Stricken language would be deleted from and underlined language would be added to present law. Act 7 of the Second Extraordinary Session

1		A Bill	Call Item 5
2	,	A DIII	CENATE DILL
3			SENATE BILL 4
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6	7 1		
7 8		r An Act To Be Entitled	
9	AN ACT TO MODIFY THE UNIFORM LIMITED LIABILITY		
10	COMPANY ACT; TO CLARIFY THE APPLICABILITY OF THE		
11	UNIFORM LIMITED LIABILITY COMPANY ACT AND RELATED		
12	BUSINESS STATUTES; TO CONFIRM AND RETAIN THE LIMITED		
13		•	
14	LIABILITY STATUS AND LIMITED LIABILITY PROTECTION OF CERTAIN LIMITED LIABILITY COMPANIES; TO DECLARE AN		
15	EMERGENCY; AND FOR OTHER PURPOSES.		
16		N OTHER TORTOBED.	
17			
18		Subtitle	
19		THE APPLICABILITY OF THE	
20		ITED LIABILITY COMPANY ACT;	ТО
21		RETAIN THE LIMITED LIABILI	
22	STATUS AND	LIMITED LIABILITY PROTECTIO	ON
23	OF CERTAIN	LIMITED LIABILITY COMPANIES	5;
24	4 AND TO DECL	ARE AN EMERGENCY.	
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26	5		
27	BE IT ENACTED BY THE GENERAL	ASSEMBLY OF THE STATE OF A	RKANSAS:
28	3		
29	SECTION 1. DO NOT CODE	IFY. Implementation of Uni	form Limited Liability
30	Company Act.		
31	(a) The General Assemb	oly declares that:	
32	(1) Through inac	dvertence, Acts 2021, No. 1	041, § 1, provided for
33	the repeal of the Small Busin	ness Entity Tax Pass Throug	h Act, § 4-32-101 et
34	$\frac{1}{4}$ seq., effective ninety (90)	days after April 28, 2021,	rather than providing
35	for the repeal to become effective on September 1, 2021, to correspond with		
36	the effective date of the Uniform Limited Liability Company Act, § 4-38-101		

1 et seq., enacted by Acts 2021, No. 1041, § 26, and the transition provisions 2 provided therein; 3 (2) It is the intent of this act to: 4 (A) Treat the repeal of the Small Business Entity Tax Pass 5 Through Act, § 4-32-101 et seq., and all references contained in Acts 2021, 6 No. 1041, to the Small Business Entity Tax Pass Through Act, § 4-32-101 et 7 seq., by Acts 2021, No. 1041, as effective on September 1, 2021; (B) Provide for all purposes, including without limitation 8 9 upon the books and records of the Secretary of State, the continued existence 10 of all limited liability companies formed or registered to do business under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., and 11 12 continuing to operate thereunder but for the repeal of the Small Business 13 Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, until September 1, 2021, at which time all such limited liability companies 14 15 will begin operating under the Uniform Limited Liability Company Act, § 4-38-16 101 et seq., except as otherwise provided by law; 17 (C) Ratify all actions taken by a limited liability company that occurred after July 27, 2021, and before September 1, 2021, that 18 19 would have been authorized or required under the Small Business Entity Tax 20 Pass Through Act, § 4-32-101 et seq., but for its repeal by Acts 2021, No. 21 1041, § 1; and 22 (D) Require the Secretary of State to continue the 23 registration and other filings of all limited liability companies formed or 24 registered to do business and operating under the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., that were not voluntarily or 25 involuntarily dissolved before September 1, 2021, with no change in status 26 27 except as provided by the Uniform Limited Liability Company Act, § 4-38-101 et seq., enacted by Acts 2021, No. 1041, § 26, or other applicable law; 28 29 (3) A limited liability company formed or registered to do 30 business before September 1, 2021, and not dissolved or terminated retains 31 its status as a limited liability company without interruption until 32 otherwise dissolved or terminated; and (4) Section 4-38-110 applies to a limited liability company 33 34 formed or registered to do business before September 1, 2021, notwithstanding 35 the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et 36 seq., by Acts 2021, No. 1041, § 1.

- 1 (b) The General Assembly ratifies, validates, confirms, approves, and
- 2 <u>cures the following that occurred after July 27, 2021, and before September</u>
- 3 1, 2021:
- 4 (1) Any act by a limited liability company that would have been
- 5 authorized or required under the Small Business Entity Tax Pass Through Act,
- 6 § 4-32-101 et seq., but for its repeal by Acts 2021, No. 1041, § 1; and
- 7 (2) In reference to a limited liability company, any action of a
- 8 public or private individual or entity that would have been valid under the
- 9 <u>Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its</u>
- 10 repeal by Acts 2021, No. 1041, § 1.
- 11 (c) The General Assembly recognizes the validity, notwithstanding the
- 12 repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.,
- 13 by Acts 2021, No. 1041, § 1, of the following actions that may have occurred
- 14 after July 27, 2021, and before September 1, 2021, by a limited liability
- 15 company if the actions are otherwise valid:
- (1) Issuance of any bonds, notes, warrants, certificates, or
- 17 <u>other evidences of indebtedness;</u>
- 18 (2) Any action regarding a title to property;
- 19 <u>(3) Any cause of action or other legal claim or right arising</u>
- 20 from an action taken or a failure to act;
- 21 (4) Creation and approval of any contracts, agreements,
- 22 licenses, or other documents; and
- 23 (5) Any transaction or other act entered into or performed by a
- 24 limited liability company that would have been authorized or permitted under
- 25 the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for
- 26 <u>its repeal by Acts 2021, No. 1041, § 1.</u>
- 27 (d) The act or acts of a member or manager of a limited liability
- 28 company that would have been protected against personal liability under the
- 29 <u>Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., but for its</u>
- 30 repeal by Acts 2021, No. 1041, § 1, shall be protected against personal
- 31 <u>liability to the same extent as provided by the Small Business Entity Tax</u>
- 32 Pass Through Act, § 4-32-101 et seq., had it not been repealed by Acts 2021,
- 33 No. 1041, § 1.
- 34 (e) The General Assembly declares that a limited liability company
- 35 formed or registered to do business before September 1, 2021, and otherwise
- 36 <u>in compliance with the Small Business Entity Tax Pass Through Act, § 4-32-101</u>

2	1, retains its status as a limited liability company without interruption	
3	until otherwise dissolved or terminated.	
4	(f)(1) This act is not intended to destroy or otherwise disturb any	
5	vested rights.	
6	(2) If a right is found by a court to be a vested right, the	
7	court shall uphold the vested right.	
8		
9	SECTION 2. Arkansas Code § 4-38-110 is amended to read as follows:	
10	4-38-110. Application to existing relationships.	
11	(a) Before September 1, 2021, this This chapter governs only:	
12	(1) a limited liability company formed or registered to do	
13	business on or after September 1, 2021; and	
14	(2) except as otherwise provided in subsection (c), a limited	
15	liability company formed or registered to do business before September 1,	
16	2021, which elects, in the manner provided in its operating agreement or by	
17	operation of law for amending the operating agreement, to be subject to this	
18	chapter.	
19	(b) Except as otherwise provided in subsection (c), on and after	
20	September 1, 2021, this chapter governs all limited liability companies.	
21	(c) For purposes of applying this chapter to a limited liability	
22	company formed or registered to do business before September 1, 2021:	
23	(1) the company's articles of organization are deemed to be the	
24	company's certificate of organization; and	
25	(2) for purposes of applying $$4-38-102(10)$$ and subject to $$4-$	
26	38-107(d), language in the company's articles of organization designating the	
27	company's management structure operates as if that language were in the	
28	operating agreement.	
29		
30	SECTION 3. Arkansas Code Title 4, Chapter 38, Subchapter 12, is	
31	amended to read as follows:	
32	Subchapter 12 — Medical or Dental Limited Liability Company Professional	
33	<u>Limited Liability Companies</u>	
34		
35	4-38-1201. Applicability — Definition.	
36	(a) As used in this subchapter, "professional service" means a service	

1 et seq., on September 1, 2021, but for its repeal by Acts 2021, No. 1041, §

- 1 that may be legally performed under a license or other legally mandated
- 2 personal authorization, including without limitation services rendered by
- 3 <u>certified public accountants</u>, architects, engineers, dentists, physicians,
- 4 and attorneys at law.
- 5 <u>(b) This subchapter applies only to a limited liability company that</u> 6 provides a professional service.

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- 8 4-38-1201. 4-38-1202. Certification of registration.
- 9 (a) A limited liability company formed under this chapter and that 10 will engage in the practice of medicine must obtain a certificate of
- 11 registration from the Arkansas State Medical Board and must comply with the
- 12 statutes of the Medical Corporation Act, § 4-29-301 et seq.
- 13 (b) A limited liability company formed under this chapter and that
- 14 will engage in the practice of dentistry must obtain a certificate of
- 15 registration and comply with the statutes in the Dental Corporation Act, § 4-
- 16 29-401 et seq.
- 17 (c)(1) An applicant seeking to register a limited liability company
- 18 <u>under this chapter shall obtain the necessary authorization required by its</u>
- 19 <u>licensing authority to:</u>
- 20 <u>(A) register as a professional limited liability company</u>
- 21 under this chapter; and
- 22 (B) use the name proposed by the applicant for
- 23 registration with the Secretary of State.
- 24 (2) The Secretary of State may require satisfactory proof of
- 25 <u>compliance with this section before registration.</u>

26

- 27 4-38-1202 4-38-1203. Name Medical or dental Professional limited
- 28 liability company.
- 29 (a) The name of a limited liability company which performs a
- 30 professional service shall contain the words "Professional Limited Liability
- 31 Company" or "Professional Limited Company" or the abbreviations "P.L.L.C.",
- 32 "P.L.C.", "PLLC", "PLC", and the words "Limited" and "Company" may be
- 33 abbreviated as "Ltd." or "Co." and may not contain the name of any person who
- 34 is not a member, except that the name of a former member or member of a
- 35 predecessor organization may continue to be included in the name.
- 36 (b) A limited liability company formed under this chapter, including

1 medical, dental, and professional companies, shall have only one corporate 2 suffix, as allowed by subsection (a). 3 SECTION 4. DO NOT CODIFY. (a) A limited liability company that 4 5 registered, filed, or took any action, including without limitation payment 6 for an action or service, with the office of the Secretary of State after 7 July 27, 2021, and before September 1, 2021, is not required to reregister, 8 refile, or make further payment for the same action or service. 9 (b) The Secretary of State shall continue the registration and other 10 filings of all limited liability companies formed or registered to do 11 business and existing under the Small Business Entity Tax Pass Through Act, § 12 4-32-101 et seq., that were not voluntarily or involuntarily dissolved before 13 September 1, 2021, with no change in status except as provided by the Uniform Limited Liability Company Act, § 4-38-101 et seq., enacted by Acts 2021, No. 14 15 1041, § 26, or other applicable law. 16 17 SECTION 5. DO NOT CODIFY. Additional savings provisions. 18 (a) It is the intent of this section to: 19 (1) Provide for the transition and continuous operation and 20 effect of additional provisions of Arkansas law related to limited liability companies and other business entities, whether or not specifically referenced 21 22 in Acts 2021, No. 1041, including without limitation provisions affecting the 23 operation and taxation aspects of limited liability companies and other 24 business entities: 25 (A) Under the Uniform Protected Series Act, § 4-37-101 et 26 seq.; and 27 (B) Concerning the authorized and unauthorized use of 28 business names; and 29 (2) Ratify, validate, confirm, approve, and cure any actions 30 under a codified or uncodified provision described in this section. (b) For the period of time after July 27, 2021, and before September 31 32 1, 2021, with respect to Acts 2021, No. 1041, §§ 2-25, 27-30, 32, 34, and 36, 33 concerning various definitions and transition provisions from the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., to the Uniform 34 Limited Liability Company Act, § 4-38-101 et seq., the stricken words "Small 35 Business Entity Tax Pass Through Act, § 4-38-101 et seq.", and all stricken 36

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provisions of the Small Business Entity Tax Pass Through Act, § 4-38-101 et
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    seq., shall be treated as unstricken and operative and the underlined words
 3
     "Uniform Limited Liability Company Act, § 4-38-101 et seq." and all
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    underlined provisions of the Uniform Limited Liability Company Act, § 4-38-
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    101 et seq. shall be treated as stricken and inoperative.
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           (c) Any action or obligation of any public or private individual or
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    entity that occurred under the following sections after July 27, 2021, and
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    before September 1, 2021, that would have been valid and effective but for
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    the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et
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     seq., by Acts 2021, No. 1041, § 1, is ratified, validated, confirmed,
     approved, and cured notwithstanding the repeal of the Small Business Entity
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    Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1:
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                (1) Section 4-37-102(8), amended by Acts 2021, No. 1041, § 2;
                (2) Section 4-37-102(12), amended by Acts 2021, No. 1041, § 3;
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                (3) Section 4-37-102(13), amended by Acts 2021, No. 1041, § 4;
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                (4) Section 4-37-102(14), amended by Acts 2021, No. 1041, § 5;
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                (5) Section 4-37-102(20), amended by Acts 2021, No. 1041, § 6;
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                (6) Section 4-37-106, amended by Acts 2021, No. 1041, § 7;
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                (7) Section 4-37-107(a)(4), amended by Acts 2021, No. 1041, § 8;
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                (8) Section 4-37-108, amended by Acts 2021, No. 1041, § 9;
                (9) Section 4-37-201(c), amended by Acts 2021, No. 1041, § 10;
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                (10) Section 4-37-201(d), amended by Acts 2021, No. 1041, § 11;
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                (11) Section 4-37-202, amended by Acts 2021, No. 1041, § 12;
                (12) Section 4-37-204(a)(3), amended by Acts 2021, No. 1041, §
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    13;
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                (13) Section 4-37-304(f), amended by Acts 2021, No. 1041, § 14;
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                (14) Section 4-37-304(g), amended by Acts 2021, No. 1041, § 15;
                (15) Section 4-37-305, amended by Acts 2021, No. 1041, § 16;
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                (16) Section 4-37-403, amended by Acts 2021, No. 1041, § 17;
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                (17) Section 4-37-502, amended by Acts 2021, No. 1041, § 18;
                (18) Section 4-37-503, amended by Acts 2021, No. 1041, § 19;
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                (19) Section 4-37-604, amended by Acts 2021, No. 1041, § 20;
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                (20) Section 4-37-605(1), amended by Acts 2021, No. 1041, § 21;
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34
                (21) Section 4-37-606(1), amended by Acts 2021, No. 1041, § 22;
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                (22) Section 4-37-607, amended by Acts 2021, No. 1041, § 23;
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                (23) Section 4-37-703(c), amended by Acts 2021, No. 1041, § 24;
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1 (24) Section 4-37-703(d), amended by Acts 2021, No. 1041, § 25; 2 (25) Section 4-42-707(b), amended by Acts 2021, No. 1041, § 27; 3 (26) Section 4-47-905(a), amended by Acts 2021, No. 1041, § 28; 4 (27) Section 4-70-201(c), amended by Acts 2021, No. 1041, § 29; 5 (28) Section 15-4-1215(b), amended by Acts 2021, No. 1041, § 30; 6 (29) Section 26-18-303(b)(14)(B), amended by Acts 2021, No. 7 1041, § 32; 8 (30) Section 26-54-104(8), amended by Acts 2021, No. 1041, § 34; 9 and 10 (31) Section 26-54-105(h)(2), amended by Acts 2021, No. 1041, § 11 36. 12 (d) Before September 1, 2021, to the extent any codified or uncodified 13 provision of Arkansas law is derived from or depends upon any provision of 14 the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., for its 15 meaning or operation: 16 (1) The provisions of the Small Business Entity Tax Pass Through 17 Act, § 4-32-101 et seq., shall be treated as remaining in full force and 18 effect solely for the limited purpose of supplying the requisite meaning or 19 operation to the codified or uncodified provision; and 20 (2) Any action or obligation of any public or private individual or entity that occurred after July 27, 2021, and before September 1, 2021, 21 22 under a codified or uncodified provision of Arkansas law that would have been 23 valid and effective but for the repeal of the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, No. 1041, § 1, is ratified, 24 25 validated, confirmed, approved, and cured notwithstanding the repeal of the 26 Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 2021, 27 No. 1041, § 1. 28 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the 29 General Assembly of the State of Arkansas that the transition, 30 implementation, and deadlines required under Acts 2021, No. 1041, require 31 further legislative clarification to preserve the public peace, health, and 32 safety; that without legislative clarification the impact of the repeal of 33 34 the Small Business Entity Tax Pass Through Act, § 4-32-101 et seq., by Acts 35 2021, No. 1041, § 1, could negatively impact the public peace, health, and 36 safety by affecting the actions, operations, and legal rights and duties of

1	limited liability companies that were formed or registered to do business
2	before September 1, 2021; and that this act is immediately necessary to
3	clarify the effectiveness and application of the law to both existing limited
4	liability companies and newly formed limited liability companies, registered
5	to do business, or revised after July 27, 2021, and before September 1, 2021,
6	to avoid any unnecessary financial uncertainty and to protect the business
7	health of the state by ensuring the efficient, orderly, and valid conduct of
8	business in the state. Therefore, an emergency is declared to exist, and
9	this act being immediately necessary for the preservation of the public
10	peace, health, and safety shall become effective on:
11	(1) The date of its approval by the Governor;
12	(2) If the bill is neither approved nor vetoed by the Governor,
13	the expiration of the period of time during which the Governor may veto the
14	bill; or
15	(3) If the bill is vetoed by the Governor and the veto is
16	overridden, the date the last house overrides the veto.
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19	APPROVED: 12/9/21
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