

1 HB251  
2 196983-3  
3 By Representative Poole  
4 RFD: Judiciary  
5 First Read: 20-MAR-19

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ENROLLED, An Act,

To amend Section 10A-1-3.33, Code of Alabama 1975, as amended by Act 2018-125 of the 2018 Regular Session, Section 10A-5A-1.01, Code of Alabama 1975, and Sections 10A-8A-1.02 and 10A-8A-4.11, as added to the Code of Alabama 1975, by Act 2018-125 of the 2018 Regular Session, relating to business corporations; to specify which law governs the right of inspection and access by governing persons under existing and proposed law; to make certain technical corrections regarding the name of the Alabama Limited Liability Company Law, the ability of a partnership to continue as an entity for a brief period of time under the law with one partner or no partners, and the duty of a partner in a general partnership to not compete with the partnership before the partnership is dissolved; and to provide for a retroactive effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 10A-1-3.33, of the Code of Alabama 1975, as amended by Act 2018-125 of the 2018 Regular Session, Section 10A-5A-1.01 of the Code of Alabama 1975, and Sections 10A-8A-1.02 and 10A-8A-4.11 of the Code of Alabama 1975, as added by Act 2018-125 of the 2018 Regular Session, are amended to read as follows:

"§10A-1-3.33.

1           "(a) An entity covered by Section 10A-1-3.32 shall  
2 provide governing persons and their agents and attorneys  
3 access to its books and records, including the books and  
4 records required to be maintained under the chapter of this  
5 title applicable to the entity and other books and records of  
6 the entity for any purpose reasonably related to the governing  
7 person's service as a governing person. The right of access  
8 shall include the right to inspect and copy books and records  
9 during ordinary business hours. An entity may impose a  
10 reasonable charge covering the costs of labor and material for  
11 copies of documents furnished.

12           "(b) An entity covered by Section 10A-1-3.32 shall  
13 furnish to a governing person:

14           "(1) Without demand, any information concerning the  
15 entity's business and affairs reasonably required for the  
16 proper exercise of the governing person's rights and duties  
17 under the entity's governing documents or this title; and

18           "(2) On demand, any other information concerning the  
19 entity's business and affairs, except to the extent the demand  
20 or the information demanded is unreasonable or otherwise  
21 improper under the circumstances.

22           "(c) A court may require an entity covered by  
23 Section 10A-1-3.32 to open the books and records of the  
24 entity, including the books and records required to be  
25 maintained by the entity under the chapter of this title

1 applicable to the entity, to permit a governing person to  
2 inspect, make copies of, or take extracts from the books and  
3 records or may require an entity to furnish the governing  
4 person with information concerning the entity's business and  
5 affairs on a showing by the governing person that:

6 "(1) the person is a governing person of the entity;

7 "(2) the person's purpose for inspecting the  
8 entity's books and records under subsection (a) or in  
9 obtaining information as to the entity's business and affairs  
10 under subsection (b) (1) is reasonably related to the person's  
11 service as a governing person or, in the case of information  
12 as to the entity's business and affairs demanded under  
13 subsection (b) (2), that neither the demand nor the information  
14 demand is unreasonable or otherwise improper under the  
15 circumstances;

16 "(3) in the case of information as to the entity's  
17 business and affairs described in subsection (b) (2), the  
18 person has made demand for the information; and

19 "(4) the entity refused the person's access to the  
20 books and records or to furnish information as to the entity's  
21 business and affairs.

22 "(d) A court may award a governing person attorney  
23 fees and any other proper relief in a suit under subsection  
24 (c) to require an entity to open its books and records.

1           "(e) For purposes of this section only, corporations  
2 formed pursuant to or governed by Chapter 2, professional  
3 corporations formed pursuant to or governed by Chapter 4, and  
4 real estate investment trusts formed pursuant to or governed  
5 by Chapter 10 shall be deemed to be entities covered by  
6 Section 10A-1-3.32 until midnight on December 31, 2020.

7           "§10A-5A-1.01.

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

12           "§10A-8A-1.02.

13           "Notwithstanding Section 10A-1-1.03, as used in this  
14 chapter, unless the context otherwise requires, the following  
15 terms mean:

16           "(1) "Business" includes every trade, occupation,  
17 and profession for profit.

18           "(2) "Disqualified person" means any person who is  
19 not a qualified person.

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

24           "(4) "Foreign limited liability partnership" means a  
25 foreign partnership whose partners have limited liability for

1 the debts, obligations, or other liabilities of the foreign  
2 partnership under a provision similar to Section  
3 10A-8A-3.06(c).

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

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

14 "(7) "Not for profit activity" includes every  
15 undertaking not for profit.

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

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

20 "(B) has not dissociated as a partner under Section  
21 10A-8A-6.01.

22 "(9) "Partnership" means an ~~association of two or~~  
23 ~~more persons~~ entity that is formed under Section 10A-8A-2.01,  
24 ~~predecessor statute, or comparable law of another jurisdiction~~  
25 ~~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.

1           "(15) "Statement" means a statement of partnership  
2 under Section 10A-8A-2.02, a statement of not for profit  
3 partnership under Section 10A-8A-2.02, a statement of  
4 authority under Section 10A-8A-3.03, a statement of denial  
5 under Section 10A-8A-3.04, a statement of dissociation under  
6 Section 10A-8A-7.04, a statement of dissolution under Section  
7 10A-8A-8.02 or under Section 10A-8A-8.03, a certificate of  
8 reinstatement under Section 10A-8A-8.11, a statement of  
9 limited liability partnership under Section 10A-8A-10.01, a  
10 statement of cancellation under Section 10A-8A-10.01, or any  
11 other document required or permitted to be delivered to the  
12 Secretary of State for filing under this chapter, or an  
13 amendment or cancellation of any of the foregoing.

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

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

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

22           "§10A-8A-4.11.

23           "(a) The duties that a partner has to the  
24 partnership and to the other partners include the duty of

1 loyalty and the duty of care as described in subsections (b)  
2 and (c).

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

5 "(1) to account to the partnership and to hold as  
6 trustee for it any property, profit, or benefit derived by the  
7 partner in the conduct or winding up of the partnership's  
8 business or not for profit activity or derived from a use by  
9 the partner of partnership property, including the  
10 appropriation of a partnership opportunity;

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

15 "(3) to refrain from competing with the partnership  
16 in the conduct ~~or winding up~~ of the partnership's business or  
17 not for profit activity before the dissolution of the  
18 partnership.

19 "(c) A partner's duty of care to the partnership and  
20 to the other partners in the conduct or winding up of the  
21 partnership's business or not for profit activity includes  
22 refraining from engaging in grossly negligent or reckless  
23 conduct, intentional misconduct, or a knowing violation of  
24 law.

1           "(d) A partner shall discharge the duties to the  
2 partnership and to the other partners under this chapter and  
3 under the partnership agreement and exercise any rights  
4 consistently with the implied contractual covenant of good  
5 faith and fair dealing.

6           "(e) A partner does not violate a duty or obligation  
7 under this chapter or under the partnership agreement merely  
8 because the partner's conduct furthers the partner's own  
9 interest."

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

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 04-APR-19.

Jeff Woodard  
Clerk

Senate	23-APR-19	Amended and Passed
House	22-MAY-19	Concurred in Senate Amendment