

1 State of Arkansas
2 93rd General Assembly
3 Second Extraordinary Session, 2021
4

A Bill

Call Item 5
HOUSE BILL 1004

5 By: Representative Dalby
6 By: Senator J. Dismang
7

For An Act To Be Entitled

9 AN ACT TO MODIFY THE UNIFORM LIMITED LIABILITY
10 COMPANY ACT; TO CLARIFY THE APPLICABILITY OF THE
11 UNIFORM LIMITED LIABILITY COMPANY ACT AND RELATED
12 BUSINESS STATUTES; TO CONFIRM AND RETAIN THE LIMITED
13 LIABILITY STATUS AND LIMITED LIABILITY PROTECTION OF
14 CERTAIN LIMITED LIABILITY COMPANIES; TO DECLARE AN
15 EMERGENCY; AND FOR OTHER PURPOSES.
16
17

Subtitle

18
19 TO CLARIFY THE APPLICABILITY OF THE
20 UNIFORM LIMITED LIABILITY COMPANY ACT; TO
21 CONFIRM AND RETAIN THE LIMITED LIABILITY
22 STATUS AND LIMITED LIABILITY PROTECTION
23 OF CERTAIN LIMITED LIABILITY COMPANIES;
24 AND TO DECLARE AN EMERGENCY.
25
26

27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

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

31 (a) The General Assembly declares that:

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



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

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

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

8 (B) Provide for all purposes, including without limitation
9 upon the books and records of the Secretary of State, the continued existence
10 of all limited liability companies formed or registered to do business under
11 the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., and
12 continuing to operate thereunder but for the repeal of the Small Business
13 Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1,
14 until September 1, 2021, at which time all such limited liability companies
15 will begin operating under the Uniform Limited Liability Company Act, § 4-38-
16 101 et seq., except as otherwise provided by law;

17 (C) Ratify all actions taken by a limited liability
18 company that occurred after July 27, 2021, and before September 1, 2021, that
19 would have been authorized or required under the Small Business Entity Tax
20 Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No.
21 1041, § 1; and

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

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

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

1 (b) The General Assembly ratifies, validates, confirms, approves, and
2 cures the following that occurred after July 27, 2021, and before September
3 1, 2021:

4 (1) Any act by a limited liability company that would have been
5 authorized or required under the Small Business Entity Tax Pass Through Act,
6 § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1; and

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

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

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

18 (2) Any action regarding a title to property;

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

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

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

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

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

1 et seq., on September 1, 2021, but for its repeal by Acts 2021, No. 1041, §
 2 1, retains its status as a limited liability company without interruption
 3 until otherwise dissolved or terminated.

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

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

8
 9 SECTION 2. Arkansas Code § 4-38-110 is amended to read as follows:
 10 4-38-110. Application to existing relationships.

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

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

14 (2) ~~except as otherwise provided in subsection (c),~~ a limited
 15 liability company formed or registered to do business before September 1,
 16 2021, ~~which elects, in the manner provided in its operating agreement or by~~
 17 operation of law for amending the operating agreement, to be subject to this
 18 chapter.

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

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

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

25 (2) for purposes of applying § 4-38-102(10) and subject to § 4-
 26 38-107(d), language in the company's articles of organization designating the
 27 company's management structure operates as if that language were in the
 28 operating agreement.

29
 30 SECTION 3. Arkansas Code Title 4, Chapter 38, Subchapter 12, is
 31 amended to read as follows:

32 Subchapter 12 - ~~Medical or Dental Limited Liability Company~~ Professional
 33 Limited Liability Companies

34
 35 4-38-1201. Applicability - Definition.

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

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

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

7
 8 ~~4-38-1201.~~ 4-38-1202. Certification of registration.

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

13 (b) A limited liability company formed under this chapter and that
 14 will engage in the practice of dentistry must obtain a certificate of
 15 registration and comply with the statutes in the Dental Corporation Act, § 4-
 16 29-401 et seq.

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

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

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

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

26
 27 ~~4-38-1202~~ 4-38-1203. Name - ~~Medical or dental~~ Professional limited
 28 liability company.

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

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

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

3
4 SECTION 4. DO NOT CODIFY. (a) A limited liability company that
5 registered, filed, or took any action, including without limitation payment
6 for an action or service, with the office of the Secretary of State after
7 July 27, 2021, and before September 1, 2021, is not required to reregister,
8 refile, or make further payment for the same action or service.

9 (b) The Secretary of State shall continue the registration and other
10 filings of all limited liability companies formed or registered to do
11 business and existing under the Small Business Entity Tax Pass Through Act, §
12 4-32-101 et seq., that were not voluntarily or involuntarily dissolved before
13 September 1, 2021, with no change in status except as provided by the Uniform
14 Limited Liability Company Act, § 4-38-101 et seq., enacted by Acts 2021, No.
15 1041, § 26, or other applicable law.

16
17 SECTION 5. DO NOT CODIFY. Additional savings provisions.

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

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

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

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

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

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

1 provisions of the Small Business Entity Tax Pass Through Act, § 4-38-101 et
 2 seq., shall be treated as unstricken and operative and the underlined words
 3 "Uniform Limited Liability Company Act, § 4-38-101 et seq." and all
 4 underlined provisions of the Uniform Limited Liability Company Act, § 4-38-
 5 101 et seq. shall be treated as stricken and inoperative.

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

- 13 (1) Section 4-37-102(8), amended by Acts 2021, No. 1041, § 2;
- 14 (2) Section 4-37-102(12), amended by Acts 2021, No. 1041, § 3;
- 15 (3) Section 4-37-102(13), amended by Acts 2021, No. 1041, § 4;
- 16 (4) Section 4-37-102(14), amended by Acts 2021, No. 1041, § 5;
- 17 (5) Section 4-37-102(20), amended by Acts 2021, No. 1041, § 6;
- 18 (6) Section 4-37-106, amended by Acts 2021, No. 1041, § 7;
- 19 (7) Section 4-37-107(a)(4), amended by Acts 2021, No. 1041, § 8;
- 20 (8) Section 4-37-108, amended by Acts 2021, No. 1041, § 9;
- 21 (9) Section 4-37-201(c), amended by Acts 2021, No. 1041, § 10;
- 22 (10) Section 4-37-201(d), amended by Acts 2021, No. 1041, § 11;
- 23 (11) Section 4-37-202, amended by Acts 2021, No. 1041, § 12;
- 24 (12) Section 4-37-204(a)(3), amended by Acts 2021, No. 1041, §
 25 13;
- 26 (13) Section 4-37-304(f), amended by Acts 2021, No. 1041, § 14;
- 27 (14) Section 4-37-304(g), amended by Acts 2021, No. 1041, § 15;
- 28 (15) Section 4-37-305, amended by Acts 2021, No. 1041, § 16;
- 29 (16) Section 4-37-403, amended by Acts 2021, No. 1041, § 17;
- 30 (17) Section 4-37-502, amended by Acts 2021, No. 1041, § 18;
- 31 (18) Section 4-37-503, amended by Acts 2021, No. 1041, § 19;
- 32 (19) Section 4-37-604, amended by Acts 2021, No. 1041, § 20;
- 33 (20) Section 4-37-605(1), amended by Acts 2021, No. 1041, § 21;
- 34 (21) Section 4-37-606(1), amended by Acts 2021, No. 1041, § 22;
- 35 (22) Section 4-37-607, amended by Acts 2021, No. 1041, § 23;
- 36 (23) Section 4-37-703(c), amended by Acts 2021, No. 1041, § 24;

- 1 (24) Section 4-37-703(d), amended by Acts 2021, No. 1041, § 25;
2 (25) Section 4-42-707(b), amended by Acts 2021, No. 1041, § 27;
3 (26) Section 4-47-905(a), amended by Acts 2021, No. 1041, § 28;
4 (27) Section 4-70-201(c), amended by Acts 2021, No. 1041, § 29;
5 (28) Section 15-4-1215(b), amended by Acts 2021, No. 1041, § 30;
6 (29) Section 26-18-303(b)(14)(B), amended by Acts 2021, No.
7 1041, § 32;
8 (30) Section 26-54-104(8), amended by Acts 2021, No. 1041, § 34;
9 and
10 (31) Section 26-54-105(h)(2), amended by Acts 2021, No. 1041, §
11 36.

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

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

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

28
29 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
30 General Assembly of the State of Arkansas that the transition,
31 implementation, and deadlines required under Acts 2021, No. 1041, require
32 further legislative clarification to preserve the public peace, health, and
33 safety; that without legislative clarification the impact of the repeal of
34 the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts
35 2021, No. 1041, § 1, could negatively impact the public peace, health, and
36 safety by affecting the actions, operations, and legal rights and duties of

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

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

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

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

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 19 **APPROVED: 12/9/21**
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