

1 SB517
2 132062-1
3 By Senator Singleton
4 RFD: Judiciary
5 First Read: 25-MAY-11

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8 SYNOPSIS: Existing law does not specifically recognize
9 the formation of low-profit limited liability
10 companies.

11 This bill would specifically provide for the
12 formation of low-profit limited liability
13 companies.

14 This bill would change certain provisions
15 relative to definitions of low-profit limited
16 liability companies.

17 This bill would change certain provisions
18 relating to the names of limited liability
19 companies.

20 This bill would change certain provisions
21 relating to judicial and administrative dissolution
22 of limited liability companies.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 10A-1-5.06, 10A-2-14.20, and
2 10A-5-1.02 of the Code of Alabama 1975, relating to limited
3 liability companies; to provide for the formation of
4 low-profit limited liability companies; to change certain
5 provisions relative to definitions of low-profit limited
6 liability companies; to change certain provisions relating to
7 the names of limited liability companies; and to change
8 certain provisions relating to judicial and administrative
9 dissolution of limited liability companies.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. Sections 10A-1-5.06, 10A-2-14.20, and
12 10A-5-1.02 of the Code of Alabama 1975, are amended to read as
13 follows:

14 "§.

15 "The name of a limited liability company or a
16 foreign limited liability company doing business in this state
17 must contain the words "Limited Liability Company" or the
18 abbreviation "L.L.C." or "LLC." In the case of a low-profit
19 limited liability company, the name shall contain the words
20 "Low-profit Limited Liability Company" or the abbreviations
21 "L3C," "l.3.C.," or "l3c."

22 "§10A-2-14.20.

23 "The name of a limited liability company or a
24 foreign limited liability company doing business in this state
25 must contain the words "Limited Liability Company" or the
26 abbreviation "L.L.C." or "LLC." In the case of a low-profit
27 limited liability company, the name shall contain the words

1 "Low-profit Limited Liability Company" or the abbreviations
2 "L3C," "l.3.C.," or "l3c."

3 "The Secretary of State may commence a proceeding
4 under Section 10A-2-14.21 to administratively dissolve a
5 corporation if:

6 "(1) The corporation does not pay within six months
7 after they are due any franchise taxes or penalties imposed by
8 this chapter or other law~~7.~~

9 "(2) The corporation does not deliver its annual
10 report to the Secretary of State within six months after it is
11 due~~7.~~

12 "(3) The corporation is without a registered agent
13 or registered office in this state for 60 days or more~~7.~~

14 "(4) The corporation does not notify the Secretary
15 of State within 60 days that its registered agent or
16 registered office has been changed, that its registered agent
17 has resigned, or that its registered office has been
18 discontinued~~7 or.~~

19 "(5) The corporation's period of duration stated in
20 its articles of incorporation expires.

21 "(6) In the case of a low-profit limited liability
22 company, the company has ceased to meet any of the
23 requirements of subdivision (6) of 10A-5-1.02 and has failed
24 for 60 days after ceasing to meet those requirements to file
25 articles of amendment with the Secretary of State to amend its
26 name to conform with the requirements of Section 10A-1-5.06.

27 "§10A-5-1.02.

1 "As used in this chapter, unless the context
2 otherwise requires, the following terms mean:

3 "(1) ARTICLES OF ORGANIZATION. The filing instrument
4 provided for by Section 10A-5-2.01, or, if it has been amended
5 or restated, as most recently amended or restated. In the case
6 of a foreign limited liability company, the term includes all
7 documents serving a similar function that are required to be
8 filed to form the limited liability company in the state or
9 other jurisdiction where it is organized. The term articles of
10 organization as used in this chapter is synonymous with the
11 term certificate of formation as defined in Section
12 10A-1-1.03(7). In this chapter, the use of the term
13 certificate of formation shall be deemed to include articles
14 of organization, and vice-versa. Together with the operating
15 agreement, the articles of organization or certificate of
16 formation of a limited liability company constitute its
17 governing documents within the meaning of Section
18 10A-1-1.03(40).

19 "(2) BUSINESS ENTITY. A corporation, limited
20 liability company, partnership, limited partnership,
21 registered limited liability partnership, or other entity
22 organized to engage in business, whether for profit or not,
23 created under the laws of the State of Alabama, predecessor
24 law, or law of another jurisdiction.

25 "(3) FINANCIAL RIGHTS. Rights to a. share in profits
26 and losses as provided in Section 10A-5-5.03, b. receive
27 interim distributions as provided in Section 10A-5-5.04, and

1 c. receive termination distributions as provided in Section
2 10A-5-7.05.

3 "(4) FOREIGN LIMITED LIABILITY COMPANY. An
4 organization formed under the laws of any jurisdiction other
5 than Alabama that is substantially similar to a limited
6 liability company.

7 "(5) GOVERNANCE RIGHTS. All a member's rights as a
8 member of a limited liability company except financial rights,
9 including without limitation, the rights to participate in the
10 management of the limited liability company and to bind the
11 limited liability company as provided in Section 10A-5-3.03.

12 "(6) LIMITED LIABILITY COMPANY or DOMESTIC LIMITED
13 LIABILITY COMPANY. An organization that is formed and existing
14 under this chapter. The term shall include, but not limited
15 to, a low-profit limited liability company which is a limited
16 liability company that has set forth in its articles of
17 organization a business purpose that satisfies, and is at all
18 times operated to satisfy, each of the following requirements:

19 "a. The limited liability company significantly
20 furtheres the accomplishment of one or more purposes within the
21 meaning of 26 U.S.C. Section 170(c)(2)(B) and would not have
22 been formed but for its relationship to the accomplishment of
23 the purposes.

24 "b. No significant purpose of one or more limited
25 liability company interests in the limited liability company
26 shall be the production of income or the appreciation of
27 property; however, the fact that the limited liability company

1 produces significant income or capital appreciation may not,
2 in the absence of other factors, be conclusive evidence of a
3 significant purpose involving the production of income or the
4 appreciation of property with respect to any particular
5 limited liability company interest in the limited liability
6 company.

7 "c. No purpose of the limited liability company
8 shall be to accomplish one or more political or legislative
9 purposes within the meaning of 26 U.S.C. Section 170(c)(2)(D).

10 "(7) MEMBER. A person reflected in the required
11 records of a limited liability company as the owner of some
12 governance rights of a membership interest in the limited
13 liability company.

14 "(8) OPERATING AGREEMENT. A written agreement of the
15 member or members governing the affairs of a limited liability
16 company and the conduct of its business. The operating
17 agreement, if entered into together with the articles of
18 organization or certificate of formation of a limited
19 liability company constitute its governing documents within
20 the meaning of Section of 10A-1-1.03(40)."

21 Section 2. This act shall become effective on the
22 first day of the third month following its passage and
23 approval by the Governor, or its otherwise becoming law.