

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 53rd Legislature (2011)

4 HOUSE BILL 1088

 By: Grau

7 AS INTRODUCED

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

4 2. "Bankrupt" means bankrupt under the United States Bankruptcy
5 Code, as amended, or insolvent under any state insolvency act;

6 3. "Business" means any trade, occupation, profession or other
7 activity regardless of whether engaged in for gain, profit or
8 livelihood;

9 4. "Capital contribution" means anything of value that a person
10 contributes to the limited liability company as a prerequisite for,
11 or in connection with, membership, including cash, property,
12 services rendered, or a promissory note or other binding obligation
13 to contribute cash or property or to perform services;

14 5. "Capital interest" means the fair market value as of the
15 date contributed of a member's capital contribution as adjusted for
16 any additional capital contributions or withdrawals;

17 6. "Corporation" means a corporation formed under the laws of
18 this state or a foreign corporation as defined in this section;

19 7. "Court" includes every court and judge having jurisdiction
20 in the case;

21 8. "Foreign corporation" means a corporation formed under the
22 laws of any state other than this state, or under the laws of the
23 District of Columbia or any foreign country;

1 9. "Foreign limited liability company" means an entity that is:

2 a. an unincorporated association,

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

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

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

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

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

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

22 13. "Low-profit limited liability company" or "L3C" means a
23 for-profit limited liability company which satisfies the

1 requirements of Section 3 of this act and does not have as a
2 significant purpose the production of income or the appreciation of
3 property;

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

8 ~~14.~~ 15. "Member" means a person with an ownership interest in a
9 limited liability company, with the rights and obligations specified
10 under this act;

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

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

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1 ~~17.~~ 18. "Person" means an individual, a general partnership, a
2 limited partnership, a limited liability company, a trust, an
3 estate, an association, a corporation or any other legal or
4 commercial entity; and

5 ~~18.~~ 19. "State" means a state, territory or possession of the
6 United States, the District of Columbia, or the Commonwealth of
7 Puerto Rico.

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

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

13 1. Shall contain either the words "limited liability company"
14 or "limited company" or the abbreviations "LLC", "LC", "L.L.C.", or
15 "L.C." The word "limited" may be abbreviated as "LTD." and the word
16 "Company" may be abbreviated as "CO."; ~~and~~ or

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

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

21 (1) names upon the records in the Office of the
22 Secretary of State of limited liability
23 companies, whether organized pursuant to the laws

1 of this state or licensed or registered as
2 foreign limited liability companies, then in good
3 standing or registered or which were in good
4 standing or registered at any time during the
5 preceding three (3) years, or

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

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

21 (4) trade names, fictitious names, or other names
22 reserved with the Secretary of State.
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1 b. The provisions of subparagraph a of this paragraph
2 shall not apply if one of the following is filed with
3 the Secretary of State:

4 (1) the written consent of the other limited
5 liability company, corporation, limited
6 partnership, or holder of the trade name,
7 fictitious name or other reserved name to use the
8 same or indistinguishable name with the addition
9 of one or more words, numerals, numbers or
10 letters to make that name distinguishable upon
11 the records of the Secretary of State, except
12 that the addition of words, numerals, numbers or
13 letters to make the name distinguishable shall
14 not be required where such written consent states
15 that the consenting entity is about to change its
16 name, cease to do business, withdraw from the
17 state or be wound up, or

18 (2) a certified copy of a final decree of a court of
19 competent jurisdiction establishing the prior
20 right of such limited liability company or holder
21 of a limited liability company name to the use of
22 such name in this state.

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

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

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

7 2. Shall organize under the Oklahoma Limited Liability Company
8 Act; and

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

11 a. it shall significantly further the accomplishment of
12 one or more charitable or educational purposes within
13 the meaning of Section 170(c)(2)(B) of the Internal
14 Revenue Code,

15 b. it shall demonstrate that the low-profit limited
16 liability company would not be formed but for the
17 company's relationship to the accomplishment of a
18 charitable or educational purpose,

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

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

3 B. If a company that is a low-profit limited liability company
4 at its formation at any time ceases to meet a requirement to be a
5 low-profit limited liability company under subsection A of this
6 section, the company:

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

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

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

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

17 2. Involuntary.

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

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

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

3 E. Notwithstanding subsection A of this section, if a low-
4 profit limited liability company produces significant income or
5 capital appreciation, in the absence of other factors, the fact that
6 the low-profit limited liability company produces significant income
7 or capital appreciation is not conclusive evidence of a significant
8 purpose involving the production of income or the appreciation of
9 property.

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

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12 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT, TOURISM AND
13 FINANCIAL SERVICES, dated 02-24-2011 - DO PASS.

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