

CHAPTER NO. 418

SENATE BILL NO. 1012

By McNally

Substituted for: House Bill No. 708

By Overbey, Black, Caldwell, Ferguson

AN ACT To amend Tennessee Code Annotated, Title 16; Title 23, Chapter 1, Part 1; Title 48 and Title 61, Chapter 2, relative to certain partnerships or corporations.

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

SECTION 1. Tennessee Code Annotated, Title 48, Chapter 101, is amended by adding the following new part:

48-101-701. This act shall be known and may be cited as the "Nonprofit Limited Liability Company Act of 2001."

48-101-702. As used in this act, unless the context otherwise requires:

(1) "Limited liability company" or "LLC" means a limited liability company, foreign or domestic, organized under or subject to the provisions of the Tennessee Limited Liability Company Act compiled in Chapters 201-248 of this title.

(2) "Nonprofit corporation", for the purposes of this part, means a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of Chapters 51-68 of this title and is exempt from franchise and excise tax as not-for-profit as defined in Section 67-4-2004(15).

(3) "Nonprofit limited liability company" or "nonprofit LLC" means a limited liability company (i) that is disregarded as an entity for federal income tax purposes and (ii) whose sole member is a nonprofit corporation, foreign or domestic, incorporated under or subject to the provisions of Chapters 51-68 of this title and is exempt from franchise and excise tax as not-for-profit as defined in Section 67-4-2004(15).

(4) "Parent nonprofit corporation" means a nonprofit corporation that is the sole member of a nonprofit corporation.

(5) "Subsidiary nonprofit corporation" means a nonprofit corporation whose sole member is a nonprofit corporation.

48-101-703. The Tennessee Limited Liability Company Act shall apply to nonprofit limited liability companies, both domestic and foreign, to the extent not inconsistent with this act.

48-101-704. A nonprofit corporation may organize a nonprofit LLC by filing articles of organization prominently designating it as a nonprofit limited liability company with the office of the secretary of state consistent with the Tennessee Limited Liability Company Act; provided, that an LLC shall qualify as a nonprofit LLC only if the LLC is disregarded as an entity for federal income tax

purposes. No more than one (1) nonprofit corporation may be a member of a nonprofit LLC.

48-101-705.(a) The standards of conduct established in Sections 48-58-301, 48-58-302, 48-58-303, 48-58-304, and 48-58-403 applicable to the directors, officers, employees and agents of the nonprofit corporation that is the sole member of a nonprofit LLC shall likewise apply to the governors, managers, employees and agents of the nonprofit LLC.

(b) The indemnification provisions of Chapter 58, Part 5 of this title applicable to the directors, officers, employees and agents of the nonprofit corporation that is the sole member of a nonprofit LLC shall likewise apply to the governors, managers, employees and agents of the nonprofit LLC.

(c) The limitation of actions and immunity from actions provided in Chapter 58, Part 6 of this title applicable to the directors, officers, trustees and members of the nonprofit corporation that is the sole member of a nonprofit LLC shall likewise apply to the governors and managers of the nonprofit LLC.

(d) The attorney general and reporter shall have such authority, rights and obligations over nonprofit LLCs as the attorney general and reporter have over nonprofit corporations pursuant to Chapters 51-68 of this title.

(e) If the nonprofit corporation that is the sole member of the nonprofit LLC is a "private foundation" as defined in Section 509(a) of the Internal Revenue Code of 1986 (26 U.S.C. § 509a), the requirements of Section 48-51-501 shall likewise apply to the nonprofit LLC.

48-101-706. Consistent with Section 67-4-2007(d) for excise tax purposes and Section 67-4-2106(c) for franchise tax purposes, a nonprofit LLC shall be disregarded as an entity separate from the nonprofit corporation that is the sole member of the nonprofit LLC for purposes of all state and local Tennessee taxes. The nonprofit LLC shall file annual reports and other filings with the office of the secretary of state as required of all LLCs.

48-101-707. (a) A subsidiary nonprofit corporation incorporated in this state may be converted to a nonprofit LLC pursuant to this section.

(b) The terms and conditions of a conversion of a subsidiary nonprofit corporation to a nonprofit LLC must be approved by the board of directors of the subsidiary nonprofit corporation and the parent nonprofit corporation.

(c) After the conversion is approved under subsection (b), the subsidiary nonprofit corporation shall file articles of conversion with the office of the secretary of state that satisfy the requirements of Section 48-205-101, and designate the LLC as a nonprofit limited liability company. Such articles shall also include:

(1) A statement that the nonprofit corporation was converted to a nonprofit LLC;

(2) The name and principal address of the former nonprofit corporation; and

(3) A statement that the terms and conditions of the conversion have been approved by the board of directors of the subsidiary nonprofit corporation and the parent nonprofit corporation.

(d) The conversion is effective when the articles of conversion are filed with the secretary of state or at any later date on or before ninety (90) days from filing of the articles of conversion if specified in such articles. The filing of articles of conversion with the secretary of state, in compliance with this section, shall constitute and, for purposes of Chapter 64 of this title, be deemed to be a certificate of cancellation of the subsidiary nonprofit corporation.

(e) Articles of conversion shall be amended in the same manner as the articles of organization of a limited liability company.

48-101-708. (a) Upon the effective date of the conversion from a subsidiary nonprofit corporation to a nonprofit LLC:

(1) All property owned by the converting nonprofit corporation remains vested in the nonprofit LLC;

(2) All obligations of the converting nonprofit corporation continue as obligations of the nonprofit LLC; and

(3) An action or proceeding pending against the converting nonprofit corporation may be continued as if the conversion had not occurred.

(b) The converting nonprofit corporation shall not be required to wind up its affairs or to pay its liabilities and distribute its assets, and such conversion shall be deemed to constitute a dissolution of such subsidiary nonprofit corporation.

(c) The ownership interests or membership of the parent nonprofit corporation in the subsidiary nonprofit corporation shall become membership interests in the nonprofit LLC.

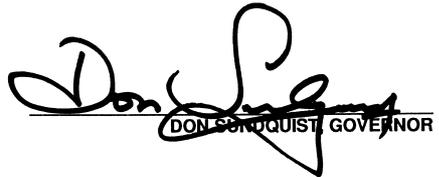
SECTION 2. This act shall take effect July 1, 2001, the public welfare requiring it.

PASSED: June 18, 2001


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 27th day of June 2001


DON SUNDQUIST, GOVERNOR