

# SB0055



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB0055

Introduced 1/30/2009, by Sen. Michael Bond

#### SYNOPSIS AS INTRODUCED:

805 ILCS 180/1-5  
805 ILCS 180/1-10  
805 ILCS 180/5-5

Amends the Limited Liability Company Act. Allows for the creation of a low-profit limited liability company or L3C. Defines "L3C" or "low-profit limited liability company" to mean a company organized for a business purpose that satisfies and is at all times operated to satisfy each of the following requirements: (1) it significantly furthers the accomplishment of one or more educational purposes within the meaning of the Internal Revenue Code of 1986 and would not have been formed but for the company's relationship to the accomplishment of charitable or educational purposes; (2) no significant purpose of the company is the production of income or the appreciation of property; and the purpose of the company is not to accomplish one or more political or legislative purposes. Also provides that a company that met the definition of a low-profit limited liability company at its formation will cease to exist as a low-profit limited liability company once it fails to satisfy any one of the Act's requirements, but will instead continue as a limited liability company. Makes other changes. Effective immediately.

LRB096 03537 KTG 13562 b

A BILL FOR

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Limited Liability Company Act is amended by  
5 changing Sections 1-5, 1-10, and 5-5 as follows:

6 (805 ILCS 180/1-5)

7 Sec. 1-5. Definitions. As used in this Act, unless the  
8 context otherwise requires:

9 "Anniversary" means that day every year exactly one or more  
10 years after: (i) the date the articles of organization filed  
11 under Section 5-5 of this Act were filed by the Office of the  
12 Secretary of State, in the case of a limited liability company;  
13 or (ii) the date the application for admission to transact  
14 business filed under Section 45-5 of this Act was filed by the  
15 Office of the Secretary of State, in the case of a foreign  
16 limited liability company.

17 "Anniversary month" means the month in which the  
18 anniversary of the limited liability company occurs.

19 "Articles of organization" means the articles of  
20 organization filed by the Secretary of State for the purpose of  
21 forming a limited liability company as specified in Article 5.

22 "Assumed limited liability company name" means any limited  
23 liability company name other than the true limited liability

1 company name, except that the identification by a limited  
2 liability company of its business with a trademark or service  
3 mark of which it is the owner or licensed user shall not  
4 constitute the use of an assumed name under this Act.

5 "Bankruptcy" means bankruptcy under the Federal Bankruptcy  
6 Code of 1978, Title 11, Chapter 7 of the United States Code.

7 "Business" includes every trade, occupation, profession,  
8 and other lawful purpose, whether or not carried on for profit.

9 "Contribution" means any cash, property, or services  
10 rendered or a promissory note or other binding obligation to  
11 contribute cash or property or to perform services, that a  
12 person contributes to the limited liability company in that  
13 person's capacity as a member.

14 "Court" includes every court and judge having jurisdiction  
15 in a case.

16 "Debtor in bankruptcy" means a person who is the subject of  
17 an order for relief under Title 11 of the United States Code, a  
18 comparable order under a successor statute of general  
19 application, or a comparable order under federal, state, or  
20 foreign law governing insolvency.

21 "Distribution" means a transfer of money, property, or  
22 other benefit from a limited liability company to a member in  
23 the member's capacity as a member or to a transferee of the  
24 member's distributional interest.

25 "Distributional interest" means all of a member's interest  
26 in distributions by the limited liability company.

1 "Entity" means a person other than an individual.

2 "Federal employer identification number" means either (i)  
3 the federal employer identification number assigned by the  
4 Internal Revenue Service to the limited liability company or  
5 foreign limited liability company or (ii) in the case of a  
6 limited liability company or foreign limited liability company  
7 not required to have a federal employer identification number,  
8 any other number that may be assigned by the Internal Revenue  
9 Service for purposes of identification.

10 "Foreign limited liability company" means an  
11 unincorporated entity organized under laws other than the laws  
12 of this State that afford limited liability to its owners  
13 comparable to the liability under Section 10-10 and is not  
14 required to register to transact business under any law of this  
15 State other than this Act.

16 "Insolvent" means that a limited liability company is  
17 unable to pay its debts as they become due in the usual course  
18 of its business.

19 "Limited liability company" means a limited liability  
20 company organized under this Act.

21 "L3C" or "low-profit limited liability company" means a  
22 company organized under this Act that is organized for a  
23 business purpose that satisfies and is at all times operated to  
24 satisfy each of the following requirements:

25 (a) The company:

26 (1) significantly furthers the accomplishment of

1 one or more charitable or educational purposes within  
2 the meaning of Section 170(c)(2)(B) of the Internal  
3 Revenue Code of 1986, 26 U.S.C. 170(c)(2)(B); and

4 (2) would not have been formed but for the  
5 company's relationship to the accomplishment of  
6 charitable or educational purposes.

7 (b) No significant purpose of the company is the  
8 production of income or the appreciation of property;  
9 provided, however, that the fact that a person produces  
10 significant income or capital appreciation shall not, in  
11 the absence of other factors, be conclusive evidence of a  
12 significant purpose involving the production of income or  
13 the appreciation of property.

14 (c) No purpose of the company is to accomplish one or  
15 more political or legislative purposes within the meaning  
16 of Section 170(c)(2)(D) of the Internal Revenue Code of  
17 1986, 26 U.S.C. 170(c)(2)(D).

18 (d) If a company that met the definition of this  
19 Section (1-5) at its formation at any time ceases to  
20 satisfy any one of the requirements, it shall immediately  
21 cease to be a low-profit limited liability company, but by  
22 continuing to meet all the other requirements of this Act,  
23 will continue to exist as a limited liability company. The  
24 name of the company must be changed to be in conformance  
25 with Section 1-10 of this Act.

26 "Manager" means a person, whether or not a member of a

1 manager-managed company, who is vested with authority under  
2 Section 13-5.

3 "Manager-managed company" means a limited liability  
4 company which is so designated in its articles of organization.

5 "Member" means a person who becomes a member of the limited  
6 liability company upon formation of the company or in the  
7 manner and at the time provided in the operating agreement or,  
8 if the operating agreement does not so provide, in the manner  
9 and at the time provided in this Act.

10 "Member-managed company" means a limited liability company  
11 other than a manager-managed company.

12 "Membership interest" means a member's rights in the  
13 limited liability company, including the member's right to  
14 receive distributions of the limited liability company's  
15 assets.

16 "Operating agreement" means the agreement under Section  
17 15-5 concerning the relations among the members, managers, and  
18 limited liability company. The term "operating agreement"  
19 includes amendments to the agreement.

20 "Organizer" means one of the signers of the original  
21 articles of organization.

22 "Person" means an individual, partnership, domestic or  
23 foreign limited partnership, limited liability company or  
24 foreign limited liability company, trust, estate, association,  
25 corporation, governmental body, or other juridical being.

26 "Registered office" means that office maintained by the

1 limited liability company in this State, the address, including  
2 street, number, city and county, of which is on file in the  
3 office of the Secretary of State, at which, any process,  
4 notice, or demand required or permitted by law may be served  
5 upon the registered agent of the limited liability company.

6 "Registered agent" means a person who is an agent for  
7 service of process on the limited liability company who is  
8 appointed by the limited liability company and whose address is  
9 the registered office of the limited liability company.

10 "Restated articles of organization" means the articles of  
11 organization restated as provided in Section 5-30.

12 "State" means a state, territory, or possession of the  
13 United States, the District of Columbia, or the Commonwealth of  
14 Puerto Rico.

15 "Transfer" includes an assignment, conveyance, deed, bill  
16 of sale, lease, mortgage, security interest, encumbrance, and  
17 gift.

18 (Source: P.A. 90-424, eff. 1-1-98.)

19 (805 ILCS 180/1-10)

20 Sec. 1-10. Limited liability company name.

21 (a) Except for the low-profit limited liability companies,  
22 the ~~The~~ name of each limited liability company as set forth in  
23 its articles of organization:

24 (1) shall contain the terms "limited liability  
25 company", "L.L.C.", or "LLC";

1           (2) may not contain a word or phrase, or an  
2 abbreviation or derivation thereof, the use of which is  
3 prohibited or restricted by any other statute of this State  
4 unless the restriction has been complied with;

5           (3) shall consist of letters of the English alphabet,  
6 Arabic or Roman numerals, or symbols capable of being  
7 readily reproduced by the Office of the Secretary of State;

8           (4) shall not contain any of the following terms:  
9 "Corporation," "Corp.," "Incorporated," "Inc.," "Ltd.,"  
10 "Co.," "Limited Partnership" or "L.P.";

11           (5) shall be the name under which the limited liability  
12 company transacts business in this State unless the limited  
13 liability company also elects to adopt an assumed name or  
14 names as provided in this Act; provided, however, that the  
15 limited liability company may use any divisional  
16 designation or trade name without complying with the  
17 requirements of this Act, provided the limited liability  
18 company also clearly discloses its name;

19           (6) shall not contain any word or phrase that indicates  
20 or implies that the limited liability company is authorized  
21 or empowered to be in the business of a corporate fiduciary  
22 unless otherwise permitted by the Commissioner of the  
23 Office of Banks and Real Estate under Section 1-9 of the  
24 Corporate Fiduciary Act. The word "trust", "trustee", or  
25 "fiduciary" may be used by a limited liability company only  
26 if it has first complied with Section 1-9 of the Corporate

1 Fiduciary Act; and

2 (7) shall contain the word "trust", if it is a limited  
3 liability company organized for the purpose of accepting  
4 and executing trusts.

5 (a-5) The name of a low-profit limited liability company as  
6 defined in Section 1-5 of this Act shall contain the  
7 abbreviation L3C or l3c.

8 (b) Nothing in this Section or Section 1-20 shall abrogate  
9 or limit the common law or statutory law of unfair competition  
10 or unfair trade practices, nor derogate from the common law or  
11 principles of equity or the statutes of this State or of the  
12 United States of America with respect to the right to acquire  
13 and protect copyrights, trade names, trademarks, service  
14 marks, service names, or any other right to the exclusive use  
15 of names or symbols.

16 (c) (Blank).

17 (d) The name shall be distinguishable upon the records in  
18 the Office of the Secretary of State from all of the following:

19 (1) Any limited liability company that has articles of  
20 organization filed with the Secretary of State under  
21 Section 5-5.

22 (2) Any foreign limited liability company admitted to  
23 transact business in this State.

24 (3) Any name for which an exclusive right has been  
25 reserved in the Office of the Secretary of State under  
26 Section 1-15.

1           (4) Any assumed name that is registered with the  
2 Secretary of State under Section 1-20.

3           (5) Any corporate name or assumed corporate name of a  
4 domestic or foreign corporation subject to the provisions  
5 of Section 4.05 of the Business Corporation Act of 1983 or  
6 Section 104.05 of the General Not For Profit Corporation  
7 Act of 1986.

8           (e) The provisions of subsection (d) of this Section shall  
9 not apply if the organizer files with the Secretary of State a  
10 certified copy of a final decree of a court of competent  
11 jurisdiction establishing the prior right of the applicant to  
12 the use of that name in this State.

13           (f) The Secretary of State shall determine whether a name  
14 is "distinguishable" from another name for the purposes of this  
15 Act. Without excluding other names that may not constitute  
16 distinguishable names in this State, a name is not considered  
17 distinguishable, for purposes of this Act, solely because it  
18 contains one or more of the following:

19           (1) The word "limited", "liability" or "company" or an  
20 abbreviation of one of those words.

21           (2) Articles, conjunctions, contractions,  
22 abbreviations, or different tenses or number of the same  
23 word.

24 (Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)

25 (805 ILCS 180/5-5)

1           Sec. 5-5. Articles of organization.

2           (a) The articles of organization shall set forth all of the  
3 following:

4           (1) The name of the limited liability company and the  
5 address of its principal place of business which may, but  
6 need not be a place of business in this State.

7           (2) The purposes for which the limited liability  
8 company is organized, which may be stated to be, or to  
9 include, the transaction of any or all lawful businesses  
10 for which limited liability companies may be organized  
11 under this Act.

12           (3) The name of its registered agent and the address of  
13 its registered office.

14           (3.1) If the company is to be a low-profit limited  
15 liability company, a statement indicating that it is a  
16 low-profit limited liability company.

17           (4) If the limited liability company is to be managed  
18 by a manager or managers, the names and business addresses  
19 of the initial manager or managers.

20           (5) If management of the limited liability company is  
21 to be vested in the members under Section 15-1, then the  
22 names and addresses of the initial member or members.

23           (6) The latest date, if any, upon which the limited  
24 liability company is to dissolve and other events of  
25 dissolution, if any, that may be agreed upon by the members  
26 under Section 35-1 hereof.

1 (7) The name and address of each organizer.

2 (8) Any other provision, not inconsistent with law,  
3 that the members elect to set out in the articles of  
4 organization for the regulation of the internal affairs of  
5 the limited liability company, including any provisions  
6 that, under this Act, are required or permitted to be set  
7 out in the operating agreement of the limited liability  
8 company.

9 (b) A limited liability company is organized at the time  
10 articles of organization are filed by the Secretary of State or  
11 at any later time, not more than 60 days after the filing of  
12 the articles of organization, specified in the articles of  
13 organization.

14 (c) Articles of organization for the organization of a  
15 limited liability company for the purpose of accepting and  
16 executing trusts shall not be filed by the Secretary of State  
17 until there is delivered to him or her a statement executed by  
18 the Commissioner of the Office of Banks and Real Estate that  
19 the organizers of the limited liability company have made  
20 arrangements with the Commissioner of the Office of Banks and  
21 Real Estate to comply with the Corporate Fiduciary Act.

22 (d) Articles of organization for the organization of a  
23 limited liability company as a bank or a savings bank must be  
24 filed with the Commissioner of Banks and Real Estate or, if the  
25 bank or savings bank will be organized under federal law, with  
26 the appropriate federal banking regulator.

1 (Source: P.A. 93-561, eff. 1-1-04.)

2 Section 99. Effective date. This Act takes effect upon  
3 becoming law.