

House Bill 1046

By: Representatives Frye of the 122nd, Roberts of the 52nd, Gisler of the 121st, Sanchez of the 42nd, Bell of the 75th, 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 restrict the powers of business corporations, nonprofit
3 corporations, partnerships, limited partnerships, and limited liability companies to only the
4 powers the General Assembly expressly grants; to prohibit business corporations, nonprofit
5 corporations, partnerships, limited partnerships, and limited liability companies from
6 engaging in ballot issue activity and election activity; to provide for civil enforcement and
7 enforcement by the Attorney General; to provide for equitable remedies; to provide for
8 definitions; to provide for related matters; to provide for an effective date and applicability;
9 to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
13 and associations, is amended in Chapter 2, relating to business corporations, by revising
14 Code Section 14-2-302, relating to general powers, as follows:

15 "14-2-302.

16 (a) As used in this Code section, the term:

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17 (1) 'Ballot issue activity' means paying, contributing, or expending money or anything
18 of value to support or oppose a ballot question or initiative.

19 (2) 'Election activity' means paying, contributing, or expending money or anything of
20 value to support or oppose a candidate, political party, or political committee.

21 (b) Every corporation has perpetual duration and succession in its corporate name, unless
22 its articles of incorporation adopted on or after April 1, 1969, or an amendment thereto
23 adopted on or after April 1, 1969, provides otherwise. ~~Unless its articles of incorporation~~
24 ~~provide otherwise, every corporation has the same powers as an individual to do all things~~
25 ~~necessary or convenient to carry out its business and affairs; A corporation only has the~~
26 ~~powers expressly prescribed to it by the General Assembly, including to~~ without limitation
27 power:

28 (1) ~~To sue~~ Sue, be sued, complain, and defend in its corporate name;

29 (2) ~~To have~~ Have a corporate seal which may be altered at will, and to use it, or a
30 facsimile of it, by impressing or affixing it or in any other manner reproducing it;

31 (3) ~~To make~~ Make and amend bylaws, not inconsistent with its articles of incorporation
32 or with the laws of this state, for managing the business and regulating the affairs of the
33 corporation;

34 (4) ~~To purchase~~ Purchase, receive, lease, or otherwise acquire, own, hold, improve, use,
35 and otherwise deal with real or personal property or any legal or equitable interest in
36 property, wherever located;

37 (5) ~~To sell~~ Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all
38 or any part of its property;

39 (6) ~~To purchase~~ Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote,
40 use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or
41 other interests in, or obligations of, any other entity;

42 (7) ~~To make~~ Make contracts and guarantees, incur liabilities, borrow money, issue its
43 notes, bonds, and other obligations (which may be convertible into or include the option

- 44 to purchase other securities of the corporation), and secure any of its obligations by
45 mortgage or pledge of any of its property, franchises, or income;
- 46 (8) ~~To lend~~ Lend money, invest and reinvest its funds, and receive and hold real and
47 personal property as security for repayment;
- 48 (9) ~~To be~~ Be a promoter, partner, member, associate, or manager of any partnership, joint
49 venture, trust, or other entity;
- 50 (10) ~~To conduct~~ Conduct its business, locate offices, and exercise the powers granted by
51 this chapter within or without this state;
- 52 (11) ~~To elect~~ Elect directors and appoint officers, employees, and agents of the
53 corporation, define their duties, fix their compensation, and lend them money and credit;
- 54 (12) ~~To pay~~ Pay pensions and establish pension plans, pension trusts, profit sharing
55 plans, share bonus plans, share option plans, and benefit or incentive plans for any or all
56 of its current or former directors, officers, employees, and agents;
- 57 (13) ~~To make~~ Make donations for the public welfare or for charitable, scientific, or
58 educational purposes;
- 59 (14) ~~To transact~~ Transact any lawful business that will aid governmental policy;
- 60 (15) ~~To provide~~ Provide insurance for its benefit on the life or physical or mental ability
61 of any of its directors, officers, or employees or any other person whose death or physical
62 or mental disability might cause financial loss to the corporation; or, pursuant to any
63 contractual arrangement with any shareholder concerning the reacquisition of shares
64 owned by him at his death or disability, on the life or physical or mental ability of that
65 shareholder, for the purpose of carrying out such contractual arrangement; or, pursuant
66 to any contract obligating the corporation, as part of compensation arrangements, or
67 pursuant to any contract obligating the corporation as guarantor or surety, on the life of
68 the principal obligor, and for these purposes the corporation is deemed to have an
69 insurable interest in such persons; and

70 (16) ~~To make~~ Make payments or donations or do any other act not inconsistent with law
71 that furthers the business and affairs of the corporation.

72 (c) A corporation shall not have the power to conduct ballot issue activity or election
73 activity.

74 (d) Ballot issue activity and election activity do not include any bona fide news story,
75 commentary, or editorial distributed through the facilities of any broadcasting station or of
76 any print, online, or digital newspaper, magazine, blog, or any other periodical publication,
77 unless such broadcasting, print, online, or digital facilities are owned or controlled by a
78 political party, political committee, or candidate."

79 **SECTION 2.**

80 Said title is further amended in said chapter by adding a new subsection to Code Section
81 14-2-304, relating to ultra vires, to read as follows:

82 "(d) Any ballot issue activity or election activity, as defined in Code Section 14-2-302,
83 conducted by a corporation is ultra vires and void. Such activities shall be subject to civil
84 action by a member, shareholder, or the Attorney General for injunctive relief or revocation
85 of the corporate charter."

86 **SECTION 3.**

87 Said title is further amended in Chapter 3, relating to nonprofit corporations, by revising and
88 adding new subsections to Code Section 14-3-302, relating to duration and powers of
89 corporation, as follows:

90 "14-3-302.

91 (a) As used in this Code section, the term:

92 (1) 'Ballot issue activity' means paying, contributing, or expending money or anything
93 of value to support or oppose a ballot question or initiative.

94 (2) 'Election activity' means paying, contributing, or expending money or anything of
95 value to support or oppose a candidate, political party, or political committee.

96 (b) Every corporation has perpetual duration and succession in its corporate name, unless
97 its articles of incorporation adopted on or after April 1, 1969, or in the case of a corporation
98 existing prior to or on April 1, 1969, an amendment thereto adopted on or after
99 April 1, 1969, provides otherwise. ~~Unless its articles of incorporation provide otherwise,~~
100 ~~every corporation has the same powers as an individual to do all things necessary or~~
101 ~~convenient to carry out its business and affairs; A corporation only has the powers~~
102 expressly prescribed to it by the General Assembly, including to without limitation power:

103 (1) ~~To sue~~ Sue, be sued, complain, and defend in its corporate name;

104 (2) ~~To have~~ Have a corporate seal, which may be altered at will, and to use it, or a
105 facsimile of it, by impressing or affixing or in any other manner reproducing it;

106 (3) ~~To make~~ Make and amend bylaws, not inconsistent with its articles of incorporation
107 or with the laws of this state, for regulating and managing the affairs of the corporation;

108 (4) ~~To purchase~~ Purchase, receive, lease, or otherwise acquire, own, hold, improve, use,
109 and otherwise deal with real or personal property or any legal or equitable interest in
110 property, wherever located;

111 (5) ~~To sell~~ Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all
112 or any part of its property;

113 (6) ~~To purchase~~ Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote,
114 use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares or
115 other interests in, or obligations of, any entity;

116 (7) ~~To make~~ Make contracts and guaranties; incur liabilities; borrow money; issue notes,
117 bonds, and other obligations; and secure any of its obligations by mortgage or pledge of
118 any of its property, franchises, or income;

- 119 (8) ~~To lend~~ Lend money, invest and reinvest its funds, and receive and hold real and
120 personal property as security for repayment, except as limited by Code Sections 14-3-860
121 through 14-3-864;
- 122 (9) ~~To be~~ Be a promoter, fiduciary, shareholder, partner, member, associate, or manager
123 of any partnership, joint venture, trust, or other entity;
- 124 (10) ~~To conduct~~ Conduct its activities, locate offices, and exercise the powers granted
125 by this chapter within or without this state;
- 126 (11) ~~To elect~~ Elect or appoint directors, officers, delegates, employees, and agents of the
127 corporation; define their duties; fix their compensation; and lend them money and credit;
- 128 (12) ~~To pay~~ Pay pensions and establish pension plans, pension trusts, and other benefit
129 and incentive plans for any or all of its current or former directors, officers, employees,
130 and agents;
- 131 (13) ~~To make~~ Make donations not inconsistent with law for the public welfare or for
132 charitable, religious, scientific, or educational purposes and for other purposes that further
133 the corporate interest;
- 134 (14) ~~To impose~~ Impose dues, assessments, admission fees, and transfer fees upon its
135 members;
- 136 (15) ~~To provide~~ Provide insurance for its benefit on the life or physical or mental ability
137 of any of its directors, officers, or employees or any other person whose death or physical
138 or mental disability might cause financial loss to the corporation; or, pursuant to any
139 contract obligating the corporation, as part of compensation arrangements, or pursuant
140 to any contract obligating the corporation as guarantor or surety, on the life of the
141 principal obligor, and for these purposes the corporation is deemed to have an insurable
142 interest in such persons;
- 143 (16) ~~To establish~~ Establish conditions for admission of members, admit members, and
144 issue memberships;
- 145 (17) ~~To carry~~ Carry on a business; and

146 (18) ~~To do~~ Do all things necessary or convenient, not inconsistent with law, to further
147 the activities and affairs of the corporation.

148 (c) A corporation shall not have the power to conduct ballot issue activity or election
149 activity.

150 (d) Ballot issue activity and election activity do not include any bona fide news story,
151 commentary, or editorial distributed through the facilities of any broadcasting station or of
152 any print, online, or digital newspaper, magazine, blog, or any other periodical publication,
153 unless such broadcasting, print, online, or digital facilities are owned or controlled by a
154 political party, political committee, or candidate."

155 SECTION 4.

156 Said title is further amended in said chapter by adding a new subsection to Code Section
157 14-3-304, relating to ultra vires, to read as follows:

158 "(d) Any ballot issue activity or election activity, as defined in Code Section 14-3-302,
159 conducted by a corporation is ultra vires and void. Such activities shall be subject to civil
160 action by a member, shareholder, or the Attorney General for injunctive relief or revocation
161 of the corporate charter."

162 SECTION 5.

163 Said title is further amended in Chapter 8, relating to partnerships, by adding a new Code
164 section to read as follows:

165 "14-8-65.

166 (a) As used in this Code section, the term:

167 (1) 'Ballot issue activity' means paying, contributing, or expending money or anything
168 of value to support or oppose a ballot question or initiative.

169 (2) 'Election activity' means paying, contributing, or expending money or anything of
170 value to support or oppose a candidate, political party, or political committee.

- 171 (b) A partnership only has the powers expressly prescribed to it by the General Assembly.
172 (c) A partnership shall not have the power to conduct ballot issue activity or election
173 activity.
174 (d) Ballot issue activity and election activity do not include any bona fide news story,
175 commentary, or editorial distributed through the facilities of any broadcasting station or of
176 any print, online, or digital newspaper, magazine, blog, or any other periodical publication,
177 unless such broadcasting, print, online, or digital facilities are owned or controlled by a
178 political party, political committee, or candidate.
179 (e) Any ballot issue activity or election activity conducted by a partnership is void. Such
180 activities shall be subject to civil action by any partner or the Attorney General for
181 injunctive relief or dissolution of such partnership."

182 **SECTION 6.**

183 Said title is further amended in Chapter 9, the "Georgia Revised Uniform Limited Partnership
184 Act," by adding a new Code section to read as follows:

185 "14-9-110.

186 (a) As used in this Code section, the term:

187 (1) 'Ballot issue activity' means paying, contributing, or expending money or anything
188 of value to support or oppose a ballot question or initiative.

189 (2) 'Election activity' means paying, contributing, or expending money or anything of
190 value to support or oppose a candidate, political party, or political committee.

191 (b) A limited partnership only has the powers expressly prescribed to it by the General
192 Assembly.

193 (c) A limited partnership shall not have the power to conduct ballot issue activity or
194 election activity.

195 (d) Ballot issue activity and election activity do not include any bona fide news story,
196 commentary, or editorial distributed through the facilities of any broadcasting station or of

197 any print, online, or digital newspaper, magazine, blog, or any other periodical publication,
198 unless such broadcasting, print, online, or digital facilities are owned or controlled by a
199 political party, political committee, or candidate.
200 (e) Any ballot issue activity or election activity conducted by a limited partnership is void.
201 Such activities shall be subject to civil action by any general partner or the Attorney
202 General for injunctive relief or dissolution of such partnership."

203 **SECTION 7.**

204 Said title is further amended in Chapter 9A, related to limited partnerships, by adding a new
205 Code section to read as follows:

206 "14-9A-6.

207 (a) As used in this Code section, the term:

208 (1) 'Ballot issue activity' means paying, contributing, or expending money or anything
209 of value to support or oppose a ballot question or initiative.

210 (2) 'Election activity' means paying, contributing, or expending money or anything of
211 value to support or oppose a candidate, political party, or political committee.

212 (b) A limited partnership only has the powers expressly prescribed to it by the General
213 Assembly.

214 (c) A limited partnership shall not have the power to conduct ballot issue activity or
215 election activity.

216 (d) Ballot issue activity and election activity do not include any bona fide news story,
217 commentary, or editorial distributed through the facilities of any broadcasting station or of
218 any print, online, or digital newspaper, magazine, blog, or any other periodical publication,
219 unless such broadcasting, print, online, or digital facilities are owned or controlled by a
220 political party, political committee, or candidate.

221 (e) Any ballot issue activity or election activity conducted by a limited partnership is void.
222 Such activities shall be subject to civil action by any general partner or the Attorney
223 General for injunctive relief or dissolution of such partnership."

224 **SECTION 8.**

225 Said title is further amended in Chapter 11, relating to limited liability companies, by
226 revising Code Section 14-11-202, relating to powers of limited liability companies, as
227 follows:

228 "14-11-202.

229 (a) As used in this Code section, the term:

230 (1) 'Ballot issue activity' means paying, contributing, or expending money or anything
231 of value to support or oppose a ballot question or initiative.

232 (2) 'Election activity' means paying, contributing, or expending money or anything of
233 value to support or oppose a candidate, political party, or political committee.

234 (b) Each limited liability company formed in this state shall have only the powers
235 expressly prescribed to it by the General Assembly ~~same powers as any person has to do~~
236 all things necessary to carry out its purpose, business, and affairs.

237 (c) A limited liability corporation shall not have the power to conduct ballot issue activity
238 or election activity.

239 (d) Ballot issue activity and election activity do not include any bona fide news story,
240 commentary, or editorial distributed through the facilities of any broadcasting station or of
241 any print, online, or digital newspaper, magazine, blog, or any other periodical publication,
242 unless such broadcasting, print, online, or digital facilities are owned or controlled by a
243 political party, political committee, or candidate.

244 (e) Any ballot issue activity or election activity conducted by a limited liability company
245 is void. Such activities shall be subject to civil action by a member, shareholder, or the
246 Attorney General for injunctive relief or dissolution."

247

SECTION 9.

248 This Act shall become effective upon its approval by the Governor or upon its becoming law
249 without such approval and shall be applicable to ballot issue activity and election activity
250 carried out on or after such date.

251

SECTION 10.

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