership engages~~;~~.

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

14 "~~(vi) any~~ (6) other information the partnership
15 determines to include.

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

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

21 "(d) The judge of probate shall register as a
22 registered limited liability partnership any partnership that
23 submits a completed registration with the required
24 registration fee.

25 "(e) A partnership registered under this section
26 shall pay each year following the year in which its
27 registration is filed, on a date specified by the Secretary of

1 State, an annual report fee in the amount prescribed by
2 Section 10A-1-4.31. The fee must be accompanied by a notice,
3 on a form provided by the Secretary of State, which shall set
4 forth any material changes in the information required to be
5 contained in the partnership's registration.

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

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

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

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

1 A partnership continues as a registered limited liability
2 partnership if there has been substantial compliance with the
3 requirements of this chapter. The status of the partnership as
4 a registered limited liability partnership and the liability
5 of a partner of the registered limited liability partnership
6 shall not be adversely affected by error or subsequent changes
7 in the information stated in the registration under subsection
8 (a) ~~of this section~~ or notice under subsection (e) ~~of this~~
9 ~~section~~.

10 "(h) The fact that a registration or notice is on
11 file with the Secretary of State is notice that the
12 partnership is a registered limited liability partnership and
13 as notice of all other facts set forth in the registration or
14 notice.

15 "(i) A partnership that has registered as a
16 registered limited liability partnership is for all purposes,
17 except as provided in Section 10A-8-3.06, the same entity that
18 existed before the registration and continues to be a
19 partnership under the laws of this state subject to the
20 registered limited liability partnership provisions of this
21 chapter. If a registered limited liability partnership
22 dissolves and its business or a portion of its business is
23 continued without liquidation of all of the partnership
24 affairs, a partnership which is a successor to the registered
25 limited liability partnership shall not be required to file a
26 new registration or annual notice but shall thereafter be
27 required to file annual notices and pay the annual report fees

1 pursuant to subsection (e) ~~of this section~~ and shall be deemed
2 to have filed any documents and paid all necessary fees
3 required or permitted under this section which were filed by
4 the predecessor partnership.

5 "(j) The Secretary of State may provide forms for
6 registration or notice of a registered limited liability
7 partnership.

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

15 "(1) ~~(a)~~ (1) A dissolved registered limited liability
16 partnership may continue its status as a registered limited
17 liability partnership through termination either by:

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

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

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

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

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

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

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

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

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

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

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

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

1 termination or winding up of the registered limited liability
2 partnership or the cancellation of its registration."

3 Section 2. Division F is added to Article 3, Chapter
4 1, Title 10A, Code of Alabama 1975, to read as follows:

5 Division F.

6 §10A-1-3.51.

7 (a) Each filing entity and foreign filing entity
8 authorized to transact business in this state shall deliver to
9 the Secretary of State for filing an annual report that sets
10 forth all of the following:

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

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

15 (3) The address of its principal office including,
16 in the case of a foreign limited liability company, the
17 address of its principal office in the state or other
18 jurisdiction under whose law it is formed.

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

21 (5) Any other information required by Title 10A,
22 including, without limitation, any information required by the
23 specific chapter of Title 10A, governing the filing entity or
24 foreign filing entity or by Article 8, Chapter 1, Title 10A,
25 to be included in an annual notice or report.

1 (b) Information in the annual report must be current
2 as of the date the annual report is executed on behalf of the
3 entity.

4 (c) The first annual report must be delivered to the
5 Secretary of State between January 1 and March 15 of the year
6 following the calendar year in which a domestic filing entity
7 was formed or a foreign filing entity was authorized to
8 transact business. Subsequent annual reports must be delivered
9 to the Secretary of State between January 1 and March 15 of
10 the following calendar years.

11 (d) If an annual report does not contain the
12 information required by this section, the Secretary of State
13 shall promptly notify the reporting filing entity or foreign
14 filing entity in writing and return the report to it for
15 correction. If the report is corrected to contain the
16 information required by this section and delivered to the
17 Secretary of State within 30 days after the effective date of
18 notice, it is deemed to be timely filed.

19 (e) An entity that does not deliver its annual
20 report to the Secretary of State within 180 days after the
21 final due date may be administratively dissolved by the
22 Secretary of State.

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

1 (2) If the entity does not file an annual report
2 within 60 days after service of the notice is perfected
3 under Section 10A-1-5.31(b), 10A-1-5.35, or 10A-1-5.36, the
4 Secretary of State shall administratively dissolve the entity
5 by signing a certificate of dissolution that recites the
6 cancellation or revocation and its effective date. The
7 Secretary of State shall file the original of the certificate,
8 deliver a copy to the judge of probate for filing, and serve a
9 copy on the filing entity or foreign filing entity
10 under Section 10A-1-5.31(b), 10A-1-5.35, or 10A-1-5.36.

11 (g) A filing entity or foreign filing entity
12 administratively dissolved continues its existence but may not
13 carry on any business except that necessary to wind up and
14 liquidate its business and affairs under Section 10A-2-14.05,
15 10A-5A-7.03, 10A-8-8.03, 10A-8-10.05, or 10A-9-8.03, and
16 notify claimants under Sections 10A-1-9.21 and 10A-1-9.22.

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

19 (i) The fee for the annual report shall be deposited
20 in the State Treasury to the credit of the Secretary of State
21 Entity Fund as prescribed by Section 10A-1-4.31.

22 (j) A filing entity or foreign filing entity
23 administratively dissolved under this section may apply to the
24 Secretary of State for reinstatement within two years after
25 the effective date of dissolution. The application must
26 satisfy all of the following:

1 (1) Recite the name and address of the entity and
2 the effective date of its dissolution.

3 (2) Recite the Alabama Entity Identification Number
4 assigned to the entity at its initial formation or
5 authorization.

6 (3) State that the ground or grounds for dissolution
7 either did not exist or have been eliminated.

8 (4) Contain a Compliance Certificate from the
9 Alabama Department of Revenue reciting that all taxes owed by
10 the entity have been paid.

11 (5) Include the filing fee listed in Section
12 10A-1-4.31.

13 (k) The name of the entity following reinstatement
14 shall be determined as follows:

15 (1) If the initial entity name is available a name
16 reservation with the entity name prior to dissolution shall be
17 obtained and attached to the reinstatement application.

18 (2) If the initial entity name is not available a
19 name reservation with a new entity name meeting the
20 requirements of Title 10A or Section 10A-9-1.08 for specific
21 partnership types, or a name reservation with the initial name
22 of the entity prior to dissolution with the word "reinstated"
23 following the name shall be obtained and attached to the
24 reinstatement application.

25 (1) If the Secretary of State determines that the
26 application contains the information required by subsections
27 (j) and (k) and that the information is correct, he or she

1 shall cancel the certificate of dissolution and prepare a
2 certificate of reinstatement that recites his or her
3 determination and the effective date of reinstatement, file
4 the original of the certificate and deliver a copy to the
5 judge of probate for filing, and serve a copy on the entity
6 under Section 10A-1-5.31, 10A-1-5.35, or 10A-1-5.36.

7 (m) When reinstatement is effective, it relates back
8 to and takes effect as of the effective date of the
9 administrative dissolution and the entity resumes carrying on
10 its business as if the administrative dissolution never
11 occurred.

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