

The House Committee on Judiciary offered the following substitute to SB 253:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 14 of the Official Code of Georgia Annotated, known as the
2 "Georgia Limited Liability Company Act," so as to change certain definitions and
3 cross-references; to change the provisions relating to approval rights of members and
4 managers; to change the provisions relating to distributions upon the event of dissociation;
5 to change the provisions relating to dissociation; to change the provisions relating to
6 assignment of limited liability company interest; to change the provisions relating to
7 cessation of membership; to limit withdrawal from a limited liability company; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Chapter 11 of Title 14 of the Official Code of Georgia Annotated, known as the "Georgia
12 Limited Liability Company Act," is amended by striking Code Section 14-11-101, relating
13 to definitions, and inserting in its place the following:

14 "14-11-101.

15 As used in this chapter, unless the context otherwise requires, the term:

16 (1) 'Articles of organization' means the articles filed under Code Section 14-11-203 and
17 such articles as amended or restated.

18 (2) 'Business entity' means a limited liability company, a foreign limited liability
19 company, a limited partnership, a foreign limited partnership, a general partnership, a
20 corporation, or a foreign corporation.

21 (3) 'Conflicting interest' with respect to a limited liability company means the interest a
22 member or manager of the limited liability company has respecting a transaction effected
23 or proposed to be effected by the limited liability company (or by a person in which the
24 limited liability company has a controlling interest), with respect to which the member
25 or manager has the power to act or vote, if:

1 (A) Whether or not the transaction is brought before the members or managers
 2 responsible for the decision, as the case may be, of the limited liability company for
 3 action, to the knowledge of the member or manager at the time of commitment, he or
 4 she or a related person is a party to the transaction or has a beneficial financial interest
 5 in or so closely linked to the transaction and of such financial significance to the
 6 member or manager or a related person that it would reasonably be expected to exert
 7 an influence on the member or manager's judgment if he or she were called upon to
 8 vote on the transaction; or

9 (B) The transaction is brought (or is of such character and significance to the limited
 10 liability company that it would in the normal course be brought) before the members
 11 or managers responsible for the decision, as the case may be, of the limited liability
 12 company for action and, to the knowledge of the member or manager at the time of
 13 commitment, any of the following persons is either a party to the transaction or has a
 14 beneficial financial interest so closely linked to the transaction and of such financial
 15 significance to that person that it would reasonably be expected to exert an influence
 16 on the member or manager's judgment if he or she were called upon to vote on the
 17 transaction: an entity (other than the limited liability company) of which the member
 18 or manager is a director, general partner, member, manager, agent, or employee; an
 19 entity that controls, is controlled by, or is under common control with one or more of
 20 the entities specified in the preceding clause; or an individual who is a general partner,
 21 principal, or employer of the member or manager.

22 (4) 'Contribution' means a contribution to the capital of a limited liability company
 23 authorized by Code Section 14-11-401.

24 (5) 'Corporation' means a corporation incorporated under Chapter 2 of this title.

25 (6) 'Distribution' means a direct or indirect transfer of money or other property (except
 26 its own limited liability company interests) by a limited liability company to or for the
 27 benefit of its members or their assignees in respect of any of its limited liability company
 28 interests. A distribution may be in the form of a transfer of money or other property; a
 29 purchase, redemption, or other acquisition of a limited liability company interest; a
 30 distribution of indebtedness; or otherwise.

31 (6.1) 'Electronic transmission' or 'electronically transmitted' means any process of
 32 communication not directly involving the physical transfer of paper that is suitable for
 33 the retention, retrieval, and reproduction of information by the recipient.

34 (7) 'Event of dissociation' means an event that causes a person to cease to be a member,
 35 as provided in Code Section 14-11-601 or 14-11-601.1.

36 (8) 'Foreign corporation' means a corporation for profit formed under the laws of a
 37 jurisdiction other than this state.

1 (9) 'Foreign limited liability company' means a limited liability company formed under
2 the laws of a jurisdiction other than this state.

3 (10) 'Foreign limited partnership' means a limited partnership formed under the laws of
4 a jurisdiction other than this state.

5 (11) 'General partnership' means a partnership (other than a limited partnership) existing
6 under the laws of this state or the laws of any other jurisdiction.

7 (12) 'Limited liability company' means a limited liability company formed under this
8 chapter by one or more members.

9 (13) 'Limited liability company interest' means a member's share of the profits and losses
10 of a limited liability company and a member's right to receive distributions.

11 (14) 'Limited partnership' means a limited partnership formed under the laws of this
12 state.

13 (15) 'Manager' means a person in whom management is vested in accordance with
14 subsection (b) of Code Section 14-11-304.

15 (16) 'Member' means a person who has been admitted to a limited liability company as
16 a member as provided in Code Section 14-11-505 and who has not ceased to be a member
17 as provided in Code Section 14-11-601 or 14-11-601.1.

18 (17) 'Member or manager's conflicting interest transaction' with respect to a limited
19 liability company means a transaction effected or proposed to be effected by the limited
20 liability company (or by a person in which the limited liability company has a controlling
21 interest) respecting which a member or manager of the limited liability company having
22 the power to act or vote has a conflicting interest.

23 (18) 'Operating agreement' means any agreement, written or oral, as to the conduct of the
24 business and affairs of a limited liability company that is binding upon all of the
25 members. A written operating agreement may provide that a person shall be admitted as
26 a member of a limited liability company, or shall become an assignee of a limited liability
27 company interest or other rights or powers of a member to the extent assigned, and shall
28 become bound by the operating agreement and the provisions of the articles of
29 organization (A) if such person (or a representative authorized by such person orally, in
30 writing, or by other action such as payment for a limited liability company interest)
31 executes the operating agreement or any other writing evidencing the intent of such
32 person to become a member or assignee, or (B) without such execution, if such person
33 (or a representative authorized by such person orally, in writing, or by other action such
34 as payment for a limited liability company interest) complies with the conditions for
35 becoming a member or assignee as set forth in the written operating agreement or any
36 other writing and such person or representative requests in writing that the records of the
37 limited liability company reflect such admission or assignment. In the case of a limited

1 liability company with only one member, a writing signed by that member stating that it
 2 is intended to be a written operating agreement shall constitute a written operating
 3 agreement.

4 (19) 'Person' means an individual, business entity, business trust, estate, trust,
 5 association, joint venture, government, governmental subdivision or agency, or any other
 6 legal or commercial entity.

7 (20) 'Proceeding' means any threatened, pending, or completed action, suit, or
 8 proceeding, whether civil, criminal, administrative, or investigative and whether formal
 9 or informal.

10 (21) 'Related person' of a member or manager means:

11 (A) A child, grandchild, sibling, parent, or spouse of, or an individual occupying the
 12 same household as, the member or manager or a trust or estate of which an individual
 13 specified in this subparagraph is a substantial beneficiary; or

14 (B) A trust, estate, incompetent, conservator, or minor of which the member or
 15 manager is a fiduciary.

16 (22) 'Required disclosure' means disclosure by the member or manager who has a
 17 conflicting interest of (A) the existence and nature of his or her conflicting interest, and
 18 (B) all facts known to him or her respecting the subject matter of the transaction that an
 19 ordinarily prudent person would reasonably believe to be material to a judgment as to
 20 whether or not to proceed with the transaction.

21 (23) 'State' means the District of Columbia or the Commonwealth of Puerto Rico or any
 22 state, territory, possession, or other jurisdiction of the United States.

23 (24) 'Time of commitment' respecting a member's or manager's conflicting interest
 24 transaction means the time when the transaction is consummated or, if made pursuant to
 25 contract, the time when the limited liability company (or the person in which it has a
 26 controlling interest) becomes contractually obligated so that its unilateral withdrawal
 27 from the transaction would entail significant loss, liability, or other damage."

28 SECTION 2.

29 Said chapter is further amended by striking Code Section 14-11-308, relating to approval
 30 rights of members and managers, and inserting in its place the following:

31 "14-11-308.

32 (a) Except as otherwise provided in this chapter or in the articles of organization or a
 33 written operating agreement, and subject to subsection (b) of this Code section:

34 (1) If management of the limited liability company is vested in the members, each
 35 member shall have one vote with respect to, and the affirmative vote, approval, or

1 consent of a majority of the members shall be required to decide, any matter arising in
2 connection with the business and affairs of the limited liability company; and

3 (2) If management of the limited liability company is vested in a manager or managers,
4 each manager shall have one vote with respect to, and the affirmative vote, approval, or
5 consent of a majority of the managers shall be required to decide, any matter arising in
6 connection with the business and affairs of the limited liability company.

7 (b) Unless otherwise provided in the articles of organization or a written operating
8 agreement, the unanimous vote or consent of the members shall be required to approve the
9 following matters:

10 (1) The dissolution of the limited liability company under paragraph (3) of subsection (a)
11 or paragraph (3) of subsection (b) of Code Section 14-11-602;

12 (2) The merger of the limited liability company under subsection (a) of Code Section
13 14-11-903;

14 (3) The sale, exchange, lease, or other transfer of all or substantially all of the assets of
15 the limited liability company. For the purposes of this paragraph, assets shall be deemed
16 to be less than all or substantially all of a limited liability company's assets if the value
17 of the assets does not exceed two-thirds of the value of all of the assets of the limited
18 liability company and the revenues represented or produced by such assets do not exceed
19 two-thirds of the total revenues of the limited liability company; provided, however, that
20 this paragraph shall not create any inference that the sale, exchange, lease, or other
21 transfer of assets exceeding the amounts described in this paragraph is the sale of all or
22 substantially all of the assets of the limited liability company;

23 (4) The admission of any new member of the limited liability company under subsection
24 (b) of Code Section 14-11-505;

25 (5) An amendment to the articles of organization under Code Section 14-11-210 or an
26 amendment to a written operating agreement;

27 (6) Action under subsection (b) of Code Section 14-11-402 to reduce or eliminate an
28 obligation to make a contribution to the capital of a limited liability company;

29 (7) Action to approve a distribution under Code Section 14-11-404; or

30 (8) Action to continue a limited liability company under paragraph (4) of subsection (a)
31 or paragraph (4) of subsection (b) of Code Section 14-11-602."

32 SECTION 3.

33 Said chapter is further amended by striking Code Section 14-11-405, relating to distributions
34 upon event of dissociation, and inserting in its place the following:

1 "14-11-405.

2 (a) Effective for limited liability companies formed prior to July 1, 1999, except as
3 otherwise provided in the articles of organization or a written operating agreement, and
4 subject to Code Section 14-11-407, a member with respect to which an event of
5 dissociation occurs (other than one of the events specified in paragraphs (1), (2), and (4)
6 of subsection ~~(a)~~ (b) of Code Section 14-11-601) is entitled to receive, within a reasonable
7 time after the occurrence of the event, the fair value of the member's interest in the limited
8 liability company as of the date of such occurrence, but only if such event does not result
9 in dissolution of the limited liability company.

10 (b) Effective for limited liability companies formed on or after July 1, 1999, except as
11 otherwise provided in the articles of organization or a written operating agreement, a
12 member with respect to which an event of dissociation occurs under Code Section
13 14-11-601.1 is not entitled to receive any payment by reason of such event and will become
14 an assignee as to such limited liability company interest."

15 SECTION 4.

16 Said chapter is further amended by striking Code Section 14-11-502, relating to assignment
17 of limited liability company interest, and inserting in its place the following:

18 "14-11-502.

19 Except as otherwise provided in the articles of organization or a written operating
20 agreement:

21 (1) A limited liability company interest is assignable in whole or in part;

22 (2) An assignment entitles the assignee to share in the profits and losses and to receive
23 the distributions to which the assignor was entitled, to the extent assigned;

24 (3) An assignment of a limited liability company interest does not of itself dissolve the
25 limited liability company or entitle the assignee to participate in the management and
26 affairs of the limited liability company or to become or exercise any rights of a member
27 until admitted as a member pursuant to Code Section 14-11-505;

28 (4) Until the assignee of a limited liability company interest becomes a member, the
29 assignor continues to be a member with respect to the assigned limited liability company
30 interest, subject to the other members' right to remove the assignor pursuant to
31 subparagraph ~~(a)(3)(B)~~ (b)(3)(B) of Code Section 14-11-601 or subparagraph (b)(2)(B)
32 of Code Section 14-11-601.1;

33 (5) Until the assignee of a limited liability company interest becomes a member, the
34 assignee shall have no liability as a member solely as a result of the assignment;

35 (6) A member who assigns his or her entire limited liability company interest ceases to
36 be a member or to have the power to exercise any rights of a member when all of the

1 assignees of his or her entire limited liability company interest become members with
 2 respect to the assigned limited liability company interest, subject to the other members'
 3 right to remove the assignor earlier pursuant to subparagraph ~~(a)(3)(B)~~ (b)(3)(B) of Code
 4 Section 14-11-601 or subparagraph (b)(2)(B) of Code Section 14-11-601.1; and

5 (7) The pledge of, or granting of a security interest, lien, or other encumbrance in or
 6 against, any or all of the limited liability company interest of a member is not an
 7 assignment and shall not cause the member to cease to be a member or to cease to have
 8 the power to exercise any rights or powers of a member."

9 SECTION 5.

10 Said chapter is further amended by striking Code Section 14-11-601, relating to events of
 11 dissociation, and inserting in its place the following:

12 "14-11-601.

13 (a) ~~Effective~~ This Code section is effective for limited liability companies formed prior to
 14 July 1, 1999; ;

15 (b) ~~A~~ a person ceases to be a member of a limited liability company upon the occurrence
 16 of any of the following events:

17 (1) The member withdraws by voluntary act from the limited liability company as
 18 provided in subsection ~~(e)~~ (d) of this Code section;

19 (2) The member ceases to be a member of the limited liability company as provided in
 20 paragraph (6) of Code Section 14-11-502;

21 (3) The member is removed as a member:

22 (A) In accordance with the articles of organization or a written operating agreement;
 23 or

24 (B) Subject to contrary provision in the articles of organization or in a written operating
 25 agreement, when the member assigns all of his or her limited liability company interest,
 26 by an affirmative vote of a majority in number of the members who have not assigned
 27 all of their limited liability company interests;

28 (4) The member's entire interest in the limited liability company is purchased or
 29 redeemed by the limited liability company;

30 (5) Subject to contrary provision in the articles of organization or a written operating
 31 agreement, or written consent of all other members at the time, the member (A) makes
 32 an assignment for the benefit of creditors; (B) files a voluntary petition in bankruptcy; (C)
 33 is adjudicated a bankrupt or insolvent; (D) files a petition or answer seeking for the
 34 member any reorganization, arrangement, composition, readjustment, liquidation,
 35 dissolution, or similar relief under any statute, law, or regulation; (E) files an answer or
 36 other pleading admitting or failing to contest the material allegations of a petition filed

1 against the member in any proceeding of this nature; or (F) seeks, consents to, or
 2 acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all
 3 or any substantial part of the member's properties;

4 (6) Subject to contrary provision in the articles of organization or a written operating
 5 agreement, or written consent of all other members at the time, if within 120 days after
 6 the commencement of any proceeding against the member seeking reorganization,
 7 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under
 8 any statute, law, or regulation, the proceeding has not been dismissed, or if within 90
 9 days after the appointment without his or her consent or acquiescence of a trustee,
 10 receiver, or liquidator of the member or of all or any substantial part of his or her
 11 properties, the appointment is not vacated or stayed, or within 90 days after the expiration
 12 of any stay, the appointment is not vacated; or

13 (7) Subject to contrary provision in the articles of organization or a written operating
 14 agreement, or written consent of all other members at the time, in the case of a member
 15 who is an individual:

16 (A) On the date of his or her death; or

17 (B) On the date of the entry of an order by a court of competent jurisdiction
 18 adjudicating the member incompetent to manage his or her person or his or her
 19 property.

20 ~~(b)~~(c) The articles of organization or a written operating agreement may provide for other
 21 events the occurrence of which result in a person ceasing to be a member of the limited
 22 liability company.

23 ~~(c)~~(d) Except as otherwise provided in the articles of organization or a written operating
 24 agreement, a member may withdraw from the limited liability company at any time by
 25 giving written notice to the other members at least 30 days in advance of his or her
 26 withdrawal or such other notice as is provided for in a written operating agreement."

27 SECTION 6.

28 Said chapter is further amended by striking Code Section 14-11-601.1, relating to events
 29 resulting in cessation of membership, and inserting in its place the following:

30 "14-11-601.1.

31 (a) This Code section is effective ~~Effective~~ for limited liability companies formed on or
 32 after July 1, 1999; ;

33 (b) A ~~a~~ person ceases to be a member of a limited liability company upon the occurrence
 34 of any of the following events:

35 (1) The member ceases to be a member of the limited liability company as provided in
 36 paragraph (6) of Code Section 14-11-502;

1 (2) The member is removed as a member:

2 (A) In accordance with the articles of organization or a written operating agreement;
3 or

4 (B) Subject to contrary provision in the articles of organization or in a written
5 operating agreement, when the member assigns all of his or her limited liability
6 company interest, by an affirmative vote of a majority in number of the members who
7 have not assigned all of their limited liability company interests;

8 (3) The member's entire interest in the limited liability company is purchased or
9 redeemed by the limited liability company;

10 (4) Subject to contrary provision in the articles of organization or a written operating
11 agreement, or written consent of all other members at the time, the member (A) makes
12 an assignment for the benefit of creditors; (B) files a voluntary petition in bankruptcy; (C)
13 is adjudicated a bankrupt or insolvent; (D) files a petition or answer seeking for the
14 member any reorganization, arrangement, composition, readjustment, liquidation,
15 dissolution, or similar relief under any statute, law, or regulation; (E) files an answer or
16 other pleading admitting or failing to contest the material allegations of a petition filed
17 against the member in any proceeding of this nature; or (F) seeks, consents to, or
18 acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all
19 or any substantial part of the member's properties;

20 (5) Subject to contrary provision in the articles of organization or a written operating
21 agreement, or written consent of all other members at the time, if within 120 days after
22 the commencement of any proceeding against the member seeking reorganization,
23 arrangement, composition, readjustment, liquidation, dissolution, or similar relief under
24 any statute, law, or regulation, the proceeding has not been dismissed, or if within 90
25 days after the appointment without his or her consent or acquiescence of a trustee,
26 receiver, or liquidator of the member or of all or any substantial part of his or her
27 properties, the appointment is not vacated or stayed, or within 90 days after the expiration
28 of any stay, the appointment is not vacated; or

29 (6) Subject to contrary provision in the articles of organization or a written operating
30 agreement, or written consent of all other members at the time, in the case of a member
31 who is an individual:

32 (A) On the date of his or her death; or

33 (B) On the date of the entry of an order by a court of competent jurisdiction
34 adjudicating the member incompetent to manage his or her person or his or her
35 property.

