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CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS

Limited Liability Company Act: Provide for the Formation of Limited Liability Companies

CODE SECTIONS:	O.C.G.A. §§ 14-11-1 to -19 (amended), -100 to -1109 (new)
BILL NUMBER:	HB 264
ACT NUMBER:	174
SUMMARY:	The Act provides for the formation of limited liability companies. These hybrid companies enjoy the tax benefits of partnerships and the limited liability advantages of corporations. The Act further regulates various aspects of limited liability companies, such as their formation, management, finance, admission and withdrawal of members, dissolution, merger, derivative actions, dissenter's rights, and the registration of foreign limited liability companies.
EFFECTIVE DATE:	March 1, 1994

History

The General Assembly passed the Limited Liability Company (LLC) Act as a tool to stimulate business in Georgia by encouraging the formation of this type of business firm under Georgia law. In 1977, Wyoming passed the first Limited Liability Company Act.[1] Since then, almost twenty states have passed such laws.[2] A major appeal of this form of business organization is that the LLC "combines the tax treatment of a partnership with the liability protection of a corporation."[3] LLCs are not restricted in the number and kinds of

1. Wyo. Stat. §§ 17-15-101 to -136 (Supp. 1989), *cited in* Robert R. Keatinge et al., *The Limited Liability Company: A Study of the Emerging Entity*, 47 BUS. LAW. 378 (1992).

2. Telephone Interview with Robert P. Bryant, Chair, Partnership Subcommittee of the Corporate and Banking Section of the State Bar of Georgia (Apr. 21, 1993) [hereinafter Bryant Interview]. Neighboring Florida was the second state to pass an LLC Act, and the passage of an LLC statute by Delaware gave the idea a certain cachet because of Delaware's historic role in corporate law. *Id.*

3. Letter from Mitchell M. Purvis, Chair, Corporate and Banking Law Section, to Advisory Committee on Legislation, State Bar of Georgia (Oct. 7, 1992) [hereinafter Purvis Letter] (available in Georgia State University College of Law Library).

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shareholders or the complexity of their capital structure, as are S corporations, and unlike limited partnerships, there is no requirement for a general partner with unlimited liability.[4] In 1988, the Internal Revenue Service issued a favorable ruling that classified a Wyoming LLC as a partnership for federal income tax purposes.[5] These characteristics—limited liability, favorable tax treatment, and flexibility—make LLCs a desirable form of organization for many types of business.[6]

In 1991, the Corporate and Banking Law Section of the State Bar of Georgia began a study of an LLC Act for Georgia.[7] The partnership subcommittee, co-chaired by Robert Bryant, an attorney with King and Spalding, and Patrick Jones, an attorney with Nelson, Mullins, Riley, and Scarborough, drew on three principal sources in drafting proposed legislation: the Georgia Revised Uniform Limited Partnership Act, the Georgia Business Corporation Code, as well as a prototype act being developed by a working group of the American Bar Association.[8] An Act providing for the certification of foreign LLCs was passed by the General Assembly in 1992.[9] The proposed domestic LLC Act enjoys the advantages of enabling Georgia businesses desiring to organize as an LLC to do so under Georgia law rather than forming as foreign LLCs under laws of neighboring Florida, for example, as well as capturing the formation fees for Georgia.[10] The proposed legislation replaced the foreign LLC provisions that had been codified in the Code at chapter 11, title 14; added provisions authorizing and regulating the creations of LLCs under Georgia law; and conformed sections of the Georgia Business Corporation Code and the Georgia Revised Uniform Limited

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4. *Id.*

5. Keatinge et al., *supra* note 1, at 384, 424 (discussing Rev. Rul. 88-76, 1988-2 C.B. 360, 361). Because LLCs manifest several characteristics of corporations as identified by Treasury Regulations (associates, objective to carry on business and divide gains, limited liability), to qualify for pass through tax treatment they must lack two of the three other corporate characteristics (continuity of life, free transferability of interests, centralization of management). *Id.*

6. For a detailed comparison and contrast of LLCs with other forms of business organization, *see* Keatinge et al., *supra* note 1, at 386-403.

7. Bryant Interview, *supra* note 2. Discussion of LLCs arose in March of 1991 at a combined meeting of the Business Law and Tax Law Sections of the Atlanta Bar. *Id.* Because the partnership subcommittee of the Georgia Bar had worked on the Uniform Partnership Act in the early 1980s and later revised the Limited Partnership Act, this group served as the drafting committee in cooperation with business and tax lawyers from the Atlanta Bar. *Id.* The project was financed and sponsored by the Corporate and Banking Law Section of the State Bar of Georgia. *Id.*

8. *Id.*

9. *Id.*

10. Telephone Interview with Rep. Thurbert E. Baker, House District No. 70 (Apr. 15, 1993) [hereinafter Baker Interview].

Partnership Act to this new LLC Act.[11] This proposed LLC Act was introduced in the 1993 General Assembly as HB 264 by Representative Thurbert E. Baker of the 70th District.[12]

HB 264

Passage

HB 264 was widely supported by both the legal and business communities. Having been drafted by State Bar of Georgia subcommittee, the bill was endorsed by the Bar's legislative committee and approved by its Board of Governors.[13] Although the bill was introduced as a personal bill by Representative Baker rather than as part of the Miller Administration's legislative package,[14] it had the approval of the Governor.[15] The bill was widely endorsed, for example, by the State Bar of Georgia, the Chamber of Commerce, the Georgia Bankers' Association, and accountancy associations.[16] There was no organized opposition;[17] HB 264 passed with only one dissenting vote in the House of Representatives and unanimously in the Senate.[18]

There were three issues raised in the course of the bill's passage that might have generated significant opposition. One concern was that by creating a form of business with lower tax liability than corporations, state revenue might be lost if existing corporations elect to convert to LLCs.[19] On the other hand, to the extent that new businesses form in Georgia to take advantage of the LLC form of organization, new

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11. Purvis Letter, *supra* note 3.
12. HB 264, as introduced, 1993 Ga. Gen. Assem.
13. Bryant Interview, *supra* note 2.
14. Baker Interview, *supra* note 10.
15. Interview with Thomas M. Boller, Lobbyist for the State Bar of Georgia, in Atlanta (Apr. 9, 1993) [hereinafter Boller Interview].
16. *Id.* Mr. Boller characterized the bill as essentially a lawyers' bill with the business community behind it. *Id.* Many observers expect the LLC Act to be particularly popular with professional service providers, but the bill does not modify the liability of partners for each other's professional conduct existing under current law. Charles W. Griffin, III, *Corporate Hybrid Faces Tough Fight: Are Tax and Liability Breaks for Professionals Too Much of a Good Thing?*, FULTON COUNTY DAILY REP., Feb. 4, 1993, at 2. Robert Bryant emphasized that although professionals may organize under the LLC Act, the statute does not change current law as to professional liability. Bryant Interview, *supra* note 2. He noted that under current case law in Georgia, even lawyers practicing together as a corporation remain personally liable for the malpractice of their partners. *Id.*
17. Boller Interview, *supra* note 15.
18. Journal of the Georgia House of Representatives, Mar. 1, 1993, at 1239; Georgia Senate Role Call of HB 264 (Mar. 17, 1993) (to be published in 1993 Georgia Senate Journal).
19. Griffin, *supra* note 16, at 1.

revenues would be generated.[20] Although supporters claimed that the overall revenue impact would be neutral, Deputy Commissioner Jerry Jackson of the Georgia Department of Revenue stated that the large number of variables involved made it impossible to predict the effect on state revenue.[21]

A second issue was raised by Representative Denmark Groover of the House Committee on the Judiciary. He was concerned that LLCs could become vehicles for securities fraud unless members' interests were defined as securities and required to be registered.[22] An analysis by Professor William J. Carney of Emory Law School, however, suggested that such a modification would severely limit the flexibility of LLCs to structure management as they see fit by imposing on smaller LLCs the necessity to seek legal advice on exemptions to Code section 10-5-9(13), an exemption not without pitfalls.[23] The House Judiciary Committee substitute inserted language that deems LLC interests to be securities to the extent they would be so treated under Code section 10-5-9(a).[24]

The third concern was the suggestion by Representative Roy Barnes, also of the House Committee on the Judiciary, that language providing for piercing the corporate veil might need to be added.[25] Professor Carney's analysis, however, suggested that Georgia case law, rather than statutory enactments, has developed the doctrine of corporate veil-piercing.[26] Carney suggested that adding veil-piercing language might be interpreted as modifying current doctrine.[27] Further, because no other state's LLC statute contains such provisions, the addition of veil-

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20. *Id.*
21. *Id.* at 1-2.
22. *Id.* at 1.
23. Letter from William J. Carney, Charles Howard Candler Professor of Law, Emory University School of Law, to Robert P. Bryant (Feb. 7, 1993) [hereinafter Carney Letter] (available in Georgia State University College of Law Library). Professor Carney noted that whether LLC interests are to be treated as securities would likely be determined by courts using the functional definition of investment contracts. *Id.* Georgia courts rely on *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946) in defining investment contracts as schemes in which "an investor invests money in a common enterprise with the expectation of profits solely from the efforts of others." *Id.* Carney pointed out that members would be directly involved in managing many LLCs, especially small ones, while other LLCs might rely on centralized, hired management. *Id.* Thus, the member interests of some LLCs might fall within the definition of securities as investment contracts, but in other cases they might not. *Id.* Given that flexibility is one of the chief advantages sought by the LLC form of organization, Carney concluded that "No single, rigid approach to whether or not these interests will be securities would be appropriate." *Id.; see also* Keatinge et al., *supra* note 1, at 403-404.
24. O.C.G.A. § 14-11-1107(n) (Supp. 1993).
25. Griffin, *supra* note 16, at 1.
26. Carney Letter, *supra* note 23.
27. *Id.*

piercing language might make the Act appear to provide weaker protection from liability for Georgian LLCs, undercutting the primary purpose of creating LLCs in the state.[28] The House Judiciary Committee added language to Code section 14-11-314 specifying that corporate veil-piercing with LLCs would follow the "same methods and using the same principles"[29] as with corporations, and the House passed the Committee substitute with one dissenting vote on March 1, 1993.[30] No modifications were made on the Senate side; the bill was recommended by the Senate Judiciary Committee without dissent and passed unanimously in the Senate.[31]

Formation of LLCs

The Act provides that "one or more persons may act as the organizer or organizers of a limited liability company by delivering articles of organization to the Secretary of State."[32] An LLC may be formed for the purpose of "engaging in any lawful business in which corporations for profit, professional corporations, limited partnerships, or general partnerships formed in this state may engage."[33] The organizer or organizers must inform the Secretary of the name and address of each organizer, the street address and county of the LLC's registered office and the name of its initial registered agent, and the mailing address of the LLC's principal place of business.[34] The organizer must also deliver the articles of organization setting forth the name of the LLC and the latest date on which the LLC will dissolve.[35] The name must indicate by words or abbreviation that the firm is a limited liability company.[36] The articles of organization may specify that management "is vested in one or more managers" and "any other provisions not inconsistent with law."[37] If an LLC amends its articles of organization, it must file with the Secretary of State articles of amendment setting forth the LLC's name, the date its articles of organization were filed, the amendment to the articles, and the effective date of the

28. *Id.*
29. Telephone Interview with Rep. Roy Barnes, House District No. 33 (Aug. 24, 1993).
30. Journal of the Georgia House of Representatives, Mar. 1, 1993, at 1239.
31. Minutes of the Senate Judiciary Committee, Mar. 10, 1993; Georgia Senate Roll Call of HB 264 (Mar. 17, 1993) (to be published in 1993 Georgia Senate Journal).
32. O.C.G.A. § 14-11-203(a) (Supp. 1993).
33. *Id.* § 14-11-201(b) (Supp. 1993).
34. *Id.* § 14-11-203(a)(1)-(3) (Supp. 1993).
35. *Id.* § 14-11-204(a)(1)-(2) (Supp. 1993).
36. *Id.* § 14-11-207(a)(1) (Supp. 1993).
37. *Id.* § 14-11-204(b)(1)-(2) (Supp. 1993).

amendment.[38] There are also provisions for changing or correcting documents filed with the Secretary of State.[39]

A corporation, limited partnership, or general partnership may elect to become an LLC by filing with the Secretary of State a certificate of election specifying the basis for converting the shares of the corporation or interests of the partners.[40] Election to become an LLC requires the approval of all partners or other approval sufficient under applicable law in the case of a limited or general partnership or, in the case of a corporation, the recommendation of the plan of election by its board of directors and the approval of all shareholders.[41]

Governance Provisions

The Act outlines minimal operating provisions for LLCs that may be modified or filled in by articles of organization or written operating agreements. Every member is an agent of the LLC whose actions in the name of the LLC are binding, and management of the business is vested in the members unless otherwise provided for by the articles of organization or written operating agreement.[42] If the articles of organization vest management in a manager or managers, each manager is similarly an agent who can bind the LLC if acting within the scope of the manager's authority.[43] Such managers shall be selected by approval of more than one half of the members, unless the articles of organization or written operating agreement provide otherwise.[44] Members, managers, agents, and employees are not personally liable for the debts, obligations, or liabilities of the LLC.[45] They remain liable, however, for intentional misconduct or knowing violations of the law or for transactions from which they received personal benefits in violation of the written operating agreement.[46] The Act also explicitly declines to "alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services."[47] The LLC may indemnify members or managers for liabilities arising from LLC business unless the liability involves intentional misconduct or knowing violation of law or a transaction for personal benefit in violation of the written operating

38. *Id.* § 14-11-210(a)(1)-(4) (Supp. 1993).
39. *Id.* §§ 14-11-209(c), -211(a) (Supp. 1993).
40. *Id.* § 14-11-212(a)-(c) (Supp. 1993).
41. *Id.* §§ 14-11-212(a), 14-2-1109.1 (Supp. 1993).
42. *Id.* §§ 14-11-301(a), -304(a) (Supp. 1993).
43. *Id.* §§ 14-11-301(b), -304(b)(1) (Supp. 1993).
44. *Id.* § 14-11-304(b)(1) (Supp. 1993).
45. *Id.* § 14-11-303 (Supp. 1993).
46. *Id.* § 14-11-305(4)(A) (Supp. 1993).
47. *Id.* § 14-11-314 (Supp. 1993).

agreement.[48] Section 307 regulates conflict of interest transactions but specifies that an LLC's articles of organization or written operating agreement may override its provisions.[49]

Most states' LLC acts apportion voting rights according to members' interests in LLCs' profits.[50] Georgia's Act, however, leaves this apportioning of voting rights to the articles of organization or written operating agreement, with the default position that each member, or manager, if management is vested in managers, shall have one vote and that majority approval is required to make decisions.[51] Some decisions, however, require unanimous consent of the members: dissolution, merger, sale, admission of new members, amendment of the articles of organization, reduction or elimination of obligations to make contributions to capital, approval of distributions, or continuation beyond dissolving events.[52] Operating procedures may be specified in articles of organization or written operating agreements; if not, the Act provides for procedures such as calling and transacting business at meetings[53] or without meetings,[54] notice[55] and waiver of notice,[56] and information and records.[57]

Finance

Unlike some states that limit capital contributions to LLCs to cash or property,[58] contributions to the capital of a Georgian LLC may take the form of "cash, tangible or intangible property, services rendered, or a promissory note or other obligation to contribute cash or tangible or intangible property, or to perform services."[59] Promises to make contributions are not enforceable unless set out in the articles of organization or a written operating agreement, and obligations to make contributions may not be reduced or eliminated without unanimous consent of the members unless such articles or agreements are so provided.[60] The Act contemplates that articles of organization or written operating agreements will govern allocations of profits and losses, but specifies default provisions in case such matters are not

48. *Id.* §§ 14-11-306, -305(4)(A)(i)-(ii) (Supp. 1993).
49. *Id.* § 14-11-307 (Supp. 1993).
50. Keatinge et al., *supra* note 1, at 414.
51. O.C.G.A. § 14-11-308(a) (Supp. 1993).
52. *Id.* § 14-11-308(b) (Supp. 1993).
53. *Id.* § 14-11-310 (Supp. 1993).
54. *Id.* § 14-11-309 (Supp. 1993).
55. *Id.* § 14-11-311 (Supp. 1993).
56. *Id.* § 14-11-312 (Supp. 1993).
57. *Id.* § 14-11-313 (Supp. 1993).
58. Keatinge et al., *supra* note 1, at 412.
59. O.C.G.A § 14-11-401 (Supp. 1993).
60. *Id.* § 14-11-402(a)-(b) (Supp. 1993).

covered whereby such distributions are to be made equally among members, in cash rather than in other assets.[61] A distribution is illegal if the distribution would prevent the LLC from paying its debts or if its assets are less than its liabilities.[62] Members are liable for illegal distributions and are entitled to contribution from other members or managers who would also be liable.[63]

Interest in an LLC is personal property and is assignable in whole or part.[64] Assignment does not automatically dissolve the LLC or entitle the assignee to participate in managing the LLC; in fact, the assignor continues to be a member, unless removed by a majority vote of the remaining members, until replaced by the assignee.[65] Subject to the articles of organization or written operating agreement, a unanimous vote of the members and consent of the assignee is required for the assignee to become a member.[66] An assignee who becomes a member is liable for the contributions of the assignor, but not for unlawful distributions or other obligations of the assignor about which the assignee lacked knowledge.[67] New members may be admitted by consent of all members.[68] The legal representative of a member who dies or is legally judged incompetent has the rights of an assignee of the member's interest.[69]

Section 601 specifies events of disassociation whereby a person ceases to be an LLC member, including voluntary withdrawal, replacement by an assignee, removal of an assignor by majority vote of the members, purchase or redemption of the member's interest, or bankruptcy.[70] Unless otherwise provided in the articles of organization or written operating agreement, withdrawing members must give thirty days written notice to the other members.[71] An LLC is dissolved at the time specified or upon events specified in the articles of organization or written operating agreement, at a time approved by all members, or ninety days after the disassociation of any member, unless all other members consent in writing to continue the LLC.[72] A court may also decree dissolution when it is "not reasonably practicable to carry on the

61. *Id.* §§ 14-11-403, -406(1)-(2) (Supp. 1993).
62. *Id.* § 14-11-407 (Supp. 1993).
63. *Id.* § 14-11-408(a)-(b) (Supp. 1993).
64. *Id.* §§ 14-11-501(a), -502(1) (Supp. 1993).
65. *Id.* §§ 14-11-502(3)-(4), (6), 14-11-601(a)(3)(B) (Supp. 1993).
66. *Id.* §§ 14-11-503(1), -505(c) (Supp. 1993).
67. *Id.* § 14-11-503(3) (Supp. 1993).
68. *Id.* § 14-11-505(b) (Supp. 1993).
69. *Id.* § 14-11-506 (Supp. 1993).
70. *Id.* § 14-11-601 (Supp. 1993).
71. *Id.* § 14-11-601(c) (Supp. 1993).
72. *Id.* § 14-11-602 (Supp. 1993).

business in conformity with the articles of organization or a written operating agreement."[73]

The Act provides for a process of winding up for a dissolved LLC. Section 606 provides that the LLC may deliver a statement of commencement of winding up to the Secretary of State.[74] The dissolved LLC may dispose of known claims against it and notify its known claimants in writing of winding up proceedings; a claim may be barred if the claimant does not deliver the claim to the LLC by the deadline stated in the notification or commence a proceeding within one year of the date of mailing the rejection notice if the claim has been rejected in timely fashion (within six months of the deadline for receipt of claims).[75] Sections 608 and 609 provide for the publication of a request for any claims against the LLC.[76] To the extent that the dissolving LLC does not properly discharge claims against it, the LLC is liable to the extent of undistributed assets, and members are liable to the extent of distributed assets, with the LLC and its members having rights of contribution among themselves to attain the results of a discharge of claims prior to distribution.[77] An LLC may then file with the Secretary of State a certificate of termination stating that there are no known outstanding obligations or actions pending.[78]

The Act provides for the merger of LLCs with foreign or domestic business entities, other than corporations. Each merging entity must adopt a written plan of merger setting forth the terms and conditions of the merger and the manner and basis of converting the interests or shares of the members of each entity into shares or interests of the surviving entity.[79] In the case of a merging LLC, the merger plan must be adopted unanimously by its members unless otherwise provided for in its articles of organization or written operating agreement.[80] When the plan of merger is approved, the surviving entity shall file with the Secretary of State articles of merger.[81]

Derivative Actions and Dissenters' Rights

Unlike most LLC statutes,[82] the Georgia Act provides for derivative actions if the following requirements are met: (1) a member does not have the right to sue in the name of the LLC; (2) a member has made

73. *Id.* § 14-11-603(a) (Supp. 1993).
74. *Id.* § 14-11-606 (Supp. 1993).
75. *Id.* § 14-11-607 (Supp. 1993).
76. *Id.* §§ 14-11-608 to -609 (Supp. 1993).
77. *Id.* § 14-11-605(b) (Supp. 1993).
78. *Id.* § 14-11-610 (Supp. 1993).
79. *Id.* § 14-11-902 (Supp. 1993).
80. *Id.* § 14-11-903(a) (Supp. 1993).
81. *Id.* § 14-11-904 (Supp. 1993).
82. Keatinge et al., *supra* note 1, at 418.

written demand to those with such authority; (3) ninety days have expired; (4) the plaintiff is a member and was a member at the time of the transaction complained of; and (5) the plaintiff "fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company."[83] A derivative suit may be stayed by the court, but it may not be discontinued or settled without the court's approval.[84] The court may stay or dismiss the derivative proceeding if it finds that, after reasonable investigation, a majority of managers or members present at a meeting with a quorum, or a majority of a committee of independent managers or members, or a panel of independent persons appointed by the court, determine in good faith that the maintenance of the suit is not in the best interests of the LLC.[85] Court costs and reasonable attorney's fees may be awarded by the court to either side.[86]

The Act provides that a member is entitled to dissent from mergers, sales or dispositions of all or substantially all of the LLC's property, amendment of the articles of organization that materially and adversely affect the member's interest, exclusion or limitation of the member's right to vote on LLC matters, or cancellations, redemptions, or repurchases of the member's interest in the LLC, provided that the action challenged violated procedural requirements of Section 1002, the articles of organization, or the written operating agreement, or was based on fraud.[87] Notice to members is required of actions creating the potential for dissent, and dissenters are likewise required to notify the LLC of intent to dissent and, not more than ten days after the action was taken, of the dissent and demand for payment.[88] Within ten days of the action or receipt of payment demand, the LLC must offer to pay dissenters the fair value of their interests and provide information by which the fair value of these interests were determined.[89] Dissenters may waive the right to demand payment, may demand information about the fair value of their interests, make their own estimates of fair value, and demand payment.[90] If the demand remains unsettled, the LLC must either pay the amount demanded or commence a proceeding within sixty days of receiving the payment demand and petition the court to determine the fair value of the member interest in a nonjury equitable valuation proceeding.[91]

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83. O.C.G.A. § 14-11-801 (Supp. 1993).
84. *Id.* §§ 14-11-803 to -804 (Supp. 1993).
85. *Id.* § 14-11-805 (Supp. 1993).
86. *Id.* § 14-11-806(a)-(b) (Supp. 1993).
87. *Id.* § 14-11-1002(a)-(b) (Supp. 1993).
88. *Id.* §§ 14-11-1003 to -1006 (Supp. 1993).
89. *Id.* § 14-11-1008 (Supp. 1993).
90. *Id.* § 14-11-1010(b)-(c) (Supp. 1993).
91. *Id.* § 14-11-1011(a)-(b) (Supp. 1993).

Regulation of Domestic and Foreign LLCs

The Act enumerates various provisions for the regulation of LLCs, including annual registration and the filing of fees and penalties.[92] The Secretary of State is authorized to promulgate rules and regulations necessary to implement the Act, and service of process and venue are specified.[93] Nothing in the Act shall be construed to mean that LLC interests are not securities under subsection (a) of Code section 10-5-2,[94] and Georgia law is asserted as controlling the liability of LLC members if Georgia law conflicts with the laws of other states.[95] Most important, LLCs are deemed to be partnerships for Georgia tax purposes unless classified otherwise for federal income tax purposes.[96]

HB 264 repealed chapter 11 of title 14 providing for the registration of foreign LLCs,[97] but incorporated its provisions into the LLC Act in substantially the same form.[98] Foreign LLCs are governed by the laws of the state where they are organized, but must procure from the Secretary of State a certificate of authority to transact business in Georgia and must maintain a registered office and agent in the state for service of process.[99] Process may be served on the Secretary of State if the LLC fails to maintain a registered agent.[100] A foreign LLC may not withdraw from the state until it obtains from the Secretary of State a certificate of withdrawal.[101] The Secretary may also revoke the LLC's certificate of authority if it does not register annually, does not pay fees, taxes, or penalties within sixty days, fails to maintain a registered agent and office, gives materially false information in its filings, or is dissolved, terminated, or merged.[102] The Act also provides that the foreign LLC may appeal the revocation of its certificate to transact business in Fulton County Superior Court and that a foreign LLC without authority to transact business in the state is subject to penalties of $500 per year and cannot sue in Georgia courts, but may defend actions and enter valid contracts.[103]

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92. *Id.* §§ 14-11-1103, -1101 (Supp. 1993).
93. *Id.* §§ 14-11-1106, -1108 (Supp. 1993).
94. *Id.* § 14-11-1107(n) (Supp. 1993).
95. *Id.* § 14-11-1107(h) (Supp. 1993).
96. *Id.* § 14-11-1104 (Supp. 1993).
97. 1992 Ga. Laws 1134, 1865-81 (formerly found at O.C.G.A. §§ 14-11-1 to -19 (Supp. 1992)).
98. Baker Interview, *supra* note 10.
99. O.C.G.A. §§ 14-11-701 to -703 (Supp. 1993).
100. *Id.* § 14-11-703(h) (Supp. 1993).
101. *Id.* § 14-11-707 (Supp. 1993).
102. *Id.* § 14-11-708 (Supp. 1993).
103. *Id.* §§ 14-11-710 to -711 (Supp. 1993).

The effective date of the LLC Act is March 1, 1994.[104] This date represents a modification of the original bill, which proposed July 1, 1993 as the effective date.[105] The Secretary of State's Office, however, requested a delay until January 1, 1994, to allow time to create the computer programming necessary to implement the law.[106] Representative Groover suggested a further delay until March 1, 1994, to give the General Assembly another chance to correct any defects in the 198 page bill discovered in the process of preparing for implementation or in Continuing Legal Education seminars on the LLC Act to be held in the interim.[107]

A. B. Cochran, III

104. *Id.* § 14-11-1109 (Supp. 1993).
105. HB 269, as introduced, 1993 Ga. Gen. Assem.
106. Letter from Janet K. Jackson, Deputy Director, Business Services and Regulation Division, Office of Secretary of State, to Robert P. Bryant (Oct. 6, 1992) (available in Georgia State University College of Law Library).
107. Boller Interview, *supra* note 15.