

LOW-PROFIT LIMITED LIABILITY

COMPANY ACT

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Kraig Powell

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

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, or
44 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 the
47 account, as adjusted from time to time, maintained by the company for each member to reflect:

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

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

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

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

- 59 (i) an interest in the company; or
60 (ii) incurrence of indebtedness by a company, to or for the benefit of members in the
61 company in respect of any interest in the company.
- 62 (b) "Distribution" does not include amounts constituting:
63 (i) reasonable compensation for present or past services; or
64 (ii) reasonable payments made in the ordinary course of business pursuant to a bona
65 fide retirement plan or other benefits program.
- 66 (6) "Division" means the Division of Corporations and Commercial Code of the Utah
67 Department of Commerce.
- 68 (7) "Entity" includes:
69 (a) a domestic or foreign corporation;
70 (b) a domestic or foreign nonprofit corporation;
71 (c) a company or foreign company;
72 (d) a profit or nonprofit unincorporated association;
73 (e) a business trust;
74 (f) an estate;
75 (g) a general partnership or a domestic or foreign limited partnership;
76 (h) a trust;
77 (i) a state;
78 (j) the United States; or
79 (k) a foreign government.
- 80 (8) (a) "Filed with the division" means that a statement, document, or report:
81 (i) complies with the requirements of Section 48-2c-207; and
82 (ii) is accepted for filing by the division.
- 83 (b) "Filed with the division" includes filing by electronic means approved by the
84 division.
- 85 (9) "Foreign company" means a person organized as a
86 (a) limited liability company [organized] under a law other than the laws of this state;
87 or
88 (b) low-profit limited liability company under a law other than the laws of this state.
- 89 (10) "Interest in the company" means a member's economic rights in [~~the~~] a company

90 including the right to receive:

91 (a) a distribution from the company; and

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

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

96 [~~(11)~~] (12) "Manager" means a person elected or otherwise designated by the members
97 to manage a manager-managed company pursuant to Part 8, Management.

98 [~~(12)~~] (13) "Manager-managed company" means a company whose management is
99 vested in managers pursuant to Part 8, Management.

100 [~~(13)~~] (14) "Member" means a person with:

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

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

103 [~~(14)~~] (15) "Member-managed company" means a company whose management is
104 vested in its members pursuant to Part 8, Management.

105 [~~(15)~~] (16) (a) "Operating agreement" means a written agreement of the members:

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

107 and

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

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

111 [~~(16)~~] (17) "Person" means an individual or entity.

112 [~~(17)~~] (18) "Proceeding" means an administrative, judicial or other trial, hearing, or
113 other action, whether civil, criminal, or investigative, the result of which may be that a court,
114 arbitrator, or governmental agency may enter a judgment, order, decree, or other determination
115 which, if not appealed or reversed, would be binding upon any person subject to the
116 jurisdiction of that court, arbitrator, or governmental agency.

117 [~~(18)~~] (19) "Professional services" is as defined in Part 15, Professions.

118 [~~(19)~~] (20) "Profits interest" means that portion of the company's profits to be allocated
119 to an individual member upon an allocation of profits.

120 [~~(20)~~] (21) "Profits interests" or "interests in profits" with respect to a company means

121 the total interests of all of the company's members in the company's profits.

122 [~~(21)~~] (22) "Signed," "signs," or "signature" means:

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

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

125 [~~(22)~~] (23) "State" means:

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

127 (b) the District of Columbia; or

128 (c) the Commonwealth of Puerto Rico.

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

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

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

132 [~~(23)~~] (25) "Tribe" means a tribe, band, nation, pueblo, or other organized group or

133 community of Indians, including an Alaska Native village, that is legally recognized as eligible

134 for and is consistent with a special program, service, or entitlement provided by the United

135 States to Indians because of their status as Indians.

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

137 **48-2c-106. Name -- Exclusive right.**

138 (1) [~~The~~] Except as provided in Subsection (8), the name of [each] a company as set

139 forth in the articles of organization:

140 (a) shall contain the terms:

141 (i) "limited company";

142 (ii) "limited liability company";

143 (iii) "L.C." or "LC"; or

144 (iv) "L.L.C." or "LLC";

145 (b) may not contain:

146 (i) the terms:

147 (A) "association";

148 (B) "corporation";

149 (C) "incorporated";

150 (D) "limited partnership";

151 (E) "limited";

152 (F) "L.P."; or
153 (G) "Ltd."; or
154 (ii) words or ~~any~~ an abbreviation with a similar meaning in any other language;
155 (c) without the written consent of the United States Olympic Committee, may not

156 contain the words:

- 157 (i) "Olympic";
- 158 (ii) "Olympiad"; or
- 159 (iii) "Citius Altius Fortius"; and

160 (d) without the written consent of the Division of Consumer Protection in accordance
161 with Section 13-34-114, may not contain the words:

- 162 (i) "university";
- 163 (ii) "college"; or
- 164 (iii) "institute".

165 (2) (a) A person, other than a company formed under this chapter or a foreign company
166 authorized to transact business in this state, may not use in its name in this state any of the
167 terms:

- 168 (i) "limited liability company";
- 169 (ii) "limited company";
- 170 (iii) "L.L.C.";
- 171 (iv) "L.C.";
- 172 (v) "LLC"; or
- 173 (vi) "LC".

174 (b) Notwithstanding Subsection (2)(a):

175 (i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may
176 use its actual name in this state if it also uses:

- 177 (A) "corporation" or "corp."; or
- 178 (B) "incorporated" or "inc."; and
- 179 (ii) a limited liability partnership may use in its name the terms:

- 180 (A) "limited liability partnership";
- 181 (B) "L.L.P."; or
- 182 (C) "LLP".

183 (3) Except as authorized by Subsection (4), the name of a company must be
184 distinguishable as defined in Subsection (5) upon the records of the division from:

185 (a) the actual name, reserved name, or fictitious or assumed name of any entity
186 registered with the division; or

187 (b) any tradename, trademark, or service mark registered with the division.

188 (4) (a) A company may apply to the division for approval to file its articles of
189 organization under or to reserve a name that is not distinguishable upon the division's records
190 from one or more of the names described in Subsection (3).

191 (b) The division shall approve the name for which the company applies under
192 Subsection (4)(a) if:

193 (i) the other person whose name is not distinguishable from the name under which the
194 applicant desires to file:

195 (A) consents to the filing in writing; and

196 (B) submits an undertaking in a form satisfactory to the division to change its name to
197 a name that is distinguishable from the name of the applicant; or

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

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

203 (6) The following differences are not distinguishing:

204 (a) the terms:

205 (i) "corporation";

206 (ii) "incorporated";

207 (iii) "company";

208 (iv) "limited partnership";

209 (v) "limited";

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

211 (vii) "Ltd.";

212 (viii) "limited liability company";

213 (ix) "limited company";

- 214 (x) "L.C." or "LC"; or
215 (xi) "L.L.C." or "LLC";
216 (b) an abbreviation of a word listed in Subsection (6)(a);
217 (c) the presence or absence of the words or symbols of the words "the," "and," "a," or
218 "plus";
219 (d) differences in punctuation and special characters;
220 (e) differences in capitalization; or
221 (f) for a company that is formed in this state on or after May 4, 1998, or registered as a
222 foreign company in this state on or after May 4, 1998, differences between singular and plural
223 forms of words.

224 (7) A name that implies that a company is an agency of this state or any of its political
225 subdivisions, if it is not actually a legally established agency or political subdivision, may not
226 be approved for filing by the division.

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

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

230 **48-2c-403. Articles of organization.**

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

232 (a) the name of the company;

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

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

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

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

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

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

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

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

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

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

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

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

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

251 (a) a provision limiting or restricting:

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

253 (ii) the powers that the company may exercise; or

254 (iii) both Subsections (4)(a)(i) and (ii);

255 (b) a statement of whether there are limitations on the authority of managers or
256 members to bind the company and, if so, what the limitations are, set out in detail and not with
257 reference to any other document; or

258 (c) a statement of the period of duration of the company, which may be as long as 99
259 years from the date the articles of organization, or the latest of any amendments to the articles
260 of organization effecting a change in the period of duration, were filed with the division.

261 (5) If the articles of organization of a company do not specify a period of duration, the
262 period of duration for that company is 99 years from the date the articles of organization were
263 filed with the division, unless the period of duration is extended by an amendment to the
264 articles of organization as permitted by this chapter.

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

266 **48-2c-405. When amendment to articles of organization required.**

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

268 (1) there is a change in the name of the company;

269 (2) there is a change in the character of the business of the company specified in the
270 articles of organization;

271 (3) there is a false or erroneous statement in the articles of organization;

272 (4) there is a change in the period of duration of the company that is:

273 (a) stated in the articles of organization; or

274 (b) provided for in Section 48-2c-403;

275 (5) there is a change in:

276 (a) the management structure of the company from a manager-managed company to a
277 member-managed company or from a member-managed company to a manager-managed
278 company;

279 (b) if the company is manager-managed, who is a manager of the company; or

280 (c) if the company is member-managed, who is a member of the company; ~~or~~

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

283 ~~[(6)]~~ (7) the members desire to make a change in any other statement in the articles of
284 organization in order for the articles to accurately represent the agreement among the members.

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

286 **48-2c-412. Low-profit limited liability company.**

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

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

289 (ii) organize under this chapter; and

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

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

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

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

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

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

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

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

306 (ii) if it continues to meet the requirements of this chapter to be a limited liability

307 company, continues to exist as a limited liability company that is not a low-profit limited
308 liability company.

309 (b) A low-profit limited liability company's failure to meet a requirement of Subsection
310 (1) may be:

311 (i) voluntary, in order to convert to a limited liability company that is not a low-profit
312 limited liability company; or

313 (ii) involuntary.

314 (c) If a low-profit limited liability company ceases to be a low-profit limited liability
315 company in accordance with Subsection (2)(a), the company shall:

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

317 (ii) amend its articles of organization in accordance with Section 48-2c-403.

318 (3) Notwithstanding Subsection (1), if a low-profit limited liability company produces
319 significant income or capital appreciation, in the absence of other factors, the fact that the
320 low-profit limited liability company produces significant income or capital appreciation is not
321 conclusive evidence of a significant purpose involving the production of income or the
322 appreciation of property.

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

324 **48-2c-1411. Conversion or merger of a low-profit limited liability company.**

325 A low-profit limited liability company may engage in the following to the same extent
326 as a limited liability company that is not a low-profit limited liability company may do so under
327 this part:

328 (1) convert to another subject entity;

329 (2) convert from another subject entity; or

330 (3) participate in a merger.

S.B. 148 - Low-profit Limited Liability Company Act

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
