

SECOND REGULAR SESSION

HOUSE BILL NO. 1561

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE DIEHL.

5011L.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 347.015, 347.020, 347.039, and 347.143, RSMo, and to enact in lieu thereof four new sections relating to low-profit limited liability companies.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 347.015, 347.020, 347.039, and 347.143, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as sections 347.015, 347.020, 347.039, and 347.143, to read as follows:

347.015. As used in sections 347.010 to 347.187, the following terms mean:

(1) "Articles of organization", the articles referred to in section 347.039, filed with the secretary for the purpose of forming a limited liability company, as the same may be amended or restated from time to time as provided in sections 347.010 to 347.187;

(2) "Authorized person", manager, or member, if management of the limited liability company is vested in the members;

(3) "Bankruptcy", the entry of an order for relief by the court in a proceeding under the United States Bankruptcy Code, Title 11, U.S.C., as amended, or its equivalent under a state insolvency act or a similar law of other jurisdictions;

(4) "Business" includes every trade, occupation or profession;

(5) "Contribution", cash, other property, the use of property, services rendered, a promissory note or other binding obligation to contribute cash or property or perform services or any other valuable consideration transferred by a person to the limited liability company as a prerequisite for membership in the limited liability company and any subsequent transfer to the limited liability company by a person in his capacity as a member;

(6) "Court" includes every court and judge having jurisdiction in the case;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (7) "Domestic limited liability company" or "limited liability company", a limited
18 liability company organized and existing under sections 347.010 to 347.187. **The term**
19 **"domestic limited liability company" or "limited liability company" includes a low-profit**
20 **limited liability company and a company designated as an L3C;**

21 (8) "Event of withdrawal", an event that causes a person to cease to be a member as
22 provided in section 347.123;

23 (9) "Foreign limited liability company", a limited liability company formed under the
24 laws of any jurisdiction other than the state of Missouri;

25 (10) **"Low-profit limited liability company" or "L3C":**

26 (a) **A person organized under sections 347.010 to 347.187 that is organized for a**
27 **business purpose that satisfies and is at all times operated to satisfy each of the following**
28 **requirements:**

29 a. **The company:**

30 (i) **Significantly furthers the accomplishments of one or more charitable or**
31 **educational purposes within the meaning of Section 170(c)(2)(B) of the Internal Revenue**
32 **Code of 1986, as amended; and**

33 (ii) **Would not have been formed but for the company's relationship to the**
34 **accomplishment of charitable or educational purposes;**

35 b. **No significant purpose of the company is the production of income or the**
36 **appreciation of property; provided, however, that the fact that a person produces**
37 **significant income or capital appreciation shall not, in the absence of other factors, be**
38 **conclusive evidence of a significant purpose involving the production of income or the**
39 **appreciation of property;**

40 c. **No purpose of the company is to accomplish one or more political or legislative**
41 **purposes within the meaning of Section 170(c)(2)(D) of the Internal Revenue Code of 1986,**
42 **as amended;**

43 (b) **If a company that met the definition of low-profit limited liability company at**
44 **its formation at any time ceases to satisfy any one of the requirements in paragraph (a) of**
45 **this subdivision, it shall immediately cease to be a low-profit limited liability company, but**
46 **by continuing to meet all other requirements under sections 347.010 to 347.187, will**
47 **continue to exist as a limited liability company. The name of the company shall be changed**
48 **to be in conformance with section 347.020.**

49 (11) "Manager", with respect to a limited liability company whose articles of
50 organization state that management of the limited liability company is vested in one or more
51 managers, the person or persons designated, appointed or elected as such in the manner provided
52 in subsection 2 of section 347.079;

53 [(11)] (12) "Member", any person that signs in person or by an attorney in fact, or
54 otherwise is a party to the operating agreement at the time the limited liability company is formed
55 and is identified as a member in that operating agreement and any person who is subsequently
56 admitted as a member in a limited liability company in accordance with sections 347.010 to
57 347.187 and the operating agreement, until such time as an event of withdrawal occurs with
58 respect to such person;

59 [(12)] (13) "Member's interest", a member's share of the profits and losses of a limited
60 liability company and the right to receive distributions of limited liability company assets;

61 [(13)] (14) "Operating agreement", any valid agreement or agreements, written or oral,
62 among all members, or written declaration by the sole member concerning the conduct of the
63 business and affairs of the limited liability company and the relative rights, duties and obligations
64 of the members and managers, if any;

65 [(14)] (15) "Organizer", any of the signers of the articles of organization;

66 [(15)] (16) "Person" includes individuals, partnerships, domestic or foreign limited
67 partnerships, domestic or foreign limited liability companies, domestic or foreign corporations,
68 trusts, business trusts, employee stock ownership trusts, real estate investment trusts, estates,
69 associations, and other business or not-for-profit entities;

70 [(16)] (17) "Real property" includes land, any interest, leasehold or estate in land and any
71 improvements thereon;

72 [(17)] (18) "Secretary", the secretary of state for the state of Missouri and its delegates
73 responsible for the administration of sections 347.010 to 347.187;

74 [(18)] (19) "Surviving entity", the surviving or resulting person pursuant to a merger or
75 consolidation in which one or more domestic limited liability companies are parties.

347.020. The name of each limited liability company as set forth in its articles of
2 organization:

3 (1) Shall contain the words "limited company" or "limited liability company" or the
4 abbreviation "LC", "LLC", "L.C." or "L.L.C." and shall be the name under which the limited
5 liability company transacts business in this state unless the limited liability company registers
6 another name under which it transacts business as provided under chapter 417, RSMo, or
7 conspicuously discloses its name as set forth in its articles of organization, **or registers as a low-**
8 **profit limited liability company;**

9 (2) **Shall contain the words "low-profit limited liability company" or the**
10 **abbreviation "L3C" or "l3c" for any low-profit limited liability company;**

11 (3) May not contain the word "corporation", "incorporated", "limited partnership",
12 "limited liability partnership", "limited liability limited partnership", or "Ltd." or any
13 abbreviation of one of such words or any word or phrase which indicates or implies that it is

14 organized for any purpose not stated in its articles of organization or that it is a governmental
15 agency; and

16 ~~[(3)]~~ **(4)** Must be distinguishable upon the records of the secretary from the name of any
17 corporation, limited liability company, limited partnership, limited liability partnership, or
18 limited liability limited partnership which is licensed, organized, reserved, or registered under
19 the laws of this state as a domestic or foreign entity, unless:

20 (a) Such other holder of a reserved or registered name consents to such use in writing
21 and files appropriate documentation to the secretary to change its name to a name that is
22 distinguishable upon the records of the secretary from the name of the applying limited liability
23 company; or

24 (b) A certified copy of a final decree of a court of competent jurisdiction establishing the
25 prior right of the applicant to the use of such name in this state is filed with the secretary.

347.039. 1. The articles of organization shall set forth:

2 (1) The name of the limited liability company;

3 (2) The purpose or purposes for which the limited liability company is organized, which
4 may be stated to be, or to include, the transaction of any or all lawful business for which a
5 limited liability company may be organized under sections 347.010 to 347.187;

6 (3) **Whether the company is an L3C;**

7 (4) The address, including street and number, if any, of the registered office and the
8 name of the registered agent at such office;

9 ~~[(4)]~~ **(5)** A statement as to whether management of the limited liability company is
10 vested in managers or in members;

11 ~~[(5)]~~ **(6)** The events by which the limited liability company is to dissolve or the number
12 of years the limited liability company is to exist, which may be any number or perpetual; and

13 ~~[(6)]~~ **(7)** The name and physical business or residence address of each organizer.

14 2. The articles of organization may set forth any other provision, not inconsistent with
15 law or sections 347.010 to 347.187, which are in the operating agreement of the limited liability
16 company.

347.143. 1. A limited liability company may be dissolved involuntarily by a decree of
2 the circuit court for the county in which the registered office of the limited liability company is
3 situated in an action filed by the attorney general when it is established that the limited liability
4 company:

5 (1) Has procured its articles of organization through fraud;

6 (2) Has exceeded or abused the authority conferred upon it by law;

7 (3) Has carried on, conducted, or transacted its business in a fraudulent or illegal manner;

8 [or]

9 (4) By the abuse of its powers contrary to the public policy of the state, has become
10 liable to be dissolved; or

11 **(5) If the limited liability company is a low-profit limited liability company, has**
12 **ceased to meet any of the requirements described in paragraph (a) of subdivision (10) of**
13 **section 347.015 and for sixty days after it ceased to meet such requirements failed to file**
14 **a certificate of amendment amending its name to conform with the requirements of section**
15 **347.020.**

16 2. On application by or for a member, the circuit court for the county in which the
17 registered office of the limited liability company is located may decree dissolution of a limited
18 liability company whenever it is not reasonably practicable to carry on the business in conformity
19 with the operating agreement.

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