

REFERENCE TITLE: low-profit limited liability companies

State of Arizona
Senate
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2011

SB 1503

Introduced by
Senators Driggs: Barto, Crandall

AN ACT

AMENDING SECTIONS 29-601 AND 29-602, ARIZONA REVISED STATUTES; AMENDING TITLE 29, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 29-616; AMENDING SECTION 29-682, ARIZONA REVISED STATUTES; RELATING TO LOW-PROFIT LIMITED LIABILITY COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 29-601, Arizona Revised Statutes, is amended to
3 read:

4 29-601. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Articles of organization" means the initial articles of
7 organization as amended or restated from time to time.

8 2. "Assignee" means any person who acquires in any manner the
9 ownership of an interest in a limited liability company and who has not been
10 admitted as a member.

11 3. "Capital contribution" means cash, other property, the use of
12 property, services rendered or any other valuable consideration transferred
13 to a limited liability company as consideration for issuing an interest in a
14 limited liability company.

15 4. "Commission" means the corporation commission.

16 5. "Court" includes any court and judge with jurisdiction in the case.

17 6. "Domestic limited liability company" or "limited liability company"
18 means a limited liability company organized and existing under this chapter.

19 7. "Event of withdrawal" means an event that causes a person to cease
20 to be a member as provided in section 29-733.

21 8. "Executed" means executed by manual or facsimile signature on
22 behalf of the limited liability company by a duly authorized member if
23 management of the limited liability company is reserved to the members or
24 manager if management of the limited liability company is vested in a
25 manager, or if the limited liability company is in the hands of a receiver or
26 trustee, by the receiver or trustee.

27 9. "Filing" means the commission completing the following procedure
28 with respect to any document delivered for that purpose:

29 (a) Determining that the filing fee requirements of this chapter have
30 been satisfied.

31 (b) Determining that the document appears in all respects to conform
32 to the requirements of this chapter.

33 (c) On making the determinations required by this paragraph,
34 endorsement of the word "filed" with the applicable date on or attached to
35 the document and the return of copies to the person who delivered the
36 document or the person's representative.

37 10. "Foreign limited liability company" means either:

38 (a) An unincorporated entity or association that is owned by one or
39 more persons that have limited liability for the debts of the business, other
40 than a partnership or trust, and that is formed under the laws of a
41 jurisdiction other than this state for any lawful purpose, including the
42 rendering of professional services as defined in that jurisdiction.

43 (b) An entity or unincorporated association that is formed under the
44 laws of a jurisdiction other than this state for any lawful purpose,
45 including the rendering of professional services as defined in that

1 jurisdiction, and that is characterized as a limited liability company by
2 those laws.

3 11. "Initial articles of organization" means the articles of
4 organization filed with the commission at the time a limited liability
5 company is formed, including articles of organization that are corrected to
6 conform to the filing provisions of this chapter pursuant to section 29-634,
7 subsection C, paragraph 2.

8 12. "LOW-PROFIT LIMITED LIABILITY COMPANY" MEANS A FOR-PROFIT LIMITED
9 LIABILITY COMPANY THAT IS ORGANIZED AND EXISTS PURSUANT TO THIS CHAPTER AND
10 THAT DOES NOT HAVE AS A SIGNIFICANT PURPOSE THE PRODUCTION OF INCOME OR THE
11 APPRECIATION OF PROPERTY.

12 ~~12.~~ 13. "Member" means a person who is admitted as a member in a
13 limited liability company pursuant to this chapter until an event of
14 withdrawal occurs with respect to the person and, if reference is made to
15 members, that reference means a member in the case of a limited liability
16 company that has a single member. A member includes a noneconomic member of
17 a limited liability company who:

18 (a) Does not own a member's interest in the company.

19 (b) Does not have an obligation to contribute capital to the company.

20 (c) Does not have a right to participate in or receive distributions
21 of profits of the company or an obligation to contribute to the losses of the
22 company.

23 (d) May have voting rights and other rights and privileges as
24 prescribed by the articles of organization or operating agreement.

25 ~~13.~~ 14. "Member's interest", "interest in a limited liability company"
26 or "interest in the limited liability company" means a member's share of the
27 profits and losses of a limited liability company and the right to receive
28 distributions of limited liability company assets.

29 ~~14.~~ 15. "Operating agreement" means either:

30 (a) Any written or oral agreements among all members concerning the
31 affairs of a limited liability company or the conduct of its business.

32 (b) In the case of a limited liability company that has a single
33 member, any written or oral statement of the member made in good faith
34 purporting to govern the affairs of a limited liability company or the
35 conduct of its business as of the effective time of the statement.

36 ~~15.~~ 16. "Person" includes any individual, general partnership, limited
37 partnership, domestic or foreign limited liability company, corporation,
38 trust, business trust, real estate investment trust, estate and other
39 association.

40 ~~16.~~ 17. "Real property" includes land, any interest, leasehold or
41 estate in land and any improvements on it.

42 ~~17.~~ 18. "State" means a state, possession or territory of the United
43 States, the District of Columbia or the Commonwealth of Puerto Rico.

1 Sec. 2. Section 29-602, Arizona Revised Statutes, is amended to read:

2 29-602. Limited liability company name

3 A. The name of a limited liability company as set forth in its
4 articles of organization shall:

5 1. Contain the words "limited liability company" or "limited company"
6 or the abbreviations "L.L.C.", "L.C.", "LLC" or "LC", **OR, IF ORGANIZED AS A**
7 **LOW-PROFIT LIMITED LIABILITY COMPANY UNDER SECTION 29-616, SHALL CONTAIN THE**
8 **TERM "L3C"**, in uppercase or lowercase letters.

9 2. Not contain the words "association", "corporation" or
10 "incorporated" or an abbreviation of these words.

11 3. Not include the words "bank", "deposit", "credit union", "trust" or
12 "trust company" separately or in combination to indicate or convey the idea
13 that the limited liability company is engaged in banking, credit union or
14 trust business unless the limited liability company is to be and becomes
15 actively and substantially engaged in the banking, credit union or trust
16 business or the limited liability company is a holding company holding
17 substantial interest in companies actively and substantially engaged in the
18 banking, credit union or trust business.

19 B. Except as authorized by subsections C and D of this section, the
20 name of the limited liability company shall be distinguishable from all of
21 the following:

22 1. The corporate name of a corporation incorporated in this state or a
23 foreign corporation authorized to transact business in this state.

24 2. A corporate name reserved under section 10-402 or registered under
25 section 10-403.

26 3. A fictitious name adopted by a foreign corporation under section
27 10-1506.

28 4. The corporate name of a nonprofit corporation incorporated in this
29 state or a foreign nonprofit or not for profit corporation authorized to
30 conduct affairs in this state.

31 5. The partnership name of a limited partnership organized and
32 registered under the laws of this state or of a foreign limited partnership
33 authorized to transact business in this state.

34 6. The name of a limited liability company organized in this state or
35 a foreign limited liability company authorized to transact business in this
36 state.

37 7. A trade name registered pursuant to title 44, chapter 10,
38 article 3.1.

39 8. The name of a registered limited liability partnership organized in
40 this state or a foreign limited liability partnership authorized to transact
41 business in this state.

42 C. A limited liability company may apply to the commission for
43 authorization to use a name that is not distinguishable from one or more of
44 the names described in subsection B of this section. The commission shall
45 authorize use of the name applied for if either:

1 1. The other entity consents to the use in writing and submits an
2 undertaking in a form satisfactory to the commission to change its name to a
3 name that is distinguishable from the name of the applying limited liability
4 company.

5 2. The applicant delivers to the commission a certified copy of the
6 final judgment of a court of competent jurisdiction that establishes the
7 applicant's right to use the name applied for in this state.

8 D. A limited liability company may use the name, including a
9 fictitious name, of another domestic or foreign entity that is used in this
10 state if the other entity is incorporated or authorized to transact business
11 in this state and the limited liability company that proposes to use the name
12 has either:

13 1. Merged with the other entity.

14 2. Been formed by reorganization of the other entity.

15 3. Acquired all or substantially all of the assets, including the
16 name, of the other entity.

17 E. This chapter does not control the use of fictitious names.

18 Sec. 3. Title 29, chapter 4, article 1, Arizona Revised Statutes, is
19 amended by adding section 29-616, to read:

20 29-616. Low-profit limited liability companies

21 A. A LOW-PROFIT LIMITED LIABILITY COMPANY SHALL AT ALL TIMES
22 SIGNIFICANTLY FURTHER THE ACCOMPLISHMENT OF ONE OR MORE CHARITABLE OR
23 EDUCATIONAL PURPOSES WITHIN THE MEANING OF 26 UNITED STATES CODE SECTION
24 170(c)(2)(B) AND WOULD NOT HAVE BEEN FORMED BUT FOR THE RELATIONSHIP TO THE
25 ACCOMPLISHMENT OF THE CHARITABLE OR EDUCATIONAL PURPOSES.

26 B. A LIMITED LIABILITY COMPANY THAT INTENDS TO QUALIFY AS A LOW-PROFIT
27 LIMITED LIABILITY COMPANY PURSUANT TO THIS SECTION SHALL INDICATE THE
28 INTENTION IN ITS ARTICLES OF ORGANIZATION AND STATE BOTH OF THE FOLLOWING:

29 1. THE PRODUCTION OF INCOME OR THE APPRECIATION OF PROPERTY IS NOT THE
30 SIGNIFICANT PURPOSE OF THE COMPANY AND THE FACT THAT A PERSON PRODUCES
31 SIGNIFICANT INCOME OR CAPITAL APPRECIATION IS NOT, IN THE ABSENCE OF OTHER
32 FACTORS, CONCLUSIVE EVIDENCE OF A SIGNIFICANT PURPOSE INVOLVING THE
33 PRODUCTION OF INCOME OR THE APPRECIATION OF PROPERTY.

34 2. THE PURPOSE OF THE COMPANY IS NOT TO ACCOMPLISH ONE OR MORE
35 POLITICAL OR LEGISLATIVE PURPOSES WITHIN THE MEANING OF 26 UNITED STATES CODE
36 SECTION 170(c)(2)(D).

37 C. A COMPANY THAT NO LONGER SATISFIES THE REQUIREMENTS OF THIS SECTION
38 CONTINUES TO EXIST AS A LIMITED LIABILITY COMPANY AND SHALL PROMPTLY AMEND
39 ITS ARTICLES OF ORGANIZATION SO THAT ITS NAME AND PURPOSE NO LONGER IDENTIFY
40 IT AS A LOW-PROFIT LIMITED LIABILITY COMPANY.

41 D. ANY COMPANY OPERATING OR HOLDING ITSELF OUT AS A LOW-PROFIT LIMITED
42 LIABILITY COMPANY IN THIS STATE, ANY COMPANY FORMED AS A LOW-PROFIT LIMITED
43 LIABILITY COMPANY UNDER THIS CHAPTER AND ANY CHIEF OPERATING OFFICER,
44 DIRECTOR OR MANAGER OF THE COMPANY IS A TRUSTEE.

1 E. THIS SECTION DOES NOT PREVENT A LIMITED LIABILITY COMPANY THAT IS
2 NOT ORGANIZED AS A LOW-PROFIT LIMITED LIABILITY COMPANY FROM ELECTING A
3 CHARITABLE OR EDUCATIONAL PURPOSE IN WHOLE OR IN PART FOR DOING BUSINESS
4 UNDER THIS CHAPTER.

5 Sec. 4. Section 29-682, Arizona Revised Statutes, is amended to read:
6 29-682. Operating agreement

7 A. The members of a limited liability company may adopt an operating
8 agreement containing provisions they deem appropriate. All or part of an
9 operating agreement may be subsequently repealed or amended by agreement or
10 consent of all of the members or, to the extent an operating agreement so
11 provides, by all of the managers or a specified portion of the members or
12 managers.

13 B. An operating agreement governs relations among the members and the
14 managers and between the members and managers and the limited liability
15 company and may contain any provision that is not contrary to law and that
16 relates to the business of the limited liability company, the conduct of its
17 affairs, its rights, duties or powers and the rights, duties or powers of its
18 members, managers, officers, employees or agents, including:

19 1. Whether the management of the limited liability company is vested
20 in one or more managers and, if so, the powers to be exercised by managers.

21 2. Providing for classes or groups of members with various rights,
22 powers and duties and providing for the future creation of additional classes
23 or groups of members with relative rights, powers and duties superior, equal
24 or inferior to existing classes and groups of members.

25 3. The exercise or division of management or voting rights among
26 different classes or groups of members or managers on a per capita or other
27 basis.

28 4. With respect to any matter requiring a vote, approval or consent of
29 members or managers, provisions relating to notice of the time, place and
30 purpose of any meeting at which the matter is to be voted on, waiver of
31 notice, action by consent without a meeting, the establishment of a record
32 date, quorum requirements, authorizations by proxy or any other matter
33 concerning the exercise of any voting or approval rights.

34 5. Restrictions on the transfer of and option rights to acquire or
35 sell any member's interest in the limited liability company.

36 6. SPECIFYING THE NUMBER OR PERCENTAGE OF MEMBERS THAT MAY AUTHORIZE
37 OR RATIFY, AFTER FULL DISCLOSURE OF ALL MATERIAL FACTS, A SPECIFIC ACT OR
38 TRANSACTION THAT OTHERWISE WOULD VIOLATE THE MEMBERS' FIDUCIARY DUTIES.

39 C. A court may enforce an operating agreement by injunction or by any
40 other relief that the court in its discretion determines to be fair and
41 appropriate in the circumstances.