

State of Arkansas
93rd General Assembly
Second Extraordinary Session, 2021

A Bill

Call Item 5
HOUSE BILL 1004

By: Representative Dalby
By: Senator J. Dismang

For An Act To Be Entitled

AN ACT TO MODIFY THE UNIFORM LIMITED LIABILITY COMPANY ACT; TO CLARIFY THE APPLICABILITY OF THE UNIFORM LIMITED LIABILITY COMPANY ACT AND RELATED BUSINESS STATUTES; TO CONFIRM AND RETAIN THE LIMITED LIABILITY STATUS AND LIMITED LIABILITY PROTECTION OF CERTAIN LIMITED LIABILITY COMPANIES; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THE APPLICABILITY OF THE UNIFORM LIMITED LIABILITY COMPANY ACT; TO CONFIRM AND RETAIN THE LIMITED LIABILITY STATUS AND LIMITED LIABILITY PROTECTION OF CERTAIN LIMITED LIABILITY COMPANIES; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Implementation of Uniform Limited Liability Company Act.

(a) The General Assembly declares that:

(1) Through inadvertence, Acts 2021, No. 1041, § 1, provided for the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., effective ninety (90) days after April 28, 2021, rather than providing for the repeal to become effective on September 1, 2021, to correspond with the effective date of the Uniform Limited Liability Company Act, § 4-38-101



et seq., enacted by Acts 2021, No. 1041, § 26, and the transition provisions provided therein;

(2) It is the intent of this act to:

(A) Treat the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., and all references contained in Acts 2021, No. 1041, to the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, as effective on September 1, 2021;

(B) Provide for all purposes, including without limitation upon the books and records of the Secretary of State, the continued existence of all limited liability companies formed or registered to do business under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., and continuing to operate thereunder but for the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, until September 1, 2021, at which time all such limited liability companies will begin operating under the Uniform Limited Liability Company Act, § 4-38-101 et seq., except as otherwise provided by law;

(C) Ratify all actions taken by a limited liability company that occurred after July 27, 2021, and before September 1, 2021, that would have been authorized or required under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1; and

(D) Require the Secretary of State to continue the registration and other filings of all limited liability companies formed or registered to do business and operating under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., that were not voluntarily or involuntarily dissolved before September 1, 2021, with no change in status except as provided by the Uniform Limited Liability Company Act, § 4-38-101 et seq., enacted by Acts 2021, No. 1041, § 26, or other applicable law;

(3) A limited liability company formed or registered to do business before September 1, 2021, and not dissolved or terminated retains its status as a limited liability company without interruption until otherwise dissolved or terminated; and

(4) Section 4-38-110 applies to a limited liability company formed or registered to do business before September 1, 2021, notwithstanding the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1.

(b) The General Assembly ratifies, validates, confirms, approves, and cures the following that occurred after July 27, 2021, and before September 1, 2021:

(1) Any act by a limited liability company that would have been authorized or required under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1; and

(2) In reference to a limited liability company, any action of a public or private individual or entity that would have been valid under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1.

(c) The General Assembly recognizes the validity, notwithstanding the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, of the following actions that may have occurred after July 27, 2021, and before September 1, 2021, by a limited liability company if the actions are otherwise valid:

(1) Issuance of any bonds, notes, warrants, certificates, or other evidences of indebtedness;

(2) Any action regarding a title to property;

(3) Any cause of action or other legal claim or right arising from an action taken or a failure to act;

(4) Creation and approval of any contracts, agreements, licenses, or other documents; and

(5) Any transaction or other act entered into or performed by a limited liability company that would have been authorized or permitted under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1.

(d) The act or acts of a member or manager of a limited liability company that would have been protected against personal liability under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1, shall be protected against personal liability to the same extent as provided by the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., had it not been repealed by Acts 2021, No. 1041, § 1.

(e) The General Assembly declares that a limited liability company formed or registered to do business before September 1, 2021, and otherwise in compliance with the Small Business Entity Tax Pass Through Act, § 4-32-101

et seq., on September 1, 2021, but for its repeal by Acts 2021, No. 1041, § 1, retains its status as a limited liability company without interruption until otherwise dissolved or terminated.

(f)(1) This act is not intended to destroy or otherwise disturb any vested rights.

(2) If a right is found by a court to be a vested right, the court shall uphold the vested right.

SECTION 2. Arkansas Code § 4-38-110 is amended to read as follows:
4-38-110. Application to existing relationships.

(a) ~~Before September 1, 2021, this~~ This chapter governs ~~only~~:

(1) a limited liability company formed or registered to do business on or after September 1, 2021; and

(2) ~~except as otherwise provided in subsection (c),~~ a limited liability company formed or registered to do business before September 1, 2021, ~~which elects, in the manner provided in its operating agreement or by operation of law for amending the operating agreement, to be subject to this chapter.~~

(b) Except as otherwise provided in subsection (c), on and after September 1, 2021, this chapter governs all limited liability companies.

(c) For purposes of applying this chapter to a limited liability company formed or registered to do business before September 1, 2021:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for purposes of applying § 4-38-102(10) and subject to § 4-38-107(d), language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

SECTION 3. Arkansas Code Title 4, Chapter 38, Subchapter 12, is amended to read as follows:

~~Subchapter 12 – Medical or Dental Limited Liability Company~~ Professional Limited Liability Companies

4-38-1201. Applicability – Definition.

(a) As used in this subchapter, "professional service" means a service

that may be legally performed under a license or other legally mandated personal authorization, including without limitation services rendered by certified public accountants, architects, engineers, dentists, physicians, and attorneys at law.

(b) This subchapter applies only to a limited liability company that provides a professional service.

~~4-38-1201.~~ 4-38-1202. Certification of registration.

(a) A limited liability company formed under this chapter and that will engage in the practice of medicine must obtain a certificate of registration from the Arkansas State Medical Board and must comply with the statutes of the Medical Corporation Act, § 4-29-301 et seq.

(b) A limited liability company formed under this chapter and that will engage in the practice of dentistry must obtain a certificate of registration and comply with the statutes in the Dental Corporation Act, § 4-29-401 et seq.

(c)(1) An applicant seeking to register a limited liability company under this chapter shall obtain the necessary authorization required by its licensing authority to:

(A) register as a professional limited liability company under this chapter; and

(B) use the name proposed by the applicant for registration with the Secretary of State.

(2) The Secretary of State may require satisfactory proof of compliance with this section before registration.

~~4-38-1202~~ 4-38-1203. Name – ~~Medical or dental~~ Professional limited liability company.

(a) The name of a limited liability company which performs a professional service shall contain the words “Professional Limited Liability Company” or “Professional Limited Company” or the abbreviations “P.L.L.C.”, “P.L.C.”, “PLLC”, “PLC”, and the words “Limited” and “Company” may be abbreviated as “Ltd.” or “Co.” and may not contain the name of any person who is not a member, except that the name of a former member or member of a predecessor organization may continue to be included in the name.

(b) A limited liability company formed under this chapter, ~~including~~

~~medical, dental, and professional companies,~~ shall have only one corporate suffix, as allowed by subsection (a).

SECTION 4. DO NOT CODIFY. (a) A limited liability company that registered, filed, or took any action, including without limitation payment for an action or service, with the office of the Secretary of State after July 27, 2021, and before September 1, 2021, is not required to reregister, refile, or make further payment for the same action or service.

(b) The Secretary of State shall continue the registration and other filings of all limited liability companies formed or registered to do business and existing under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., that were not voluntarily or involuntarily dissolved before September 1, 2021, with no change in status except as provided by the Uniform Limited Liability Company Act, § 4-38-101 et seq., enacted by Acts 2021, No. 1041, § 26, or other applicable law.

SECTION 5. DO NOT CODIFY. Additional savings provisions.

(a) It is the intent of this section to:

(1) Provide for the transition and continuous operation and effect of additional provisions of Arkansas law related to limited liability companies and other business entities, whether or not specifically referenced in Acts 2021, No. 1041, including without limitation provisions affecting the operation and taxation aspects of limited liability companies and other business entities:

(A) Under the Uniform Protected Series Act, § 4-37-101 et seq.; and

(B) Concerning the authorized and unauthorized use of business names; and

(2) Ratify, validate, confirm, approve, and cure any actions under a codified or uncodified provision described in this section.

(b) For the period of time after July 27, 2021, and before September 1, 2021, with respect to Acts 2021, No. 1041, §§ 2-25, 27-30, 32, 34, and 36, concerning various definitions and transition provisions from the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., to the Uniform Limited Liability Company Act, § 4-38-101 et seq., the stricken words "Small Business Entity Tax Pass Through Act, § 4-38-101 et seq.", and all stricken

provisions of the Small Business Entity Tax Pass Through Act, § 4-38-101 et seq., shall be treated as unstricken and operative and the underlined words "Uniform Limited Liability Company Act, § 4-38-101 et seq." and all underlined provisions of the Uniform Limited Liability Company Act, § 4-38-101 et seq. shall be treated as stricken and inoperative.

(c) Any action or obligation of any public or private individual or entity that occurred under the following sections after July 27, 2021, and before September 1, 2021, that would have been valid and effective but for the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, is ratified, validated, confirmed, approved, and cured notwithstanding the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1:

- (1) Section 4-37-102(8), amended by Acts 2021, No. 1041, § 2;
- (2) Section 4-37-102(12), amended by Acts 2021, No. 1041, § 3;
- (3) Section 4-37-102(13), amended by Acts 2021, No. 1041, § 4;
- (4) Section 4-37-102(14), amended by Acts 2021, No. 1041, § 5;
- (5) Section 4-37-102(20), amended by Acts 2021, No. 1041, § 6;
- (6) Section 4-37-106, amended by Acts 2021, No. 1041, § 7;
- (7) Section 4-37-107(a)(4), amended by Acts 2021, No. 1041, § 8;
- (8) Section 4-37-108, amended by Acts 2021, No. 1041, § 9;
- (9) Section 4-37-201(c), amended by Acts 2021, No. 1041, § 10;
- (10) Section 4-37-201(d), amended by Acts 2021, No. 1041, § 11;
- (11) Section 4-37-202, amended by Acts 2021, No. 1041, § 12;
- (12) Section 4-37-204(a)(3), amended by Acts 2021, No. 1041, §

13;

- (13) Section 4-37-304(f), amended by Acts 2021, No. 1041, § 14;
- (14) Section 4-37-304(g), amended by Acts 2021, No. 1041, § 15;
- (15) Section 4-37-305, amended by Acts 2021, No. 1041, § 16;
- (16) Section 4-37-403, amended by Acts 2021, No. 1041, § 17;
- (17) Section 4-37-502, amended by Acts 2021, No. 1041, § 18;
- (18) Section 4-37-503, amended by Acts 2021, No. 1041, § 19;
- (19) Section 4-37-604, amended by Acts 2021, No. 1041, § 20;
- (20) Section 4-37-605(1), amended by Acts 2021, No. 1041, § 21;
- (21) Section 4-37-606(1), amended by Acts 2021, No. 1041, § 22;
- (22) Section 4-37-607, amended by Acts 2021, No. 1041, § 23;
- (23) Section 4-37-703(c), amended by Acts 2021, No. 1041, § 24;

(24) Section 4-37-703(d), amended by Acts 2021, No. 1041, § 25;
(25) Section 4-42-707(b), amended by Acts 2021, No. 1041, § 27;
(26) Section 4-47-905(a), amended by Acts 2021, No. 1041, § 28;
(27) Section 4-70-201(c), amended by Acts 2021, No. 1041, § 29;
(28) Section 15-4-1215(b), amended by Acts 2021, No. 1041, § 30;
(29) Section 26-18-303(b)(14)(B), amended by Acts 2021, No.
1041, § 32;

and

(30) Section 26-54-104(8), amended by Acts 2021, No. 1041, § 34;
(31) Section 26-54-105(h)(2), amended by Acts 2021, No. 1041, §
36.

(d) Before September 1, 2021, to the extent any codified or uncodified provision of Arkansas law is derived from or depends upon any provision of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., for its meaning or operation:

(1) The provisions of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., shall be treated as remaining in full force and effect solely for the limited purpose of supplying the requisite meaning or operation to the codified or uncodified provision; and

(2) Any action or obligation of any public or private individual or entity that occurred after July 27, 2021, and before September 1, 2021, under a codified or uncodified provision of Arkansas law that would have been valid and effective but for the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, is ratified, validated, confirmed, approved, and cured notwithstanding the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1.

SECTION 6. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the transition, implementation, and deadlines required under Acts 2021, No. 1041, require further legislative clarification to preserve the public peace, health, and safety; that without legislative clarification the impact of the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, could negatively impact the public peace, health, and safety by affecting the actions, operations, and legal rights and duties of

limited liability companies that were formed or registered to do business before September 1, 2021; and that this act is immediately necessary to clarify the effectiveness and application of the law to both existing limited liability companies and newly formed limited liability companies, registered to do business, or revised after July 27, 2021, and before September 1, 2021, to avoid any unnecessary financial uncertainty and to protect the business health of the state by ensuring the efficient, orderly, and valid conduct of business in the state. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.