

House Bill 1414

By: Representatives Reeves of the 99th, Efstoration of the 104th, Hong of the 103rd, Holcomb of the 101st, Evans of the 57th, and others

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 permit the creation of protected series and registered
3 series of a limited liability company; to provide for procedures for creation of such series;
4 to provide for the records of such series; to provide for the assets property owned by such
5 series; to provide for the debts, obligations, liabilities of such series; to provide for members
6 and managers of such series; to provide for the powers of members and managers; to provide
7 for interests in such series; to provide for distributions; to provide for termination and
8 winding up of such series; to provide for certain filings with the Secretary of State; to provide
9 for conversion of a protected series to a registered series and of a registered series to a
10 protected series; to provide for consolidation of series; to provide for merger of registered
11 series; to provide for definitions; to provide for related matters; to repeal conflicting laws;
12 and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Chapter 11 of Title 14 of the Official Code of Georgia Annotated, relating to limited liability
16 companies, is amended by adding a new article to read as follows:

H. B. 1414

17 "ARTICLE 12

18 14-11-1200.

19 As used in this article, the term:

20 (1) 'Protected series' means a designated series of members, managers, limited liability
21 company interests or assets created through the operating agreement of a limited liability
22 company and meeting the conditions of Code Section 14-11-1203.

23 (2) 'Registered series' means a designated series of members, managers, limited liability
24 company interests, or assets created through filing a certificate of registered series with
25 the Secretary of State pursuant to Code Section 14-11-1204.

26 (3) 'Series' means a protected series, a registered series, or a designated series of
27 members, managers, limited liability company interests, or assets that is neither a
28 protected series nor a registered series.

29 14-11-1201.

30 (a) An operating agreement may establish or provide for the establishment of one or more
31 protected series or registered series.

32 (b) A series may have separate rights, powers, or duties with respect to specified property
33 or obligations of the limited liability company or profits and losses associated with
34 specified property or obligations, and may have a separate business purpose or investment
35 objective.

36 (c) This article shall not be construed to limit the principle of freedom of contract to a
37 series that is not a protected series or a registered series.

38 (d) No series may merge, convert, or consolidate except pursuant to this article.

39 14-11-1202.

40 (a) This Code section applies to any protected or registered series. For purposes of this
41 article, records that reasonably identify the assets of a series by any objectively

42 determinable method shall be deemed to account for such assets separately from the assets
43 of the limited liability company or any other series.

44 (b) A series may carry on any lawful business purpose, or activity, whether or not for
45 profit, except business pursuant to Title 7. Unless provided for in the operating agreement,
46 a series shall have the power and capacity to, in its own name:

47 (1) Contract;

48 (2) Hold title to real, personal, and intangible property;

49 (3) Grant liens and security interests; and

50 (4) Sue and be sued.

51 (c) No member of a series shall be obligated personally for any debt, obligation, or liability
52 of such series, whether arising in contract, tort, or through other means, solely by reason
53 of being a member or manager of such series; provided, however, that a member or
54 manager may agree to be personally obligated under the operating agreement of the limited
55 liability company.

56 (d)(1) An operating agreement may:

57 (A) Provide for classes or groups of members or managers associated with a series
58 having such relative rights, powers, and duties as the operating agreement may provide,
59 including the creation of additional classes;

60 (B) Provide for the taking of an action without the approval of any member or
61 manager, including an action to create a series;

62 (C) Provide that any member or class of member associated with a series shall have no
63 voting rights; and

64 (D) Grant members or managers the right to vote on any matter separately or with any
65 class.

66 (2) Unless provided in the operating agreement, management of a series shall be vested
67 in its members in proportion to their interests in the profits of the series. The decision of
68 a majority of all members shall be binding.

69 (3) If an operating agreement provides for management by a manager, the manager shall
70 be chosen and hold office as provided in the operating agreement. A series may have
71 more than one manager. A manager ceasing to be manager of a series shall not cease to
72 be a manager of the limited liability company or any other series of such company.

73 (e)(1) Notwithstanding Code Section 14-11-407, a limited liability company may make
74 a distribution with respect to a series.

75 (2) A limited liability company shall not make a distribution to a member if all liabilities
76 of the series, other than liabilities to members on account of their interests and liabilities
77 for specified property, exceed the fair value of the series's assets; provided, however, that
78 property subject to limited-recourse liability shall be included only to the extent its fair
79 value exceeds that liability.

80 (3) A distribution shall not include reasonable compensation for services or payments
81 in the ordinary course pursuant to a retirement or benefits program.

82 (4) A member who knowingly receives a distribution in violation of this subsection shall
83 be liable to the series for the amount of the distribution. A member who unknowingly
84 receives such distribution shall not be liable.

85 (5) This subsection shall not affect any obligation of a member under an operating
86 agreement or other applicable law.

87 (f) When a member is entitled to a distribution from a series, the member shall have the
88 status and remedies of a creditor of the series. An operating agreement may establish a
89 record date for allocations and distributions.

90 (g) Unless otherwise provided in the operating agreement:

91 (1) A member shall cease to be associated with a series upon assignment of all of such
92 member's interest in the series; and

93 (2) An event causing a member to cease to be associated with a series shall not cause the
94 member to cease to be associated with any other series or terminate the member's
95 membership in the limited liability company or cause the termination of the series.

- 96 (h) A series is an association for all purposes of the laws of this state, regardless of the
97 number of its member or managers.
- 98 (i)(1) Subject to Article 6 of this title, and except as provided in the operating agreement,
99 a series may be terminated and its affairs wound up without dissolving the limited
100 liability company. Termination shall not affect the limitation of liability provided by this
101 article.
- 102 (2) A series is terminated and its affairs shall be wound up upon the dissolution of the
103 limited liability company or upon the first to occur of:
- 104 (A) The time specified in the operating agreement;
105 (B) The occurrence of an event specified in the operating agreement;
106 (C) The vote or consent of members owning more than two-thirds of the interests in
107 the profits of the series, except otherwise provided in the operating agreement; or
108 (D) Judicial termination pursuant to paragraph (4) of this subsection.
- 109 (3) Unless otherwise provided in the operating agreement, a manager who has not
110 wrongfully terminated the series, or if none, the members or a person approved by them
111 may wind up the affairs of the series. The superior court of the county of the registered
112 agent may wind up upon application by any member, manager, personal representative,
113 or assignee, and may appoint a liquidating trustee. Those winding up such series may
114 take all permitted actions in the name of the limited liability company and series and shall
115 provide for claims and distribution of assets pursuant to Code Section 14-11-605.
116 Actions in accordance with this paragraph shall not impose liability on a liquidating
117 trustee.
- 118 (4) Upon application by or for a member or manager, a superior court may decree
119 termination whenever it is not reasonably practicable to conduct the business of the series
120 in conformity with the operating agreement.
- 121 (j)(1) If an operating agreement provides a manner for revoking termination, it may be
122 revoked accordingly.

123 (2) Unless the limited liability company has dissolved without revocation or the
124 operating agreement prohibits revocation, termination may be revoked prior to
125 completion of winding up:

126 (A) In case of termination by vote or consent, pursuant to such vote or consent; or

127 (B) In the case of termination by event or time, pursuant to the vote or consent required
128 to amend the operating agreement provision causing termination.

129 (k) A foreign limited liability company registering in this state whose operating agreement
130 establishes or provides for the establishment of a protected series or registered series shall
131 state such provision on its application and shall disclose:

132 (1) Whether the debts, liabilities, and obligations of a series are enforceable only against
133 such series's assets and not against the assets of the foreign limited liability company or
134 other series; and

135 (2) Whether the debts, liabilities, and obligations of the limited liability company
136 generally or of any other series are enforceable against the assets of a series.

137 14-11-1203.

138 (a) A protected series is established when the operating agreement provides for its
139 creation, the records maintained for the series account for its assets separately from the
140 assets of the limited liability company and any other series, and notice of the limitation of
141 liabilities of a series is set forth in the articles of organization.

142 (b) When the conditions of subsection (a) are met, the debts, liabilities, obligations, and
143 expenses of the protected series shall be enforceable against such series's assets only, and
144 not against the assets of the limited liability company or any other series.

145 (c) Unless otherwise provided in the operating agreement, none of the debts, liabilities,
146 obligations, or expenses of the limited liability company or any other series shall be
147 enforceable against the assets of a protected series.

148 (d) This article shall not restrict:

- 149 (1) A protected series from agreeing that debts of the limited liability company or any
150 other series shall be enforceable against such protected series's assets; or
151 (2) A limited liability company from agreeing that debts of a protected series shall be
152 enforceable against its general assets.
153 (e) Assets of a protected series may be held in the name of the series, the limited liability
154 company, a nominee, or as otherwise determined by the operating agreement.
155 (f) The notice required by subsection (a) of this Code section need not reference any
156 specific series or use the term 'protected' or cite this Code section, and is sufficient whether
157 or not any series has been established when included in the articles of organization.

158 14-11-1204.

- 159 (a)(1) A registered series is formed by filing a certificate of registered series with the
160 Secretary of State.
161 (2) A certificate of registered series shall include the names of the limited liability
162 company and the registered series and may include other information deemed appropriate
163 by the Secretary of State.
164 (3) A certificate of registered series shall be effective upon filing unless a later date is
165 specified. Such certificate shall not amend the articles of organization.
166 (4) A certificate of registered series may be amended by filing a certificate of
167 amendment with the Secretary of State stating the name of the limited liability company,
168 the name of the registered series, and the amendment.
169 (5) A manager, or if none, any member, who becomes aware of false or changed material
170 information shall promptly amend the certificate of registered series.
171 (6) A certificate of registered series may be amended at any time for any purpose.
172 (7) An amendment to a certificate of registered series is effective when filed unless a
173 later date is specified.
174 (8) A certificate of registered series shall be canceled upon:

- 175 (A) Cancellation of the articles of organization of the limited liability company named
176 in the certificate of registered series;
- 177 (B) Filing or future effective date of a certificate of cancellation;
- 178 (C) Filing or future effective date of a certificate of merger or consolidation if the
179 series is not the surviving or resulting registered series; or
- 180 (D) Filing or future effective date of a certificate of conversion to a protected series.
- 181 (9) A certificate of cancellation may be filed upon the termination and completion of
182 winding up and shall state the names of the limited liability company and registered
183 series, the date of the original certificate, the future effective date, if applicable, and any
184 other information deemed necessary by the Secretary of State.
- 185 (10) An erroneously filed certificate of cancellation may be corrected by filing a
186 certificate of correction.
- 187 (11) The Secretary of State shall not issue a certificate of good standing for a registered
188 series if its certificate is canceled or the limited liability company is not in good standing.
- 189 (b)(1) The name of a registered series shall:
- 190 (A) Begin with the name of the limited liability company;
- 191 (B) Be distinguishable in the records of the Secretary of State from any other
192 corporation, partnership, limited partnership, statutory trust, limited liability company,
193 or registered series; provided, however, that registration under a nondistinguishable
194 name is permitted with written consent filed with the Secretary of State; and
- 195 (C) Not contain the term 'bank' except in a context clearly not referring to a Title 7
196 business.
- 197 (2) The name of a registered series may contain the name of a member or a manager.
- 198 (c) When the records of a registered series account for such registered series's assets
199 separately from those of the limited liability company and other series, the debts, liabilities,
200 obligations, and expenses of the registered series shall be enforceable against such
201 registered series's assets only and not against the assets of the limited liability company or

202 other series. None of the debts of the limited liability company or other series shall be
203 enforceable against the assets of a registered series unless provided for in the operating
204 agreement.

205 (d) This article shall not restrict:

206 (1) A registered series from agreeing that debts of the limited liability company or any
207 other series shall be enforceable against its assets; or

208 (2) A limited liability company from agreeing that debts of a registered series shall be
209 enforceable against its general assets.

210 (e) Assets of a registered series may be held in the name of the registered series, the
211 limited liability company, a nominee, or as otherwise provided in the operating agreement.

212 (f) Notice in the articles of organization of the limitation of liabilities of a registered series
213 is sufficient for all purposes whether or not any series has been formed and need not
214 reference any specific series or cite this article. Any reference to Code Section 14-11-1203
215 in the articles of organization shall be deemed a reference to this Code section with respect
216 to a registered series. The filing of the articles of organization containing such notice shall
217 constitute notice of such limitation.

218 (g)(1) In addition to the provisions provided in subsection (j) of Code Section
219 14-11-1202, if the operating agreement provides a manner for revoking termination of
220 a registered series, such termination may be revoked accordingly, and unless the limited
221 liability company has dissolved without revocation or the operating agreement prohibits
222 revocation, the registered series shall not be terminated prior to filing a certificate of
223 cancellation.

224 (2) A registered series is continued upon:

225 (A) A vote or consent, in the case of termination by vote or consent; or

226 (B) The vote or consent required to amend the provision of the operating agreement
227 causing the termination in the case of termination under subparagraph (i)(2)(A) or (B)
228 of Code Section 14-11-1202.

229 (3) If a registered series is terminated by the dissolution of the limited liability company,
230 such termination shall be automatically revoked upon revocation of the limited liability
231 company's dissolution unless a certificate of cancellation has been filed or the operating
232 agreement prohibits the revocation.

233 14-11-1205.

234 (a) A protected series may convert to a registered series by filing with the Secretary of
235 State:

236 (1) An executed certificate of conversion; and

237 (2) An executed certificate of registered series.

238 (b) The certificate of conversion and certificate of registered series shall be filed
239 simultaneously and, if not effective upon filing, shall provide for the same effective date.

240 (c) An existing protected series may not become a registered series except pursuant to this
241 subsection.

242 (d) If the operating agreement specifies the manner of authorizing such conversion, it shall
243 be authorized accordingly. Otherwise such conversion shall be authorized by a majority
244 of all members of the protected series if not prohibited by the operating agreement.

245 14-11-1206.

246 (a) A registered series may convert to a protected series. A registered series shall not
247 become a protected series except pursuant to this subsection.

248 (b) If the operating agreement specifies the manner of authorizing such conversion, it shall
249 be authorized accordingly. Otherwise such conversion shall be authorized by a majority
250 of all members of the registered series if not prohibited by the operating agreement.

251 (c) The registered series shall file an executed certificate of conversion with the Secretary
252 of State.

253 14-11-1207.

254 (a) Unless provided in the operating agreement, a conversion agreement shall not require
255 the series to wind up or distribute assets and shall not constitute a dissolution of the limited
256 liability company or termination of the series. The converted series shall be the same series
257 and a continuation of the converting series.

258 (b) Interests in the converting series may be exchanged for or converted into cash,
259 property, or interests in the converted series or any other entity, may remain outstanding,
260 or may be canceled.

261 (c) An executed certificate of conversion shall include:

262 (1) The name of the limited liability company and, if changed, the original name;

263 (2) The date of filing the original articles of organization;

264 (3) The name of the converting series and, if changed, the original name;

265 (4) The date the converting series was established or, if a registered series, the date its
266 certificate of registered series was filed;

267 (5) The name of the converted series;

268 (6) The future effective date, if applicable; and

269 (7) That the conversion has been authorized pursuant to this Code section.

270 (d) All rights, privileges, powers, property, and debts of the converting series shall remain
271 vested in the converted series. Title to real property shall not revert or be impaired.

272 (e) All rights of creditors and liens shall be preserved unimpaired. All debts, liabilities,
273 and duties shall remain attached and enforceable against the converted series.

274 (f) Property, debts, and duties shall not be deemed transferred.

275 (g) An operating agreement may prohibit conversion.

276 14-11-1208.

277 (a) Pursuant to a written agreement, one or more registered series of the same limited
278 liability company may merge with one or more other registered series of such company,
279 and such agreement shall be provided to the surviving series.

280 (b) An agreement of merger shall be approved by each merging registered series by a
281 majority of members unless otherwise provided in the operating agreement.

282 (c) Interests in a merging registered series may be exchanged for or converted into cash,
283 property, or interests in the surviving series or any other entity, may remain outstanding,
284 or may be canceled.

285 (d) The surviving series shall file a certificate of merger, which shall include:

286 (1) The names of each merging registered series and the limited liability company;

287 (2) That an agreement of merger has been approved and executed by each merging
288 registered series;

289 (3) The name of the surviving series;

290 (4) Any amendments to the certificate of registered series of the surviving series;

291 (5) The future effective date, if applicable;

292 (6) The address where the agreement of merger is on file; and

293 (7) That a copy shall be furnished upon request without cost.

294 (e) A merger is effective upon filing with the Secretary of State unless a later date is
295 specified.

296 (f) A certificate of merger shall act as a certificate of cancellation for each nonsurviving
297 series. A certificate setting forth amendments under paragraph (4) of subsection (d) of this
298 Code section shall be deemed an amendment to the surviving series's certificate.

299 (g) An agreement of merger may amend provisions of the operating agreement relating
300 solely to the constituent series, effective upon merger.

301 (h)(1) All rights, privileges, powers, property, and debts of each merging series shall
302 remain vested in the surviving series. Title to real property shall not revert or be
303 impaired.

304 (2) All rights of creditors and liens shall be preserved unimpaired. All debts, liabilities,
305 and duties shall remain attached and enforceable against the surviving series.

306 (3) Property, debts, and duties shall not be deemed transferred.

307 (i) An operating agreement may prohibit merger.

308 **SECTION 2.**

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