

House Bill 308 (COMMITTEE SUBSTITUTE)

By: Representatives Ralston of the 7th, Willard of the 49th, Oliver of the 83rd, and Dobbs of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 11 of Title 14 of the Official Code of Georgia Annotated, relating to
2 limited liability companies, so as to amend the "Georgia Limited Liability Company Act";
3 to provide certain technical corrections to previously enacted legislation; to clarify certain
4 provisions in the existing statute; to make certain provisions consistent with parallel
5 provisions in the Georgia Business Corporations Code; to clarify the provisions governing
6 the operating agreement of a limited liability company and its binding effect; to provide for
7 automatic resignation of a registered agent following the dissolution of a limited liability
8 company; to provide that statutory liability for wrongful distributions is based solely on
9 violations of the statutory limitations on distributions; to reduce the risk of an unintended
10 dissolution of the limited liability company; to limit the rights of judgment creditors of a
11 member to interfere with management or force the dissolution of a limited liability company;
12 to provide for related matters; to provide for an effective date; to repeal conflicting laws; and
13 for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 style="text-align:center">**SECTION 1.**

16 Chapter 11 of Title 14 of the Official Code of Georgia Annotated, relating to limited liability
17 companies, is amended in Code Section 14-11-101, relating to definitions relative to limited
18 liability companies, by revising paragraphs (12) and (18) as follows:

19 "(12) 'Limited liability company' means a limited liability company formed under this
20 chapter ~~by one or more members.~~"

21 "(18) 'Operating agreement' means any agreement, written or oral, of the member or
22 members as to the conduct of the business and affairs of a limited liability company ~~that~~
23 ~~is binding upon all of the members. A written operating agreement may provide that a~~
24 ~~person shall be admitted as a member of a limited liability company, or shall become an~~
25 ~~assignee of a limited liability company interest or other rights or powers of a member to~~
26 ~~the extent assigned, and shall become bound by the operating agreement and the~~

~~provisions of the articles of organization (A) if such person (or a representative~~
~~authorized by such person orally, in writing, or by other action such as payment for a~~
~~limited liability company interest) executes the operating agreement or any other writing~~
~~evidencing the intent of such person to become a member or assignee, or (B) without~~
~~such execution, if such person (or a representative authorized by such person orally, in~~
~~writing, or by other action such as payment for a limited liability company interest)~~
~~complies with the conditions for becoming a member or assignee as set forth in the~~
~~written operating agreement or any other writing and such person or representative~~
~~requests in writing that the records of the limited liability company reflect such admission~~
~~or assignment. In the case of a limited liability company with only one member, a~~
~~writing signed by that member stating that it is intended to be a written operating~~
~~agreement shall constitute a written operating agreement and shall not be unenforceable~~
~~by reason of there being only one person who is a party to the operating agreement. A~~
~~limited liability company is not required to execute its operating agreement and, except~~
~~as otherwise provided in the operating agreement, is bound by its operating agreement~~
~~whether or not the limited liability company executes the operating agreement. An~~
~~operating agreement may provide enforceable rights to any person, including a person~~
~~who is not a party to the operating agreement, to the extent set forth therein."~~

45 **SECTION 2.**

46 Said chapter is further amended in Code Section 14-11-203, relating to formation of limited
47 liability companies, by adding a new subsection to read as follows:

48 "(e) During any period when a limited liability company has any members it may have one
49 or more members."

50 **SECTION 3.**

51 Said chapter is further amended in Code Section 14-11-212, relating to conversion to a
52 limited liability company, by revising subsection (a), paragraph (6) of subsection (b), and
53 paragraph (2) of subsection (c), as follows:

54 "(a) A corporation, foreign corporation, foreign limited liability company, limited
55 partnership, foreign limited partnership, general partnership, or foreign general partnership
56 may elect to become a limited liability company. Such election shall require (1)
57 compliance with Code Section 14-2-1109.1 in the case of a Georgia corporation, or (2) the
58 approval of all of its partners, members or shareholders (or such other approval or
59 compliance as may be sufficient under applicable law or the governing documents of the
60 electing entity to authorize such election) in the case of a foreign corporation, foreign

61 limited liability company, limited partnership, foreign limited partnership, general
 62 partnership, or foreign general partnership."

63 "(6) A statement setting forth either (A) the manner and basis for converting the
 64 ownership interests in the entity making the election into interests as members of the
 65 limited liability company formed pursuant to such election or canceling them, or (B)(i)
 66 that a written operating agreement has been entered into among the persons who will be
 67 the members of the limited liability company formed pursuant to such election, (ii) that
 68 such operating agreement will be effective immediately upon the effectiveness of such
 69 election, and (iii) that such operating agreement provides for the manner and basis of
 70 such conversion or cancellation."

71 "(2) The ownership interests in the entity making the election shall be converted or
 72 canceled on the basis stated or referred to in the certificate of conversion in accordance
 73 with paragraph (6) of subsection (b) of this Code section;"

74 **SECTION 4.**

75 Said chapter is further amended in Code Section 14-11-303, relating to liability to third
 76 parties, by revising subsection (a) as follows:

77 "(a) A person who is a member, manager, agent, or employee of a limited liability
 78 company is not liable, solely by reason of being a member, manager, agent, or employee
 79 of the limited liability company, under a judgment, decree, or order of a court, or in any
 80 other manner, for a debt, obligation, or liability of the limited liability company, including
 81 liabilities and obligations of the limited liability company to any member or assignee,
 82 whether arising in contract, tort, or otherwise, or for the acts or omissions of any other
 83 member, manager, agent, or employee of the limited liability company, whether arising in
 84 contract, tort, or otherwise. Notwithstanding the provisions of this subsection, a member,
 85 manager, or employee may be personally liable for tax liabilities arising from the operation
 86 of the limited liability company as provided in Code Section 48-2-52."

87 **SECTION 5.**

88 Said chapter is further amended in Code Section 14-11-311, relating to notice, by revising
 89 paragraph (2) as follows:

90 "(2) Notice may be communicated in person; by telephone, ~~telegraph, teletype,~~ electronic
 91 transmission, or other form of wire or wireless communication; or by mail or private
 92 carrier. If these forms of personal notice are impracticable, notice may be communicated
 93 by a newspaper of general circulation in the area where published or by radio, television,
 94 or other form of public broadcast communication;"

95 **SECTION 6.**

96 Said chapter is further amended in Code Section 14-11-408, relating to liability upon
97 wrongful distribution, by revising subsection (a) and paragraph (2) of subsection (b) as
98 follows:

99 "(a) A member or manager who votes for or expressly consents to a distribution that is
100 made in violation of ~~the articles of organization, a written operating agreement, or Code~~
101 Section 14-11-407 is personally liable to the limited liability company for the amount of
102 the distribution that exceeds what could have been distributed without violating ~~the articles~~
103 ~~of organization, written operating agreement, or Code Section 14-11-407~~, if it is established
104 that such member or manager did not act in compliance with Code Section 14-11-407 and
105 violated a duty owed under Code Section 14-11-305 (without regard to any limitation on
106 such duty permitted by paragraph (4) of Code Section 14-11-305)."

107 "(2) From each member for the amount the member received knowing that the
108 distribution was made in violation of ~~the articles of organization, written operating~~
109 ~~agreement, or Code Section 14-11-407.~~"

110 **SECTION 7.**

111 Said chapter is further amended in Code Section 14-11-504, relating to rights of a judgment
112 creditor, by revising subsection (b) as follows:

113 "(b) The remedy conferred by this Code section shall not be deemed exclusive of others
114 which may exist, including, without limitation, the right of a judgment creditor to reach the
115 limited liability company interest of the member by process of garnishment served on the
116 limited liability company, provided that, except as otherwise provided in the articles of
117 organization or a written operating agreement, a judgment creditor shall have no right
118 under this chapter or any other state law to interfere with the management or force
119 dissolution of a limited liability company or to seek an order of the court requiring a
120 foreclosure sale of the limited liability company interest."

121 **SECTION 8.**

122 Said chapter is further amended in Code Section 14-11-505, relating to admission of
123 members, by revising said Code section as follows:

124 "14-11-505.

125 (a) In connection with the formation of a limited liability company, a person ~~acquiring a~~
126 ~~limited liability company interest~~ is admitted as a member of the limited liability company
127 upon the later to occur of:

128 (1) The formation of the limited liability company; or

129 (2) The time provided in and upon compliance with the articles of organization or a
130 written operating agreement or, if the articles of organization and any written operating
131 agreement do not so provide, when the person's admission is reflected in the records of
132 the limited liability company.

133 (b) After the formation of a limited liability company, a person ~~acquiring a limited liability~~
134 ~~company interest directly from the limited liability company~~ is admitted as a member of
135 the limited liability company at the time provided in and upon compliance with the articles
136 of organization and any written operating agreement or, if the articles of organization or
137 a written operating agreement does not so provide, upon the consent of all members and
138 when the person's admission is reflected in the records of the limited liability company.

139 (c) An assignee ~~of a limited liability company interest~~ is admitted as a member of the
140 limited liability company upon compliance with paragraph (1) of Code Section 14-11-503
141 and at the time provided in and upon compliance with the articles of organization and any
142 written operating agreement or, if the articles of organization or a written operating
143 agreement does not so provide, when any such person's permitted admission is reflected
144 in the records of the limited liability company; provided, however, that an assignee shall
145 not be admitted as a member of the limited liability company until such assignee has
146 consented to such admission.

147 (d) A written operating agreement may provide that a person shall be admitted as a
148 member of a limited liability company, or shall become an assignee of a limited liability
149 company interest or other rights or powers of a member to the extent assigned, and shall
150 become bound by the operating agreement and the provisions of the articles of organization
151 (A) if such person (or a representative authorized by such person) executes the operating
152 agreement or any other writing evidencing the intent of such person to become a member
153 or assignee, or (B) without such execution, if such person (or a representative authorized
154 by such person) complies with the conditions for becoming a member or assignee as set
155 forth in the written operating agreement or any other writing and such person or
156 representative requests in writing that the records of the limited liability company reflect
157 such admission or assignment.

158 (e) A person may be admitted to a limited liability company as a member of the limited
159 liability company and may receive a limited liability company interest in the limited
160 liability company without making a contribution or being obligated to make a contribution
161 to the limited liability company. Unless otherwise provided in a written operating
162 agreement, a person may be admitted to a limited liability company as a member of the
163 limited liability company without acquiring a limited liability company interest in the
164 limited liability company. Unless otherwise provided in a written operating agreement, a
165 person may be admitted as the sole member of a limited liability company without making

166 a contribution or being obligated to make a contribution to the limited liability company
 167 or without acquiring a limited liability company interest in the limited liability company.
 168 (f) In the case of a person being admitted as a member of a surviving limited liability
 169 company pursuant to a merger in accordance with Article 9 of this chapter, a person is
 170 admitted as a member of the limited liability company as provided in the operating
 171 agreement of the surviving limited liability company or in the agreement of merger, and
 172 in the event of any inconsistency, the terms of the agreement of merger shall control. In
 173 connection with the conversion into a limited liability company in accordance with Code
 174 Section 14-11-212, a person is admitted as a member of the limited liability company as
 175 provided in the limited liability company agreement."

176 **SECTION 9.**

177 Said chapter is further amended in Code Section 14-11-506, relating to powers of the estate
 178 of a deceased or incompetent member, by revising said Code section as follows:

179 "14-11-506.

180 Except as otherwise provided in the articles of organization or a written operating
 181 agreement, if a member who is an individual dies or a court of competent jurisdiction
 182 adjudges him or her to be incompetent to manage his or her person or his or her property,
 183 the member's executor, administrator, guardian, conservator, or other legal representative
 184 has all of the rights of an assignee of all of the member's limited liability company interest.
 185 Except as otherwise provided in the articles of organization or a written operating
 186 agreement, if the last member of a limited liability company dies or a court of competent
 187 jurisdiction adjudges him or her to be incompetent to manage his or her person or his or her
 188 property, the member's executor, administrator, guardian, conservator, or other legal
 189 representative shall become a member of the limited liability company, unless such
 190 executor, administrator, guardian, conservator, or other legal representative elects not to
 191 become a member by written notice given to the limited liability company within 90 days
 192 of such death or adjudication (or within such other period as is provided for in a written
 193 operating agreement)."

194 **SECTION 10.**

195 Said chapter is further amended in Code Section 14-11-602, relating to dissolution, by
 196 revising said Code section as follows:

197 "14-11-602.

198 (a) Effective for limited liability companies formed prior to July 1, 1999, a limited liability
 199 company is dissolved and its affairs shall be wound up upon the first to occur of the
 200 following:

- 201 (1) At the time specified in the articles of organization or a written operating agreement;
 202 (2) Upon the happening of events specified in the articles of organization or a written
 203 operating agreement;
 204 (3) Subject to contrary provision in the articles of organization or a written operating
 205 agreement, at ~~At~~ a time approved by all the members;
 206 (4) Subject to contrary provision in the articles of organization or a written operating
 207 agreement, 90 days after any event of dissociation with respect to any member (other than
 208 an event specified in paragraph (1) of subsection (b) of Code Section 14-11-601), unless
 209 within such 90 day period the limited liability company is continued by the written
 210 consent of all other members or as otherwise provided in the articles of organization or
 211 a written operating agreement; or
 212 (5) Entry of a decree of judicial dissolution under subsection (a) of Code Section
 213 14-11-603.
- 214 (b) Effective for limited liability companies formed on or after July 1, 1999, a limited
 215 liability company is dissolved and its affairs shall be wound up upon the first to occur of
 216 the following:
- 217 (1) At the time specified in the articles of organization or a written operating agreement;
 218 (2) Upon the happening of events specified in the articles of organization or a written
 219 operating agreement;
 220 (3) Subject to contrary provision in the articles of organization or a written operating
 221 agreement, at ~~At~~ a time approved by all the members;
 222 (4) Subject to contrary provision in the articles of organization or a written operating
 223 agreement, 90 days after an event of dissociation with respect to the last remaining
 224 member, unless otherwise provided in the articles of organization or a written operating
 225 agreement; or
 226 (5) Entry of a decree of judicial dissolution under subsection (a) of Code Section
 227 14-11-603.
- 228 (c) Notwithstanding paragraphs (1), (2), (3), and (4) of subsections (a) and (b) of this Code
 229 section, the limited liability company shall not be dissolved and its affairs shall not be
 230 wound up if, prior to the filing of a certificate of termination in the office of the Secretary
 231 of State, either:
- 232 (1) The limited liability company's articles of organization or operating agreement, or
 233 both, are amended such that, after giving effect to such amendment, such event does not
 234 result in dissolution of the limited liability company pursuant to subsection (a) or (b) of
 235 this Code section; or
 236 (2) If the limited liability company then has at least one member, a decision to continue
 237 the limited liability is taken by all of the members of the limited liability company (and

238 all other persons, if any, with power to require dissolution of the limited liability
 239 company under its articles of organization or written operating agreement).
 240 Any amendment or other action contemplated by paragraph (1) or (2) of this subsection
 241 shall, to the extent necessary to achieve the purposes of this subsection, be effective as of
 242 and from and after the applicable event described in subsection (a) or (b) of this Code
 243 section."

244 **SECTION 11.**

245 Said chapter is further amended in Code Section 14-11-610, relating to certificate of
 246 termination, by revising said Code section as follows:

247 "14-11-610.

248 A dissolved limited liability company ~~shall~~ may deliver to the Secretary of State for filing
 249 a certificate of termination when the statements required to be included therein can be
 250 truthfully made. Such a certificate of termination shall set forth:

- 251 (1) The name of the limited liability company;
 252 (2) That all known debts, liabilities, and obligations of the limited liability company have
 253 been paid, discharged, or barred or that adequate provision has been made therefor; and
 254 (3) That there are no actions pending against the limited liability company in any court,
 255 or that adequate provision has been made for the satisfaction of any judgment, order, or
 256 decree that may be entered against it in any pending action."

257 **SECTION 12.**

258 Said chapter is further amended in Code Section 14-11-901, relating to mergers, by revising
 259 subsection (a) as follows:

260 "(a) Pursuant to a written agreement, which, unless otherwise provided therein, will
 261 constitute the plan of merger required by Code Section 14-11-902 if it contains the
 262 provisions required by that Code section, a limited liability company may merge with or
 263 into one or more business entities with such limited liability company or other business
 264 entity as the agreement shall provide being the surviving limited liability company or other
 265 business entity."

266 **SECTION 13.**

267 Said chapter is further amended in Code Section 14-11-905, relating to effects of merger, by
 268 revising paragraphs (7) and (8) of subsection (a) as follows:

269 "(7) The articles of organization of the surviving limited liability company shall be
 270 amended to the extent provided in the ~~plan~~ articles of merger; and

271 (8) The interests or shares in each merging constituent business entity that are to be
272 converted into interests of the surviving limited liability company, or into cash or other
273 property under the terms of the plan of merger, or cancelled, are so converted or
274 cancelled, and the former holders thereof are entitled only to the rights provided in the
275 plan of merger or their rights otherwise provided by law."

276 **SECTION 14.**

277 This Act shall become effective upon its approval by the Governor or upon its becoming law
278 without such approval.

279 **SECTION 15.**

280 All laws and parts of laws in conflict with this Act are repealed.