

House Bill 295

By: Representatives Reeves of the 34th, Jacobs of the 80th, Willard of the 51st, Fleming of the 121st, Evans of the 42nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 14 of the Official Code of Georgia Annotated, relating to corporations,
2 partnerships, and associations, so as to change certain provisions relating to definitions, name
3 registration, service of process, and reinstatement following administrative dissolution; to
4 provide for certain definitions applicable to business corporations, nonprofit corporations,
5 partnerships, and the "Georgia Revised Uniform Limited Partnership Act"; to correct a
6 cross-reference; to change certain provisions relating to who may serve as a registered agent
7 for certain domestic and foreign entities, including corporations, nonprofit corporations,
8 limited liability partnerships, limited partnerships, and limited liability companies; to provide
9 for one copy of a process, notice, or demand to be served upon the Secretary of State when
10 he or she is acting as an agent for service of process for certain entities; to change certain
11 provisions relating to reinstatement following administrative dissolution applicable to
12 business corporations and nonprofit corporations; to change certain provisions relating to
13 judicial and administrative dissolution and reservation of name applicable to limited liability
14 companies; to provide for related matters; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **PART I**
17 **SECTION 1-1.**

18 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
19 and associations, is amended in Code Section 14-2-140, relating to code definitions
20 applicable to business corporations, by adding two new paragraphs to read as follows:

21 "(13.1) 'Foreign limited liability company' means a limited liability company formed
22 under the laws of a jurisdiction other than this state."

23 "(16.1) 'Limited liability company' means any limited liability company formed under
24 Chapter 11 of this title."

25 **SECTION 1-2.**

26 Said title is further amended in Code Section 14-3-140, relating to definitions applicable to
27 nonprofit corporations, by adding two new paragraphs to read as follows:

28 "(16.1) 'Foreign limited liability company' means a limited liability company formed
29 under the laws of a jurisdiction other than this state."

30 "(19.1) 'Limited liability company' means any limited liability company formed under
31 Chapter 11 of this title."

32 **SECTION 1-3.**

33 Said title is further amended in Code Section 14-8-2, relating to definitions applicable to
34 partnerships, by adding two new paragraphs to read as follows:

35 "(4.1) 'Foreign limited liability company' means a limited liability company formed
36 under the laws of a jurisdiction other than this state."

37 "(6.1) 'Limited liability company' means any limited liability company formed under
38 Chapter 11 of this title."

39 **SECTION 1-4.**

40 Said title is further amended in Code Section 14-9-101, relating to definitions applicable to
41 the "Georgia Revised Uniform Limited Partnership Act," by adding two new paragraphs to
42 read as follows:

43 "(3.1) 'Foreign limited liability company' means a limited liability company formed
44 under the laws of a jurisdiction other than this state."

45 "(6.1) 'Limited liability company' means any limited liability company formed under
46 Chapter 11 of this title."

47 **PART II**

48 **SECTION 2-1.**

49 Said title is further amended by revising Code Section 14-2-501, relating to registered office
50 and registered agent applicable to business corporations, as follows:

51 "14-2-501.

52 Each corporation must continuously maintain in this state:

53 (1) A registered office that may be the same as any of its places of business; and

54 (2) A registered agent, who may be:

55 (A) A person who resides in this state and whose business office is identical with the
56 registered office;

57 (B) A domestic corporation, ~~or~~ nonprofit domestic corporation, or domestic limited
 58 liability company whose business office is identical with the registered office; or
 59 (C) A foreign corporation, ~~or~~ nonprofit foreign corporation, or foreign limited liability
 60 company authorized to transact business in this state whose business office is identical
 61 with the registered office."

62 SECTION 2-2.

63 Said title is further amended by revising Code Section 14-2-1507, relating to registered office
 64 and registered agent of foreign corporation applicable to business corporations, as follows:
 65 "14-2-1507.

66 Each foreign corporation authorized to transact business in this state must continuously
 67 maintain in this state:

68 (1) A registered office that may be the same as any of its places of business; and

69 (2) A registered agent, who may be:

70 (A) An individual who resides in this state and whose business office is identical with
 71 the registered office;

72 (B) A domestic corporation, ~~or~~ nonprofit domestic corporation, or domestic limited
 73 liability company whose business office is identical with the registered office; or

74 (C) A foreign corporation, ~~or~~ foreign or nonprofit corporation, or foreign limited
 75 liability company authorized to transact business in this state whose business office is
 76 identical with the registered office."

77 SECTION 2-3.

78 Said title is further amended by revising Code Section 14-3-501, relating to registered office
 79 and registered agent applicable to nonprofit corporations, as follows:

80 "14-3-501.

81 Each corporation must continuously maintain in this state:

82 (1) A registered office with the same address as that of the registered agent; and

83 (2) A registered agent, who may be:

84 (A) A person who resides in this state and whose office is identical with the registered
 85 office;

86 (B) A domestic business or nonprofit corporation or domestic limited liability company
 87 formed under this chapter or under Chapter 2 of this title whose office is identical with
 88 the registered office; or

89 (C) A foreign business or nonprofit corporation or foreign limited liability company
 90 authorized to transact business in this state whose office is identical with the registered
 91 office."

92 **SECTION 2-4.**

93 Said title is further amended by revising Code Section 14-3-1507, relating to registered office
 94 and registered agent of foreign corporation applicable to nonprofit corporations, as follows:
 95 "14-3-1507.

96 Each foreign corporation authorized to transact business in this state must continuously
 97 maintain in this state:

98 (1) A registered office that may be the same as any of its places of business; and

99 (2) A registered agent, who may be:

100 (A) An individual who resides in this state and whose business office is identical with
 101 the registered office;

102 (B) A domestic corporation, ~~or~~ domestic business corporation, or domestic limited
 103 liability company whose business office is identical with the registered office; or

104 (C) A foreign corporation, ~~or~~ foreign business corporation, or foreign limited liability
 105 company authorized to transact business in this state whose business office is identical
 106 with the registered office."

107 **SECTION 2-5.**

108 Said title is further amended by revising subsection (b) of Code Section 14-8-46, relating to
 109 registered office and registered agent required for foreign limited liability partnership, as
 110 follows:

111 "(b) A registered agent must be an individual resident of this state, a domestic corporation,
 112 professional corporation, or limited liability company, or a foreign corporation or limited
 113 liability company authorized to do business in this state."

114 **SECTION 2-6.**

115 Said title is further amended by revising subsection (b) of Code Section 14-9-902.1, relating
 116 to registered agent and office under the "Georgia Revised Uniform Limited Partnership Act,"
 117 as follows:

118 "(b) An agent for service of process must be an individual resident of this state, a domestic
 119 corporation, professional corporation, or limited liability company, or a foreign corporation
 120 or limited liability company authorized to do business in this state."

121 **SECTION 2-7.**

122 Said title is further amended by revising subsection (b) of Code Section 14-11-209, relating
 123 to registered office and registered agent applicable to limited liability companies, as follows:

124 "(b) A registered agent must be an individual resident of this state, a corporation, another
 125 limited liability company, or a foreign corporation or a foreign limited liability company
 126 having a certificate of authority to transact business in this state."

127 **SECTION 2-8.**

128 Said title is further amended by revising subsection (b) of Code Section 14-11-703, relating
 129 to registered office and registered agent applicable to foreign limited liability companies, as
 130 follows:

131 "(b) A registered agent must be an individual resident of this state, a corporation, limited
 132 liability company, or a foreign corporation or another foreign limited liability company
 133 having a certificate of authority to transact business in this state."

134 **PART III**

135 **SECTION 3-1.**

136 Said title is further amended by revising subsection (a) of Code Section 14-2-1422, relating
 137 to reinstatement following administrative dissolution applicable to business corporations, as
 138 follows:

139 "(a) A corporation administratively dissolved under Code Section 14-2-1421 may apply
 140 to the Secretary of State for reinstatement within five years after the effective date of such
 141 dissolution. The application shall:

142 (1) Recite the name of the corporation and the effective date of its administrative
 143 dissolution;

144 (2) State that the ground or grounds for dissolution either did not exist or have been
 145 eliminated;

146 (3) Either be executed by the registered agent or an officer, ~~director, or shareholder~~ of
 147 the corporation, in each case as set forth in the most recent annual registration of the
 148 corporation filed with the Secretary of State, or be accompanied by a notarized statement,
 149 executed by a person who was an officer, director, or ~~shareholder~~ member, or an heir,
 150 successor, or assign of a person who was an officer, director, or ~~shareholder~~ member, of
 151 the corporation at the time that the corporation was administratively dissolved, stating
 152 that such person or decedent was an officer, director, or ~~shareholder~~ member of the
 153 corporation at the time of administrative dissolution and such person has knowledge of
 154 and assents to the application for reinstatement;

155 (4) Contain a statement by the corporation reciting that all taxes owed by the corporation
 156 have been paid; and

157 (5) Be accompanied by the fee required for the application for reinstatement contained
 158 in Code Section 14-2-122."

159 **SECTION 3-2.**

160 Said title is further amended by revising subsection (a) of Code Section 14-3-1422, relating
 161 to reinstatement following administrative dissolution applicable to nonprofit corporations,
 162 as follows:

163 "(a) A corporation administratively dissolved under Code Section 14-3-1421 may apply
 164 to the Secretary of State for reinstatement within five years after the effective date of such
 165 dissolution. The application shall:

166 (1) Recite the name of the corporation and the effective date of its administrative
 167 dissolution;

168 (2) State that the ground or grounds for dissolution either did not exist or have been
 169 eliminated;

170 (3) Either be executed by the registered agent or an officer, ~~director, or shareholder~~ of
 171 the corporation, in each case as set forth in the most recent annual registration of the
 172 corporation filed with the Secretary of State, or be accompanied by a notarized statement,
 173 executed by a person who was an officer, director, or ~~shareholder~~ member, or an heir,
 174 successor, or assign of a person who was an officer, director, or ~~shareholder~~ member, of
 175 the corporation at the time that the corporation was administratively dissolved, stating
 176 that such person or decedent was an officer, director, or ~~shareholder~~ member of the
 177 corporation at the time of administrative dissolution and such person has knowledge of
 178 and assents to the application for reinstatement;

179 (4) Contain a statement by the corporation reciting that all taxes owed by the corporation
 180 have been paid; and

181 (5) Be accompanied by the fee required for the application for reinstatement contained
 182 in Code Section 14-3-122."

183 **SECTION 3-3.**

184 Said title is further amended by revising paragraph (4) of subsection (b) of Code Section
 185 14-11-603, relating to judicial and administrative dissolution and reservation of name
 186 applicable to limited liability companies, as follows:

187 "(4) A limited liability company administratively dissolved under this Code section may
 188 apply to the Secretary of State for reinstatement within five years after the effective date
 189 of such dissolution. The application shall:

190 (A) Recite the name of the limited liability company and the effective date of its
 191 administrative dissolution;

192 (B) State that the ground or grounds for dissolution either did not exist or have been
193 eliminated;

194 (C) Either be executed by the registered agent ~~or a member or manager~~ of the limited
195 liability company, ~~in each case~~ as set forth in the most recent annual registration of the
196 limited liability company filed with the Secretary of State, or be accompanied by a
197 notarized statement, executed by a person who was a member or manager, or an heir,
198 successor, or assign of a person who was a member or manager, of the limited liability
199 company at the time that the limited liability company was administratively dissolved,
200 stating that such person or decedent was a member or manager of the limited liability
201 company at the time of administrative dissolution and such person has knowledge of
202 and assents to the application for reinstatement;

203 (D) Contain a statement by the limited liability company reciting that all taxes owed
204 by the limited liability company have been paid; and

205 (E) Be accompanied by the fee required for the application for reinstatement contained
206 in Code Section 14-11-1101.

207 If the Secretary of State determines that the application contains the information required
208 by this paragraph and that the information is correct, he or she shall prepare a certificate
209 of reinstatement that recites his or her determination and the effective date of
210 reinstatement, file the original of the certificate, and serve a copy on the limited liability
211 company. When the reinstatement is effective, it relates back to and takes effect as of the
212 effective date of the administrative dissolution, and the limited liability company resumes
213 carrying on its business as if the administrative dissolution had never occurred."

214 **SECTION 3-4.**

215 Said title is further amended by adding a new paragraph to subsection (b) of Code Section
216 14-11-603, relating to judicial and administrative dissolution and reservation of name
217 applicable to limited liability companies, as follows:

218 "(7) This Code section shall apply to all limited liability companies administratively
219 dissolved under this Code section and any similar former statutes, regardless of the date
220 of dissolution."

221 **PART IV**

222 **SECTION 4-1.**

223 Said title is further amended by revising subsection (i) of Code Section 14-8-46, relating to
224 registered office and registered agent required for foreign limited liability partnership,
225 Secretary of State as agent for service of process, and venue, as follows:

226 "(i) Whenever a foreign limited liability partnership required to procure a certificate of
 227 authority to do business in this state shall fail to appoint or maintain a registered agent in
 228 this state, or whenever its registered agent cannot with reasonable diligence be found at the
 229 registered office, the Secretary of State shall be an agent of such foreign limited liability
 230 partnership upon whom any process, notice, or demand may be served. Service on the
 231 Secretary of State of any such process, notice, or demand shall be made by delivering to
 232 and leaving with the Secretary of State or with any persons designated by the Secretary of
 233 State to receive such service ~~two copies~~ a copy of such process, notice, or demand. The
 234 plaintiff or his or her attorney shall certify in writing to the Secretary of State that the
 235 foreign limited liability partnership failed either to maintain a registered office or appoint
 236 a registered agent in this state and that he or she has forwarded by registered mail or
 237 statutory overnight delivery such process, service, or demand to the last registered agent
 238 at the last registered office listed on the records of the Secretary of State and that service
 239 cannot be effected at such office."

240 **SECTION 4-2.**

241 Said title is further amended by revising subsection (f) of Code Section 14-11-209, relating
 242 to registered office and registered agent relative to limited liability companies, as follows:

243 "(f) Whenever a limited liability company shall fail to appoint or maintain a registered
 244 agent in this state or whenever its registered agent cannot with reasonable diligence be
 245 found at the registered office, then the Secretary of State shall be an agent of such limited
 246 liability company upon whom any process, notice, or demand may be served. Service on
 247 the Secretary of State of any such process, notice, or demand shall be made by delivering
 248 to and leaving with him or her or with any other person or persons designated by the
 249 Secretary of State to receive such service ~~two copies~~ a copy of such process, notice, or
 250 demand. The plaintiff or his or her attorney shall certify in writing to the Secretary of State
 251 that the limited liability company failed either to maintain a registered office or appoint a
 252 registered agent in this state and that he or she has forwarded by registered or certified mail
 253 or statutory overnight delivery such process, notice, or demand to the most recent
 254 registered office listed on the records of the Secretary of State and that service cannot be
 255 effected at such office."

256 **SECTION 4-3.**

257 Said title is further amended by revising subsection (h) Code Section 14-11-703, relating to
 258 registered office and registered agent and service on Secretary of State relative to foreign
 259 limited liability companies, as follows:

260 "(h) Whenever a foreign limited liability company required to procure a certificate of
261 authority to transact business in this state shall fail to appoint or maintain a registered agent
262 in this state, or whenever its registered agent cannot with reasonable diligence be found at
263 the registered office, then the Secretary of State shall be an agent of such foreign limited
264 liability company upon whom any process, notice, or demand may be served. Service on
265 the Secretary of State of any such process, notice, or demand shall be made by delivering
266 to and leaving with him or her or with any other person or persons designated by the
267 Secretary of State to receive such service ~~two copies~~ a copy of such process, notice, or
268 demand. The plaintiff or his or her attorney shall certify in writing to the Secretary of State
269 that the foreign limited liability company failed either to maintain a registered office or
270 appoint a registered agent in this state and that he or she has forwarded by registered or
271 certified mail or statutory overnight delivery such process, notice, or demand to the last
272 registered agent at the most recent registered office listed on the records of the Secretary
273 of State and that service cannot be effected at such office."

274

PART V

275

SECTION 5-1.

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