

House Bill 308 (AS PASSED HOUSE AND SENATE)

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 repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

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

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

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

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

44 **SECTION 2.**

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

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

49 **SECTION 3.**

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

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

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

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

73 **SECTION 4.**

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

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

86 **SECTION 5.**

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

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

94 **SECTION 6.**

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

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

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

109 **SECTION 7.**

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

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

120 **SECTION 8.**

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

123 "14-11-505.

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

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

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

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

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

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

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

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

175 **SECTION 9.**

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

178 "14-11-506.

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

193 **SECTION 10.**

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

196 "14-11-602.

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

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

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

243 **SECTION 11.**

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

246 "14-11-610.

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

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

256 **SECTION 12.**

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

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

265 **SECTION 13.**

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

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

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

275

SECTION 14.

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