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2 88th General Assembly  
3 Regular Session, 2011  
4

*As Engrossed: H2/24/11*

# A Bill

SENATE BILL 5

5 By: Senator D. Johnson  
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## For An Act To Be Entitled

8 AN ACT TO ALLOW FOR THE CREATION OF A LOW-PROFIT  
9 LIMITED LIABILITY COMPANY; AND FOR OTHER PURPOSES.  
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### Subtitle

11 TO ALLOW FOR THE CREATION OF A LOW-  
12 PROFIT LIMITED LIABILITY COMPANY.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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19 SECTION 1. Arkansas Code § 4-32-102 is amended to read as follows:  
20 4-32-102. Definitions.

21 As used in this chapter, unless the context otherwise requires:

22 (1) "Articles of organization" means articles filed under § 4-  
23 32-201, and those articles as amended and restated;

24 (2) "Corporation" means a corporation formed under the laws of  
25 any state or foreign country, including professional corporations or  
26 associations;

27 (3) "Court" includes every court having jurisdiction in the  
28 case;

29 (4) "Event of dissociation" means an event that causes a person  
30 to cease to be a member as provided in § 4-32-802;

31 (5) "Foreign limited liability company" means an organization  
32 that is:

33 (A) An unincorporated association;

34 (B) Organized under laws of a state other than the laws of  
35 this state, or under the laws of any foreign country;

36 (C) Organized under a statute pursuant to which an



1 association may be formed that affords to each of its members limited  
2 liability with respect to the liabilities of the entity; and

3 (D) Not required to be registered or organized under any  
4 statute of this state other than this chapter;

5 (6) "Limited liability company" or "domestic limited liability  
6 company" means an organization formed under this chapter;

7 (7) "Limited liability company interest" or "interest in the  
8 limited liability company" means the interest that can be assigned under § 4-  
9 32-704 and charged under § 4-32-705;

10 (8) "Limited partnership" means a limited partnership formed  
11 under the laws of any state or foreign country;

12 (9)(A) "Low-profit limited liability company" means a person  
13 organized under this chapter for a business purpose that satisfies and is at  
14 all times operated to satisfy each of the following requirements:

15 (i) The company:

16 (a) Significantly furthers the accomplishment  
17 of one (1) or more religious, charitable, scientific, literary, or  
18 educational purposes within the meaning of § 170(c)(2)(B) of the Internal  
19 Revenue Code of 1986, 26 U.S.C. § 170(c)(2)(B); and

20 (b) Would not have been formed but for the  
21 company's relationship to the accomplishment of charitable or educational  
22 purposes;

23 (ii)(a) A significant purpose of the company is not  
24 the production of income or the appreciation of property.

25 (b) However, the fact that a person produces  
26 significant income or capital appreciation is not, in the absence of other  
27 factors, conclusive evidence of a significant purpose involving the  
28 production of income or the appreciation of property; and

29 (iii) A purpose of the company is not to accomplish  
30 one (1) or more political or legislative purposes within the meaning of §  
31 170(c)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(c)(2)(D).

32 (B)(i) If a company that met the definition of this  
33 subdivision (9) at the time it was formed ceases to satisfy any one (1) of  
34 the requirements of subdivision (9)(A) of this section, the company shall  
35 cease being a low-profit limited liability company but by continuing to meet  
36 all other requirements of this chapter shall continue to exist as a limited

1 liability company.

2 (ii) If a company no longer meets the definition of  
 3 a low-profit limited liability company, the name of the company shall be  
 4 changed to comply with § 4-32-103 within sixty (60) days;

5 ~~(9)~~(10) "Manager" or "managers" means, with respect to a limited  
 6 liability company that has set forth in its articles of organization that it  
 7 is to be managed by managers, the person or persons designated ~~in accordance~~  
 8 ~~with~~ under § 4-32-401;

9 ~~(10)~~(11) "Member" or "members" means a person or persons who  
 10 have been admitted to membership in a limited liability company as provided  
 11 in § 4-32-801 and who have not ceased ~~to be~~ being members as provided in § 4-  
 12 32-802;

13 ~~(11)~~(12) "Operating agreement" means the written agreement which  
 14 shall be entered into among all of the members as to the conduct of the  
 15 business and affairs of a limited liability company;

16 ~~(12)~~(13) "Person" means an individual, a general partnership, a  
 17 limited partnership, a domestic or foreign limited liability company, a  
 18 trust, an estate, an association, a corporation, a custodian, a nominee and  
 19 other individual entity in its own or representative capacity, or any other  
 20 legal entity;

21 ~~(13)~~(14) "Professional service" means any type of professional  
 22 service which may be legally performed only pursuant to a license or other  
 23 legally mandated personal authorization. For example: the personal service  
 24 rendered by certified public accountants, architects, engineers, dentists,  
 25 doctors, and attorneys at law; and

26 ~~(14)~~(15) "State" means a state, territory, or possession of the  
 27 United States, the District of Columbia, or the Commonwealth of Puerto Rico.

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 29 *SECTION 2. Arkansas Code § 4-32-103 is amended to read as follows:*  
 30 *4-32-103. Name.*

31 *(a) ~~The~~ Except as otherwise provided in this section, the name of each*  
 32 *limited liability company as set forth in its articles of organization must*  
 33 *contain the words "Limited Liability Company" or "Limited Company" or the*  
 34 *abbreviations "L.L.C.," "L.C.," "LLC," or "LC." The word "Limited" may be*  
 35 *abbreviated as "Ltd." and the word "Company" may be abbreviated as "Co."*

36 *(b) A limited liability company name must be distinguishable upon the*

1 records of the Secretary of State from:

2 (1) The name of any limited liability company, limited  
3 partnership, or corporation existing under the laws of this state or  
4 authorized to transact business in this state; or

5 (2) Any name reserved under § 4-32-104.

6 (c) The provisions of subsection (b) of this section shall not apply  
7 if the applicant files with the Secretary of State a certified copy of a  
8 final decree of a court of competent jurisdiction establishing the prior  
9 right of the applicant to the use of the name in this state.

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

18 (e) The name of a low-profit limited liability company shall contain  
19 the abbreviation "L3C", "L.3.C.", or "l3c".

20 (2) The name of a low-profit limited liability company shall  
21 contain the abbreviation "L3C", "L.3.C.", or "l3c".

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23 SECTION 3. Arkansas Code § 4-32-202 is amended to read as follows:  
24 4-32-202. Articles of organization.

25 The articles of organization shall set forth:

26 (1) A name for the limited liability company that satisfies the  
27 requirements of § 4-32-103;

28 (2) The information required by § 4-20-105(a), concerning the  
29 limited liability company's agent for service of process; and

30 (3) If management of the limited liability company is vested in  
31 a manager or managers, a statement to that effect; and

32 (4) For a low-profit limited liability company, a designation  
33 that provides that the company is a low-profit limited liability company.

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35 SECTION 4. Arkansas Code § 4-32-901 is amended to read as follows:  
36 4-32-901. Dissolution.

1 A limited liability company is dissolved and its affairs shall be wound  
2 up upon the happening of the first to occur of the following:

3 (1) At the time or upon the occurrence of events specified in  
4 writing in the articles of organization or an operating agreement, but if no  
5 such time is set forth in either of the foregoing, then the limited liability  
6 company shall have a perpetual existence;

7 (2) The written consent of all members;

8 (3) At any time there are no members, provided that, unless  
9 otherwise provided in the articles of organization or an operating agreement,  
10 the limited liability company is not dissolved and is not required to be  
11 wound up if within ninety (90) days or such other period as is provided for  
12 in the articles of organization or an operating agreement after the  
13 occurrence of the event that terminated the continued membership of the last  
14 remaining member, the personal representative of the last remaining member  
15 agrees in writing to continue the limited liability company and to the  
16 admission of the personal representative of the member or its nominee or  
17 designee to the limited liability company as a member, effective as of the  
18 occurrence of the event that terminated the continued membership of the last  
19 remaining member; ~~and~~

20 (4) If a low-profit limited liability company fails to meet any  
21 of the requirements in § 4-32-102(9)(A) and does not file an article of  
22 amendment under § 4-32-203 amending its name to conform with the requirements  
23 governing limited liability company names under § 4-32-103 within sixty (60)  
24 days; and

25 (5) The entry of a decree of judicial dissolution under § 4-32-  
26 902.

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28 /s/D. Johnson  
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