

1                                   **LOW-PROFIT LIMITED LIABILITY**

2   **COMPANY ACT**

3   2009 GENERAL SESSION

4   STATE OF UTAH

5   **Chief Sponsor: Lyle W. Hillyard**

6   House Sponsor: Kraig Powell

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8   **LONG TITLE**

9   **General Description:**

10           This bill modifies the Utah Revised Limited Liability Company Act to provide for  
11 low-profit limited liability companies.

12 **Highlighted Provisions:**

13           This bill:

- 14           ▶ defines terms;
- 15           ▶ addresses name requirements;
- 16           ▶ creates requirements to be a low-profit limited liability company, including making  
17 a statement in the articles of organization;
- 18           ▶ addresses when a low-profit limited liability company ceases to be a low-profit  
19 limited liability company;
- 20           ▶ provides for conversions or mergers involving a low-profit limited liability  
21 company; and
- 22           ▶ makes technical and conforming amendments.

23 **Monies Appropriated in this Bill:**

24           None

25 **Other Special Clauses:**

26           This bill provides an immediate effective date.

27 **Utah Code Sections Affected:**

28 AMENDS:

29           **48-2c-102**, as last amended by Laws of Utah 2008, Chapters 249 and 364

30 48-2c-106, as last amended by Laws of Utah 2002, Chapter 222

31 48-2c-403, as last amended by Laws of Utah 2008, Chapter 364

32 48-2c-405, as enacted by Laws of Utah 2001, Chapter 260

33 ENACTS:

34 48-2c-412, Utah Code Annotated 1953

35 48-2c-1411, Utah Code Annotated 1953



37 *Be it enacted by the Legislature of the state of Utah:*

38 Section 1. Section 48-2c-102 is amended to read:

39 **48-2c-102. Definitions.**

40 As used in this chapter:

41 (1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah  
42 insolvency law.

43 (2) "Business" includes a lawful trade, occupation, profession, business, investment,  
44 or other purpose or activity, whether or not that trade, occupation, profession, business,  
45 investment, purpose, or activity is carried on for profit.

46 (3) "Capital account," unless otherwise provided in the operating agreement, means  
47 the account, as adjusted from time to time, maintained by the company for each member to  
48 reflect:

- 49 (a) the value of all contributions by that member;
- 50 (b) the amount of all distributions to that member or the member's assignee;
- 51 (c) the member's share of profits, gains, and losses of the company; and
- 52 (d) the member's share of the net assets of the company upon dissolution and winding  
53 up that are distributable to the member or the member's assignee.

54 (4) "Company," "limited liability company," or "domestic company" means a person  
55 organized as a:

- 56 (a) limited liability company [organized] under or subject to this chapter; or
- 57 (b) a low-profit limited liability company under or subject to this chapter.

58 (5) (a) "Distribution" means a direct or indirect transfer by a company of money or  
59 other property, except:

- 60 (i) an interest in the company; or
- 61 (ii) incurrence of indebtedness by a company, to or for the benefit of members in the  
62 company in respect of any interest in the company.

63 (b) "Distribution" does not include amounts constituting:

- 64 (i) reasonable compensation for present or past services; or
- 65 (ii) reasonable payments made in the ordinary course of business pursuant to a bona  
66 fide retirement plan or other benefits program.

67 (6) "Division" means the Division of Corporations and Commercial Code of the Utah  
68 Department of Commerce.

69 (7) "Entity" includes:

- 70 (a) a domestic or foreign corporation;
- 71 (b) a domestic or foreign nonprofit corporation;
- 72 (c) a company or foreign company;
- 73 (d) a profit or nonprofit unincorporated association;
- 74 (e) a business trust;
- 75 (f) an estate;
- 76 (g) a general partnership or a domestic or foreign limited partnership;
- 77 (h) a trust;
- 78 (i) a state;
- 79 (j) the United States; or
- 80 (k) a foreign government.

81 (8) (a) "Filed with the division" means that a statement, document, or report:

- 82 (i) complies with the requirements of Section 48-2c-207; and
- 83 (ii) is accepted for filing by the division.

84 (b) "Filed with the division" includes filing by electronic means approved by the  
85 division.

86 (9) "Foreign company" means a person organized as a:  
87 (a) limited liability company [organized] under a law other than the laws of this state;

88 or

89 (b) low-profit limited liability company under a law other than the laws of this state.

90 (10) "Interest in the company" means a member's economic rights in ~~[the]~~ a company  
91 including the right to receive:

92 (a) a distribution from the company; and

93 (b) a portion of the net assets of the company upon dissolution and winding up of the  
94 company.

95 (11) "Low-profit limited liability company" means a company meeting the  
96 requirements of Section 48-2c-412.

97 ~~[(11)]~~ (12) "Manager" means a person elected or otherwise designated by the members  
98 to manage a manager-managed company pursuant to Part 8, Management.

99 ~~[(12)]~~ (13) "Manager-managed company" means a company whose management is  
100 vested in managers pursuant to Part 8, Management.

101 ~~[(13)]~~ (14) "Member" means a person with:

102 (a) an ownership interest in a company; and

103 (b) the rights and obligations specified under this chapter.

104 ~~[(14)]~~ (15) "Member-managed company" means a company whose management is  
105 vested in its members pursuant to Part 8, Management.

106 ~~[(15)]~~ (16) (a) "Operating agreement" means a written agreement of the members:

107 (i) concerning the business or purpose of the company and the conduct of its affairs;

108 and

109 (ii) which complies with Part 5, Operating Agreements.

110 (b) "Operating agreement" includes a written amendment agreed to by all members or  
111 other writing adopted in any other manner as may be provided in the operating agreement.

112 ~~[(16)]~~ (17) "Person" means an individual or entity.

113 ~~[(17)]~~ (18) "Proceeding" means an administrative, judicial or other trial, hearing, or

114 other action, whether civil, criminal, or investigative, the result of which may be that a court,  
115 arbitrator, or governmental agency may enter a judgment, order, decree, or other determination  
116 which, if not appealed or reversed, would be binding upon any person subject to the  
117 jurisdiction of that court, arbitrator, or governmental agency.

118 ~~[(18)]~~ (19) "Professional services" is as defined in Part 15, Professions.

119 ~~[(19)]~~ (20) "Profits interest" means that portion of the company's profits to be  
120 allocated to an individual member upon an allocation of profits.

121 ~~[(20)]~~ (21) "Profits interests" or "interests in profits" with respect to a company means  
122 the total interests of all of the company's members in the company's profits.

123 ~~[(21)]~~ (22) "Signed," "signs," or "signature" means:

124 (a) a manual signature or authorized facsimile of the signature; or

125 (b) an electronic signature approved by the division.

126 ~~[(22)]~~ (23) "State" means:

127 (a) a state, territory, or possession of the United States;

128 (b) the District of Columbia; or

129 (c) the Commonwealth of Puerto Rico.

130 (24) "Tribal limited liability company" means a limited liability company:

131 (a) formed under the law of a tribe; and

132 (b) that is at least 51% owned or controlled by the tribe.

133 ~~[(23)]~~ (25) "Tribe" means a tribe, band, nation, pueblo, or other organized group or  
134 community of Indians, including an Alaska Native village, that is legally recognized as eligible  
135 for and is consistent with a special program, service, or entitlement provided by the United  
136 States to Indians because of their status as Indians.

137 Section 2. Section **48-2c-106** is amended to read:

138 **48-2c-106. Name -- Exclusive right.**

139 (1) ~~[The]~~ Except as provided in Subsection (8), the name of [each] a company as set  
140 forth in the articles of organization:

141 (a) shall contain the terms:

- 142 (i) "limited company";
- 143 (ii) "limited liability company";
- 144 (iii) "L.C." or "LC"; or
- 145 (iv) "L.L.C." or "LLC";
- 146 (b) may not contain:
- 147 (i) the terms:
- 148 (A) "association";
- 149 (B) "corporation";
- 150 (C) "incorporated";
- 151 (D) "limited partnership";
- 152 (E) "limited";
- 153 (F) "L.P."; or
- 154 (G) "Ltd."; or
- 155 (ii) words or ~~any~~ an abbreviation with a similar meaning in any other language;
- 156 (c) without the written consent of the United States Olympic Committee, may not
- 157 contain the words:
- 158 (i) "Olympic";
- 159 (ii) "Olympiad"; or
- 160 (iii) "Citius Altius Fortius"; and
- 161 (d) without the written consent of the Division of Consumer Protection in accordance
- 162 with Section 13-34-114, may not contain the words:
- 163 (i) "university";
- 164 (ii) "college"; or
- 165 (iii) "institute".
- 166 (2) (a) A person, other than a company formed under this chapter or a foreign
- 167 company authorized to transact business in this state, may not use in its name in this state any
- 168 of the terms:
- 169 (i) "limited liability company";

- 170 (ii) "limited company";
- 171 (iii) "L.L.C.";
- 172 (iv) "L.C.";
- 173 (v) "LLC"; or
- 174 (vi) "LC".
- 175 (b) Notwithstanding Subsection (2)(a):
- 176 (i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may
- 177 use its actual name in this state if it also uses:
  - 178 (A) "corporation" or "corp."; or
  - 179 (B) "incorporated" or "inc."; and
- 180 (ii) a limited liability partnership may use in its name the terms:
  - 181 (A) "limited liability partnership";
  - 182 (B) "L.L.P."; or
  - 183 (C) "LLP".
- 184 (3) Except as authorized by Subsection (4), the name of a company must be
- 185 distinguishable as defined in Subsection (5) upon the records of the division from:
  - 186 (a) the actual name, reserved name, or fictitious or assumed name of any entity
  - 187 registered with the division; or
  - 188 (b) any tradename, trademark, or service mark registered with the division.
- 189 (4) (a) A company may apply to the division for approval to file its articles of
- 190 organization under or to reserve a name that is not distinguishable upon the division's records
- 191 from one or more of the names described in Subsection (3).
  - 192 (b) The division shall approve the name for which the company applies under
  - 193 Subsection (4)(a) if:
    - 194 (i) the other person whose name is not distinguishable from the name under which the
    - 195 applicant desires to file:
      - 196 (A) consents to the filing in writing; and
      - 197 (B) submits an undertaking in a form satisfactory to the division to change its name to

198 a name that is distinguishable from the name of the applicant; or

199 (ii) the applicant delivers to the division a certified copy of the final judgment of a  
200 court of competent jurisdiction establishing the applicant's right to use the name in this state.

201 (5) A name is distinguishable from other names, trademarks, and service marks  
202 registered with the division if it contains one or more different words, letters, or numerals from  
203 other names upon the division's records.

204 (6) The following differences are not distinguishing:

205 (a) the terms:

206 (i) "corporation";

207 (ii) "incorporated";

208 (iii) "company";

209 (iv) "limited partnership";

210 (v) "limited";

211 (vi) "L.P." or "LP";

212 (vii) "Ltd.";

213 (viii) "limited liability company";

214 (ix) "limited company";

215 (x) "L.C." or "LC"; or

216 (xi) "L.L.C." or "LLC";

217 (b) an abbreviation of a word listed in Subsection (6)(a);

218 (c) the presence or absence of the words or symbols of the words "the," "and," "a," or  
219 "plus";

220 (d) differences in punctuation and special characters;

221 (e) differences in capitalization; or

222 (f) for a company that is formed in this state on or after May 4, 1998, or registered as a  
223 foreign company in this state on or after May 4, 1998, differences between singular and plural  
224 forms of words.

225 (7) A name that implies that a company is an agency of this state or any of its political



226 subdivisions, if it is not actually a legally established agency or political subdivision, may not  
227 be approved for filing by the division.

228 (8) The name of a low-profit limited liability company shall contain the abbreviation  
229 "L3C" or "l3c".

230 Section 3. Section **48-2c-403** is amended to read:

231 **48-2c-403. Articles of organization.**

232 (1) The articles of organization of a company shall set forth:

233 (a) the name of the company;

234 (b) the business purpose for which the company is organized;

235 (c) if the company is to be a low-profit limited liability company, that the company is  
236 a low-profit limited liability company;

237 [~~e~~] (d) the information required by Subsection 16-17-203(1);

238 [~~d~~] (e) the name and street address of each organizer who is not a member or  
239 manager;

240 [~~e~~] (f) if the company is to be manager-managed:

241 (i) a statement that the company is to be managed by a manager or managers; and

242 (ii) the names and street addresses of the initial managers; and

243 [~~f~~] (g) if the company is to be member-managed:

244 (i) a statement that the company is to be managed by its members; and

245 (ii) the names and street addresses of the initial members.

246 (2) If the company is to be manager-managed, the articles of organization do not need  
247 to state the name or address of any member, except as required by Part 15, Professions.

248 (3) It is not necessary to include in the articles of organization any of the powers  
249 enumerated in this chapter.

250 (4) The articles of organization may contain any other provision not inconsistent with  
251 law, including:

252 (a) a provision limiting or restricting:

253 (i) the business in which the company may engage;

- 254 (ii) the powers that the company may exercise; or
- 255 (iii) both Subsections (4)(a)(i) and (ii);
- 256 (b) a statement of whether there are limitations on the authority of managers or
- 257 members to bind the company and, if so, what the limitations are, set out in detail and not with
- 258 reference to any other document; or
- 259 (c) a statement of the period of duration of the company, which may be as long as 99
- 260 years from the date the articles of organization, or the latest of any amendments to the articles
- 261 of organization effecting a change in the period of duration, were filed with the division.

262 (5) If the articles of organization of a company do not specify a period of duration, the

263 period of duration for that company is 99 years from the date the articles of organization were

264 filed with the division, unless the period of duration is extended by an amendment to the

265 articles of organization as permitted by this chapter.

266 Section 4. Section **48-2c-405** is amended to read:

267 **48-2c-405. When amendment to articles of organization required.**

268 The articles of organization of a company shall be amended when:

- 269 (1) there is a change in the name of the company;
- 270 (2) there is a change in the character of the business of the company specified in the
- 271 articles of organization;
- 272 (3) there is a false or erroneous statement in the articles of organization;
- 273 (4) there is a change in the period of duration of the company that is:
- 274 (a) stated in the articles of organization; or
- 275 (b) provided for in Section 48-2c-403;
- 276 (5) there is a change in:
- 277 (a) the management structure of the company from a manager-managed company to a
- 278 member-managed company or from a member-managed company to a manager-managed
- 279 company;
- 280 (b) if the company is manager-managed, who is a manager of the company; or
- 281 (c) if the company is member-managed, who is a member of the company; [~~or~~]

282 (6) in accordance with Section 48-2c-412, the company ceases to be a low-profit  
283 limited liability company; or

284 ~~[(6)]~~ (7) the members desire to make a change in any other statement in the articles of  
285 organization in order for the articles to accurately represent the agreement among the  
286 members.

287 Section 5. Section **48-2c-412** is enacted to read:

288 **48-2c-412. Low-profit limited liability company.**

289 (1) (a) To be a low-profit limited liability company, a company shall:

290 (i) state in its articles of organization that it is a low-profit limited liability company;

291 (ii) organize under this chapter; and

292 (iii) be organized for a business purpose that satisfies, and at all times operates to  
293 satisfy each of the requirements under Subsection (1)(b).

294 (b) A low-profit limited liability company:

295 (i) shall significantly further the accomplishment of one or more charitable or  
296 educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;

297 (ii) shall demonstrate that it would not be formed but for the company's relationship to  
298 the accomplishment of a charitable or educational purpose;

299 (iii) subject to Subsection (3), may not have as a significant purpose the production of  
300 income or the appreciation of property; and

301 (iv) may not have as a purpose to accomplish one or more political or legislative  
302 purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.

303 (2) (a) If a company that is a low-profit limited liability company at its formation at  
304 any time ceases to meet a requirement to be a low-profit limited liability company under  
305 Subsection (1), the company:

306 (i) ceases to be a low-profit limited liability company on the day on which the  
307 company no longer meets the requirement; and

308 (ii) if it continues to meet the requirements of this chapter to be a limited liability  
309 company, continues to exist as a limited liability company that is not a low-profit limited

310 liability company.

311 (b) A low-profit limited liability company's failure to meet a requirement of

312 Subsection (1) may be:

313 (i) voluntary, in order to convert to a limited liability company that is not a low-profit

314 limited liability company; or

315 (ii) involuntary.

316 (c) If a low-profit limited liability company ceases to be a low-profit limited liability

317 company in accordance with Subsection (2)(a), the company shall:

318 (i) change its name to conform with Section 48-2c-106; and

319 (ii) amend its articles of organization in accordance with Section 48-2c-405.

320 (3) Notwithstanding Subsection (1), if a low-profit limited liability company produces

321 significant income or capital appreciation, in the absence of other factors, the fact that the

322 low-profit limited liability company produces significant income or capital appreciation is not

323 conclusive evidence of a significant purpose involving the production of income or the

324 appreciation of property.

325 Section 6. Section **48-2c-1411** is enacted to read:

326 **48-2c-1411. Conversion or merger of a low-profit limited liability company.**

327 A low-profit limited liability company may engage in the following to the same extent

328 as a limited liability company that is not a low-profit limited liability company may do so

329 under this part:

330 (1) convert to another subject entity;

331 (2) convert from another subject entity; or

332 (3) participate in a merger.

333 Section 7. **Effective date.**

334 If approved by two-thirds of all the members elected to each house, this bill takes effect

335 upon approval by the governor, or the day following the constitutional time limit of Utah

336 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,

337 the date of veto override.

