

1 SB178  
2 196983-1  
3 By Senator Smitherman  
4 RFD: Fiscal Responsibility and Economic Development  
5 First Read: 02-APR-19

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8 SYNOPSIS: This bill would make certain technical  
9 corrections regarding the name of the Alabama  
10 Limited Liability Company Law, the ability of a  
11 partnership to continue as an entity for a brief  
12 period of time under the law with one partner or no  
13 partners, and the duty of a partner in a general  
14 partnership to not compete with the partnership  
15 before the partnership is dissolved.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 To amend Section 10A-5A-1.01, Code of Alabama 1975,  
22 and Sections 10A-8A-1.02 and 10A-8A-4.11, as added to the Code  
23 of Alabama 1975, by Act 2018-125 of the 2018 Regular Session,  
24 relating to business corporations; to make certain technical  
25 corrections regarding the name of the Alabama Limited  
26 Liability Company Law, the ability of a partnership to  
27 continue as an entity for a brief period of time under the law

1 with one partner or no partners, and the duty of a partner in  
2 a general partnership to not compete with the partnership  
3 before the partnership is dissolved; and to provide for a  
4 retroactive effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 10A-5A-1.01 of the Code of  
7 Alabama 1975, and Sections 10A-8A-1.02 and 10A-8A-4.11 of the  
8 Code of Alabama 1975, as added by Act 2018-125 of the 2018  
9 Regular Session, are amended to read as follows:

10 "§10A-5A-1.01.

11 "This chapter and the provisions of Chapter 1, to  
12 the extent applicable to limited liability companies, shall be  
13 known and may be cited as the "Alabama Limited Liability  
14 Company Law ~~of 2014.~~"

15 "§10A-8A-1.02.

16 "Notwithstanding Section 10A-1-1.03, as used in this  
17 chapter, unless the context otherwise requires, the following  
18 terms mean:

19 "(1) "Business" includes every trade, occupation,  
20 and profession for profit.

21 "(2) "Disqualified person" means any person who is  
22 not a qualified person.

23 "(3) "Distribution" except as otherwise provided in  
24 Section 10A-8A-4.09(f), means a transfer of money or other  
25 property from a partnership to another person on account of a  
26 transferable interest.

1           "(4) "Foreign limited liability partnership" means a  
2 foreign partnership whose partners have limited liability for  
3 the debts, obligations, or other liabilities of the foreign  
4 partnership under a provision similar to Section  
5 10A-8A-3.06(c).

6           "(5) "Foreign partnership" means a partnership  
7 governed by the laws of a jurisdiction other than this state  
8 which would be a partnership if governed by the laws of this  
9 state. The term includes a foreign limited liability  
10 partnership.

11           "(6) "Limited liability partnership", except in the  
12 phrase "foreign limited liability partnership", means a  
13 partnership that has filed a statement of limited liability  
14 partnership under Section 10A-8A-10.01, and does not have a  
15 similar statement in effect in any other jurisdiction.

16           "(7) "Not for profit activity" includes every  
17 undertaking not for profit.

18           "(8) "Partner" means a person that:

19           "(A) has become a partner in a partnership under  
20 Section 10A-8A-4.02 or was a partner in a partnership when the  
21 partnership became subject to this chapter; and

22           "(B) has not dissociated as a partner under Section  
23 10A-8A-6.01.

24           "(9) "Partnership" means an ~~association of two or~~  
25 ~~more persons~~ entity that is formed under Section 10A-8A-2.01,  
26 ~~predecessor statute, or comparable law of another jurisdiction~~  
27 ~~or becomes subject to the laws of this state pursuant to~~

1 ~~Section 10A-8A-1.06, to carry on any business or not for~~  
2 ~~profit activity, and this chapter or that is governed by this~~  
3 ~~chapter. The term includes, for all purposes of the laws of~~  
4 this state, a limited liability partnership.

5 "(10) "Partnership agreement" means any agreement  
6 (whether referred to as a partnership agreement or otherwise),  
7 written, oral or implied, of the partners as to the business  
8 or not for profit activity of a partnership. The partnership  
9 agreement includes any amendments to the partnership  
10 agreement.

11 "(11) "Partnership at will" means a partnership in  
12 which the partners have not agreed to remain partners until  
13 the expiration of a definite term or the completion of a  
14 particular undertaking.

15 "(12) "Person dissociated as a partner" means a  
16 person dissociated as a partner of a partnership.

17 "(13) "Qualified person," with respect to a  
18 partnership rendering professional services in this state,  
19 means a person authorized by this state or a regulatory  
20 authority of this state to own a transferable interest in that  
21 partnership.

22 "(14) "Required information" means the information  
23 that a partnership is required to maintain under Section  
24 10A-8A-1.11.

25 "(15) "Statement" means a statement of partnership  
26 under Section 10A-8A-2.02, a statement of not for profit  
27 partnership under Section 10A-8A-2.02, a statement of

1 authority under Section 10A-8A-3.03, a statement of denial  
2 under Section 10A-8A-3.04, a statement of dissociation under  
3 Section 10A-8A-7.04, a statement of dissolution under Section  
4 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of  
5 reinstatement under Section 10A-8A-8.11, a statement of  
6 limited liability partnership under Section 10A-8A-10.01, a  
7 statement of cancellation under Section 10A-8A-10.01, or any  
8 other document required or permitted to be delivered to the  
9 Secretary of State for filing under this chapter, or an  
10 amendment or cancellation of any of the foregoing.

11 "(16) "Transfer" means an assignment, conveyance,  
12 deed, bill of sale, lease, mortgage, security interest,  
13 encumbrance, gift, or transfer by operation of law.

14 "(17) "Transferable interest" means a partner's  
15 right to receive distributions from a partnership.

16 "(18) "Transferee" means a person to which all or  
17 part of a transferable interest has been transferred, whether  
18 or not the transferor is a partner.

19 "§10A-8A-4.11.

20 "(a) The duties that a partner has to the  
21 partnership and to the other partners include the duty of  
22 loyalty and the duty of care as described in subsections (b)  
23 and (c).

24 "(b) A partner's duty of loyalty to the partnership  
25 and to the other partners includes each of the following:

26 "(1) to account to the partnership and to hold as  
27 trustee for it any property, profit, or benefit derived by the

1 partner in the conduct or winding up of the partnership's  
2 business or not for profit activity or derived from a use by  
3 the partner of partnership property, including the  
4 appropriation of a partnership opportunity;

5 "(2) to refrain from dealing with the partnership in  
6 the conduct or winding up of the partnership's business or not  
7 for profit activity as or on behalf of a party having an  
8 interest adverse to the partnership; and

9 "(3) to refrain from competing with the partnership  
10 in the conduct ~~or winding up~~ of the partnership's business or  
11 not for profit activity before the dissolution of the  
12 partnership.

13 "(c) A partner's duty of care to the partnership and  
14 to the other partners in the conduct or winding up of the  
15 partnership's business or not for profit activity includes  
16 refraining from engaging in grossly negligent or reckless  
17 conduct, intentional misconduct, or a knowing violation of  
18 law.

19 "(d) A partner shall discharge the duties to the  
20 partnership and to the other partners under this chapter and  
21 under the partnership agreement and exercise any rights  
22 consistently with the implied contractual covenant of good  
23 faith and fair dealing.

24 "(e) A partner does not violate a duty or obligation  
25 under this chapter or under the partnership agreement merely  
26 because the partner's conduct furthers the partner's own  
27 interest."

1                   Section 2. This act shall become effective  
2           retroactive to January 1, 2019, following its passage and  
3           approval by the Governor, or its otherwise becoming law.