

SENATE BILL 1942

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 61,
relative to business entities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 61-3-101, is amended by adding the following appropriately designated subdivisions:

() "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the department of revenue;

() "Good standing with the department of revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the commissioner of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner;

() "Letter of good standing from the department of revenue" means a letter issued by the department of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner;

SECTION 2. Tennessee Code Annotated, Section 61-3-102(d)(2)(A), is amended by deleting "§ 61-3-802(b)(2)(F)" and substituting "§ 61-3-802(b)(1)(B)".

SECTION 3. Tennessee Code Annotated, Section 61-3-104(c)(20), is amended by deleting "§ 61-3-802(a), (b)(1), and (d)" and substituting "§ 61-3-802(a), (b)(1)(B), and (d)".

SECTION 4. Tennessee Code Annotated, Section 61-3-114(b), is amended by deleting the subsection and substituting the following:

(b)

(1) To register its name or an alternate name adopted pursuant to § 61-3-1006, a foreign limited partnership must deliver to the secretary of state for filing an application:

(A) Stating the partnership's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to § 61-3-1006; and

(B) Accompanied by a certificate of existence, or a document of similar import, from the jurisdiction of formation, bearing a date that is not more than one (1) month prior to the date the application is filed with the secretary of state.

(2) If the secretary of state finds that the name applied for is available, the secretary of state must register the name for the applicant's exclusive use.

SECTION 5. Tennessee Code Annotated, Section 61-3-117(c), is amended by deleting the language "is in good standing" and substituting the language "is active and in good standing as reflected in the records of the secretary of state".

SECTION 6. Tennessee Code Annotated, Section 61-3-118(a), is amended by deleting the language "its name or address" and substituting the language "the street address of the registered agent's business office" and by deleting subdivisions (3) and (4) and substituting the following:

(3) The agent's new street address including the zip code of its new registered office; and a mailing address such as a post office box if the United States postal service does not deliver to the new registered office; and the county in which the office is located.

SECTION 7. Tennessee Code Annotated, Section 61-3-207(a)(4), is amended by deleting the language "12:01 a.m." and substituting the language "4:30 p.m.".

SECTION 8. Tennessee Code Annotated, Section 61-3-211(a)(3), is amended by deleting the subdivision and substituting the following:

(3) The street address and zip code of its registered office and the name of its registered agent at that office in this state;

SECTION 9. Tennessee Code Annotated, Section 61-3-802(b), is amended by deleting the subsection and substituting the following:

(b) In winding up its activities and affairs:

(1) The limited partnership shall:

(A) Deliver to the secretary of state for filing a statement of dissolution; and

(B) Deliver to the secretary of state for filing a statement of termination stating:

(i) The name of the limited partnership;

(ii) A statement that the limited partnership's debts, obligations, and other liabilities are discharged;

(iii) A statement that the limited partnership's activities and affairs are settled and closed;

(iv) A statement that the limited partnership's assets are distributed; and

(v) A statement that the limited partnership is terminated.

(2) The limited partnership may:

(A) Preserve the limited partnership's activities, affairs, and property as a going concern for a reasonable time;

- (B) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;
- (C) Transfer the limited partnership's property;
- (D) Settle disputes by mediation or arbitration; and
- (E) Perform other acts necessary or appropriate to the winding up.

SECTION 10. Tennessee Code Annotated, Section 61-3-812(a)(1), is amended by inserting the language "with the department of revenue" between the word "standing" and "relative".

SECTION 11. Tennessee Code Annotated, Section 61-3-812(b), is amended by inserting the language "with the department of revenue" between the word "standing" and "and".

SECTION 12. Tennessee Code Annotated, Title 61, Chapter 3, Part 8, is amended by adding the following new sections:

61-3-814. Statement of termination following administrative dissolution.

(a) When a limited partnership has been administratively dissolved and wishes to terminate its existence, it may do so without first being reinstated by delivering a statement of termination to the secretary of state for filing following administrative dissolution, stating the name of the limited partnership and that the limited partnership is terminated.

(b) The secretary of state shall file the statement of termination following administrative dissolution if the secretary of state finds that the statement of termination complies with subsection (a) and the limited partnership is in good standing with the department of revenue.

61-3-815. Statement of termination.

(a) When a limited partnership has been dissolved and wishes to terminate its existence, it may do so by delivering a statement of termination to the secretary of state for filing and include the information described in § 61-3-802(b)(1)(B) and the secretary of state control number.

(b) The secretary of state shall file the statement of termination if the secretary of state finds that the statement of termination complies with subsection (a) and the limited partnership is in good standing with the department of revenue.

SECTION 13. Tennessee Code Annotated, Section 61-3-1003(b), is amended by deleting the language "confirmation of good standing" and substituting "letter of good standing from the department of revenue".

SECTION 14. Tennessee Code Annotated, Section 61-3-1008(a), is amended by deleting the language "must" from the first sentence and substituting the language "shall".

SECTION 15. Tennessee Code Annotated, Section 61-3-1008(a)(4), is amended by deleting the subdivision and substituting the following:

(4) The type of entity of the applicant foreign entity, its jurisdiction of formation, the date of its formation, its duration (if other than perpetual), and the date its fiscal year closes;

SECTION 16. Tennessee Code Annotated, Section 61-3-1008(a), is amended by adding the following appropriately designated subdivisions:

() The date the applicant foreign entity commenced doing business in this state;

() If the applicant foreign entity is a limited liability company:

(A) Whether it is manager managed, member managed, director managed, or board managed;

(B) If it has more than six (6) members at the date of the filing of the application, the number of members of the limited liability company at the date of the filing of the application; and

(C) If § 48-249-309(i) is applicable to the foreign limited liability company, the information required by § 48-249-309(i);

() If the applicant foreign entity is a corporation:

(A) The name and address, including city, state, and zip code, of each of its current officers;

(B) The name and address, including city, state, and zip code, of each of its current directors;

(C) A statement that it is (or is not, as the case may be) a corporation for profit; and

(D) Any additional designation, such as bank, captive insurance company, credit union, for-profit benefit corporation, insurance company, litigation financier, Massachusetts trust, professional corporation, or trust company;

() If the applicant foreign entity is a limited partnership, the name and address, including city, state, and zip code, of each of its current general partners;

() If the application is not to become effective immediately upon filing, the date (not later than ninety (90) days after the date of filing) and time the application is to become effective;

SECTION 17. Tennessee Code Annotated, Section 61-3-1008(b), is amended by deleting the subsection and substituting the following:

(b) The applicant foreign entity shall deliver with the completed application a certificate of existence, or document of similar import, duly authenticated by the

secretary of state or other official having custody of business entity records in the jurisdiction of the applicant foreign entity's formation. The certificate shall not bear a date more than two (2) months prior to the date the application is filed in this state.

SECTION 18. Tennessee Code Annotated, Section 61-3-1008, is amended by adding the following new subsections:

(c) If the applicant foreign entity is a limited liability company that elects to be registered as an obligated member entity pursuant to § 48-217-101(f), the application must:

(1) State that the limited liability company elects to be registered as an obligated member entity;

(2) State the effective date of this registration;

(3) State that the signer understands that this election will cause the members of the limited liability company to become liable for the debts, obligations, and liabilities of the limited liability company to the same extent as a partner of a general partnership; and

(4) Be accompanied by an obligated member addendum in the form prescribed by the secretary of state and signed by each person or entity that is a member of the limited liability company at the date of the filing of the application.

(d) If the secretary of state determines upon application that the applicant foreign entity has been transacting business in this state without a certificate of authority for a period of one (1) year or more, then the secretary of state shall not file the application until the applicant foreign entity submits a letter of good standing from the department of revenue.

(e) When an application for transfer of registration takes effect, the registration of the foreign limited partnership to do business in this state is transferred without

interruption to the foreign entity into which the partnership has merged or to which it has been converted.

SECTION 19. Tennessee Code Annotated, Section 61-3-1010, is amended by deleting subdivision (a)(1).

SECTION 20. Tennessee Code Annotated, Section 61-3-1010(b), is amended by deleting the language "the required certificate of existence or corresponding document" and substituting the language "a confirmation of good standing with the department of revenue".

SECTION 21. Tennessee Code Annotated, Section 61-3-1012(a), is amended by deleting the subsection and substituting the following:

(a) A registered foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation of registration accompanied by a confirmation of good standing with the department of revenue. The certificate of cancellation must state:

(1) The current name of the foreign limited partnership, and if different, the name under which it transacts business in this state;

(2) The name of the jurisdiction under the laws of which the foreign limited partnership is formed;

(3) That the foreign limited partnership is not doing business in this state and that it withdraws its registration to do business in this state;

(4) That foreign limited partnership either continues its registered agent in this state, or revokes the authority of its registered agent to accept service on its behalf in this state;

(5) A mailing address to which service of process may be made under subsection (b); and

(6) A commitment to notify the secretary of state in the future of any change in the mailing address set forth under subdivision (a)(5).

SECTION 22. Tennessee Code Annotated, Title 61, Chapter 3, Part 10, is amended by adding the following new section:

61-3-1014. Cancellation of registration following administrative revocation.

(a) When a foreign limited partnership that has had its registration revoked desires to cancel its registration it may do so without first being reinstated by filing with the secretary of state a certificate of cancellation of registration following administrative revocation of registration accompanied by a confirmation of good standing by the department of revenue. The certificate of cancellation of certificate of registration must set forth:

(1) The current name of the foreign limited partnership and, if different, the name under which the foreign limited partnership transacts business in this state; the date of revocation of foreign limited partnership registration; and the name of the jurisdiction under the laws of which the foreign limited partnership is formed;

(2) That the foreign limited partnership is not transacting business in this state and that it surrenders its authority to transact business in this state;

(3) That the foreign limited partnership either continues its registered agent in this state, or revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(4) A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subdivision (a)(3); and

(5) A commitment to notify the secretary of state in the future of any change in the mailing address set forth under subdivision (a)(4).

(b) After cancellation of the registration of the foreign limited partnership, service of process on the secretary of state or the continued registered agent under this section is service on the foreign limited partnership. Upon receipt of process, the secretary of state shall comply with § 61-3-121. However, the mailing address set forth under subdivision (a)(4), as it may be changed under subdivision (a)(5), shall be deemed to be the principal executive office of the foreign limited partnership, for purposes of the compliance with § 61-3-121 by the secretary of state.

SECTION 23. Tennessee Code Annotated, Section 61-3-1101(a)(23)(B)(iv), is amended by deleting the language "certificate" and substituting the language "articles".

SECTION 24. Tennessee Code Annotated, Section 61-3-1101(a)(25) and (26), is amended by deleting the language "statement" wherever it may appear and substituting the language "article" or "articles" as appropriate.

SECTION 25. Tennessee Code Annotated, Section 61-3-1107(c), is amended by deleting the language "a statement" and substituting the language "the articles".

SECTION 26. Tennessee Code Annotated, Section 61-3-1107(d), is amended by deleting the subsection and substituting the following:

(d) If a plan of merger is abandoned after articles of merger have been delivered to the secretary of state for filing and before the articles become effective, a statement of abandonment, signed by a party to the plan, must be delivered to the secretary of state for filing before the articles of merger become effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

(1) The name of each party to the plan of merger;

(2) The date on which the articles of merger were filed by the secretary of state; and

(3) A statement that the merger has been abandoned in accordance with this section.

SECTION 27. Tennessee Code Annotated, Section 61-3-1108(a), (b), and (c), except (b)(3), are amended by deleting the language "a statement" and substituting the language "articles" wherever it appears.

SECTION 28. Tennessee Code Annotated, Section 61-3-1108(e), is amended by deleting the subsection and substituting the following:

(e) If the surviving entity is a domestic limited partnership, the merger becomes effective when the articles of merger are effective. In all cases, the merger becomes effective on the later of:

(1) The date and time provided by the organic law of the surviving entity;

or

(2) When the articles are effective.

SECTION 29. Tennessee Code Annotated, Section 61-3-1113(b), is amended by deleting the language "a statement" and substituting the language "articles" and by deleting the language "becomes" and substituting "become".

SECTION 30. Tennessee Code Annotated, Section 61-3-1113(c), is amended by deleting the subsection and substituting the following:

(c) If a plan of conversion is abandoned after articles of conversion have been delivered to the secretary of state for filing and before the articles become effective, a statement of abandonment, signed by the converting entity, shall be delivered to the secretary of state for filing before the articles of conversion become effective. The

statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

- (1) The name of the converting limited partnership;
- (2) The date on which the articles of conversion were filed by the secretary of state; and
- (3) A statement that the conversion has been abandoned in accordance with this section.

SECTION 31. Tennessee Code Annotated, Section 61-3-1114(a), (b), and (c), except (b)(3), are amended by deleting the language "a statement" and substituting the language "articles" wherever it appears.

SECTION 32. Tennessee Code Annotated, Section 61-3-1114(e), is amended by deleting the language "statement of conversion is" and substituting the language "articles of conversion are".

SECTION 33. Tennessee Code Annotated, Section 61-3-1114(e)(2), is amended by deleting the subdivision and substituting the following:

- (2) When the articles are effective.

SECTION 34. Tennessee Code Annotated, Section 61-3-1205(a)(14), is amended by deleting the language "certificate" and substituting the language "articles".

SECTION 35. Tennessee Code Annotated, Section 61-3-1205(a)(23), is amended by deleting the subdivision and substituting the following:

- (23) Statement of withdrawn or rescinded dissolution of limited partnership - \$20.00; and

SECTION 36. Tennessee Code Annotated, Section 61-1-1001(a), is amended by deleting the language "its principal office;" and substituting the language "its principal office, and

a mailing address such as a post office box if the United States postal service does not deliver to the principal office".

SECTION 37. Tennessee Code Annotated, Section 61-1-1001(b), is amended by deleting the subsection and substituting the following:

(b) The application must be executed by one (1) or more partners authorized to execute an application. The registration of a general partnership or limited partnership as a registered limited liability partnership must be approved by a majority of the partners or as otherwise provided in the partnership agreement, or in the case of a limited partnership, by all of the partners, notwithstanding any provision to the contrary in the limited partnership agreement, unless such limited partnership was formed after July 1, 1995, and the original agreement of limited partnership provided for a conversion or a procedure of conversion of the limited partnership to a registered limited liability partnership without the consent of all partners, in which case the approval or procedure under the original limited partnership agreement shall be sufficient.

SECTION 38. Tennessee Code Annotated, Section 61-1-1001(f)(1)(B), is amended by deleting the subdivision and substituting the following:

(B) Accompanied by a tax clearance for termination confirmation of good standing by the department of revenue; or withdrawal relative to such registered limited liability partnership; or

SECTION 39. Tennessee Code Annotated, Section 61-1-1001(l), is amended by deleting the language "If a partnership registers as a registered limited liability partnership, a partner" and substituting the language "If a partnership registers as a registered limited liability partnership, a partner (in the case of a general partnership), or a general partner (in the case of a limited partnership)".

SECTION 40. Tennessee Code Annotated, Section 61-1-1001(o), is amended by deleting the subsection and substituting the following:

(o) The secretary of state may furnish, upon request and payment of a fee of twenty dollars (\$20.00), a certificate of good standing indicating confirmation that a registered limited liability partnership is registered active and in good standing.

SECTION 41. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act. The Tennessee Code Commission is also requested to change the language "statement" in the headings for Tennessee Code Annotated Sections 61-3-1108 and 61-3-1114 to the language "articles".

SECTION 42. This act shall take effect upon becoming a law, the public welfare requiring it.