

1 ENGROSSED HOUSE
2 BILL NO. 1088

By: Grau of the House

3 and

4 Holt of the Senate
5
6

7 An Act relating to corporations; amending 18 O.S.
8 2001, Sections 2001 and 2008, as amended by Sections
9 16 and 21, Chapter 253, O.S.L. 2008 (18 O.S. Supp,
10 2010, Sections 2001 and 2008), which relate to the
11 Oklahoma Limited Liability Company Act; defining
12 term; modifying restrictions of company name;
13 permitting low-profit limited liability companies;
14 requiring certain steps to qualify as low-profit
15 limited liability company; stating consequences of
16 not qualifying; describing failure to qualify;
17 requiring company to change name and amend articles
18 of organization; allowing exception when company
19 produces significant income; providing for
20 codification; and providing an effective date.

21 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

22 SECTION 1. AMENDATORY 18 O.S. 2001, Section 2001, as
23 amended by Section 16, Chapter 253, O.S.L. 2008 (18 O.S. Supp. 2010,
24 Section 2001), is amended to read as follows:

Section 2001. As used in ~~this act~~ the Oklahoma Limited
Liability Company Act, unless the context otherwise requires:

1. "Articles of organization" means documents filed under
Section 2019 of this title for the purpose of forming a limited
liability company;

- 1 2. "Bankrupt" means bankrupt under the United States Bankruptcy
2 Code, as amended, or insolvent under any state insolvency act;
- 3 3. "Business" means any trade, occupation, profession or other
4 activity regardless of whether engaged in for gain, profit or
5 livelihood;
- 6 4. "Capital contribution" means anything of value that a person
7 contributes to the limited liability company as a prerequisite for,
8 or in connection with, membership, including cash, property,
9 services rendered, or a promissory note or other binding obligation
10 to contribute cash or property or to perform services;
- 11 5. "Capital interest" means the fair market value as of the
12 date contributed of a member's capital contribution as adjusted for
13 any additional capital contributions or withdrawals;
- 14 6. "Corporation" means a corporation formed under the laws of
15 this state or a foreign corporation as defined in this section;
- 16 7. "Court" includes every court and judge having jurisdiction
17 in the case;
- 18 8. "Foreign corporation" means a corporation formed under the
19 laws of any state other than this state, or under the laws of the
20 District of Columbia or any foreign country;
- 21 9. "Foreign limited liability company" means an entity that is:
22 a. an unincorporated association,
23
24

1 b. organized under the laws of a state other than the
2 laws of this state or organized under the laws of any
3 foreign country,

4 c. organized under a statute pursuant to which an
5 association may be formed that affords to each of its
6 members limited liability with respect to the
7 liabilities of the entity, and

8 d. not required to be registered or organized under any
9 statute of this state other than this act;

10 10. "Foreign limited partnership" means a limited partnership
11 formed under the laws of any state other than this state, or under
12 the laws of the District of Columbia or any foreign country;

13 11. "Limited liability company" or "domestic limited liability
14 company" means an entity that is an unincorporated association or
15 proprietorship having one or more members that is organized and
16 existing under the laws of this state;

17 12. "Limited partnership" means a limited partnership formed
18 under the laws of this state or a foreign limited partnership as
19 defined in this section;

20 13. "Low-profit limited liability company" or "L3C" means a
21 for-profit limited liability company which satisfies the
22 requirements of Section 3 of this act and does not have as a
23 significant purpose the production of income or the appreciation of
24 property;

1 14. "Manager" or "managers" means a person or persons
2 designated by the members of a limited liability company to manage
3 the limited liability company as provided in the articles of
4 organization or an operating agreement;

5 ~~14.~~ 15. "Member" means a person with an ownership interest in a
6 limited liability company, with the rights and obligations specified
7 under this act;

8 ~~15.~~ 16. "Membership interest" or "interest" means a member's
9 rights in the limited liability company, collectively, including the
10 member's share of the profits and losses of the limited liability
11 company, the right to receive distributions of the limited liability
12 company's assets, and any right to vote or participate in
13 management;

14 ~~16.~~ 17. "Operating agreement", regardless of whether referred
15 to as an operating agreement and whether oral, in a record, implied,
16 or in any combination thereof, means any agreement of the members,
17 including a sole member, as to the affairs of a limited liability
18 company and the conduct of its business, including the agreement as
19 amended or restated;

20 ~~17.~~ 18. "Person" means an individual, a general partnership, a
21 limited partnership, a limited liability company, a trust, an
22 estate, an association, a corporation or any other legal or
23 commercial entity; and
24

1 ~~18.~~ 19. "State" means a state, territory or possession of the
2 United States, the District of Columbia, or the Commonwealth of
3 Puerto Rico.

4 SECTION 2. AMENDATORY 18 O.S. 2001, Section 2008, as
5 amended by Section 21, Chapter 253, O.S.L. 2008 (18 O.S. Supp. 2010,
6 Section 2008), is amended to read as follows:

7 Section 2008. The name of each limited liability company as set
8 forth in its articles of organization:

9 1. Shall contain either the words "limited liability company"
10 or "limited company" or the abbreviations "LLC", "LC", "L.L.C.", or
11 "L.C." The word "limited" may be abbreviated as "LTD." and the word
12 "Company" may be abbreviated as "CO."; ~~and~~ or

13 2. If organized as a low-profit limited liability company under
14 Section 3 of this act, shall contain the term "low-profit limited
15 liability company" or "L3C"; and

16 3. a. May not be the same as or indistinguishable from:

17 (1) names upon the records in the Office of the
18 Secretary of State of limited liability
19 companies, whether organized pursuant to the laws
20 of this state or licensed or registered as
21 foreign limited liability companies, then in good
22 standing or registered or which were in good
23 standing or registered at any time during the
24 preceding three (3) years, or

1 (2) names upon the records in the Office of the
2 Secretary of State of corporations organized
3 under the laws of this state or of foreign
4 corporations registered in accordance with the
5 laws of this state then existing or which existed
6 at any time during the preceding three (3) years,
7 or

8 (3) names upon the records in the Office of the
9 Secretary of State of general or limited
10 partnerships, whether formed under the laws of
11 this state or registered as foreign general or
12 limited partnerships, then in good standing or
13 registered or which were in good standing or
14 registered at any time during the preceding three
15 (3) years, or

16 (4) trade names, fictitious names, or other names
17 reserved with the Secretary of State.

18 b. The provisions of subparagraph a of this paragraph
19 shall not apply if one of the following is filed with
20 the Secretary of State:

21 (1) the written consent of the other limited
22 liability company, corporation, limited
23 partnership, or holder of the trade name,
24 fictitious name or other reserved name to use the

1 same or indistinguishable name with the addition
2 of one or more words, numerals, numbers or
3 letters to make that name distinguishable upon
4 the records of the Secretary of State, except
5 that the addition of words, numerals, numbers or
6 letters to make the name distinguishable shall
7 not be required where such written consent states
8 that the consenting entity is about to change its
9 name, cease to do business, withdraw from the
10 state or be wound up, or

11 (2) a certified copy of a final decree of a court of
12 competent jurisdiction establishing the prior
13 right of such limited liability company or holder
14 of a limited liability company name to the use of
15 such name in this state.

16 SECTION 3. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 2003.1 of Title 18, unless there
18 is created a duplication in numbering, reads as follows:

19 A. To be a low-profit limited liability company, a company:

20 1. Shall state in its articles of organization that it is a
21 low-profit limited liability company;

22 2. Shall organize under the Oklahoma Limited Liability Company
23 Act; and
24

1 3. Shall be organized for a business purpose that satisfies,
2 and operates to satisfy each of the following requirements:

3 a. it shall significantly further the accomplishment of
4 one or more charitable or educational purposes within
5 the meaning of Section 170(c)(2)(B) of the Internal
6 Revenue Code,

7 b. it shall demonstrate that the low-profit limited
8 liability company would not be formed but for the
9 company's relationship to the accomplishment of a
10 charitable or educational purpose,

11 c. subject to subsection E of this section, it shall not
12 have as a significant purpose the production of income
13 or the appreciation of property, and

14 d. it shall not have as a purpose to accomplish one or
15 more political or legislative purposes within the
16 meaning of Section 170(c)(2)(D) of the Internal
17 Revenue Code.

18 B. If a company that is a low-profit limited liability company
19 at its formation at any time ceases to meet a requirement to be a
20 low-profit limited liability company under subsection A of this
21 section, the company:

22 1. Ceases to be a low-profit limited liability company on the
23 day on which the company no longer meets the requirement; and
24

1 2. If it continues to meet the requirements of the Oklahoma
2 Limited Liability Company Act to be a limited liability company, it
3 continues to exist as a limited liability company that is not a low-
4 profit limited liability company.

5 C. A low-profit limited liability company's failure to meet a
6 requirement of subsection A of this section may be:

7 1. Voluntary, in order to convert to a limited liability
8 company that is not a low-profit limited liability company; or

9 2. Involuntary.

10 D. If a low-profit limited liability company ceases to be a
11 low-profit limited liability company in accordance with subsection B
12 of this section, the company shall:

13 1. Change its name to conform with Section 2008 of the Oklahoma
14 Limited Liability Company Act; and

15 2. Amend its articles of organization in accordance with
16 Section 2011 of the Oklahoma Limited Liability Company Act.

17 E. Notwithstanding subsection A of this section, if a low-
18 profit limited liability company produces significant income or
19 capital appreciation, in the absence of other factors, the fact that
20 the low-profit limited liability company produces significant income
21 or capital appreciation is not conclusive evidence of a significant
22 purpose involving the production of income or the appreciation of
23 property.

24 SECTION 4. This act shall become effective November 1, 2011.

1 Passed the House of Representatives the 17th day of March, 2011.

2
3
4 Presiding Officer of the House of
Representatives
5

6 Passed the Senate the ____ day of _____, 2011.

7
8
9 Presiding Officer of the Senate
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24