

Senate Bill 128

By: Senators Kennedy of the 18th, Bethel of the 54th, Hill of the 32nd, Jones II of the 22nd and Parent of the 42nd

AS PASSED

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 8 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated,
2 relating to directors and officers, so as to enact reforms consistent with the Model Act; to
3 change provisions relating to the functions of a board of directors; to change provisions
4 relating to elections of directors; to change provisions relating to terms for directors; to
5 change provisions relating to actions without meetings; to change provisions relating to
6 committees; to change provisions relating to derivative actions; to change provisions relating
7 to officers; to change provisions relating to functions of officers; to change provisions
8 relating to resignation and removal of officers; to enact provisions relating to business
9 opportunities; to amend Title 14 of the Official Code of Georgia Annotated, relating to
10 corporations, partnerships, and associations, so as to change certain provisions relating to
11 definitions, registered agent, and service of process; to provide for certain definitions
12 applicable to business corporations, nonprofit corporations, partnerships, and the "Georgia
13 Revised Uniform Limited Partnership Act"; to change certain provisions relating to who may
14 serve as a registered agent for certain domestic and foreign entities, including corporations,
15 nonprofit corporations, limited liability partnerships, limited partnerships, and limited
16 liability companies; to provide for one copy of a process, notice, or demand to be served
17 upon the Secretary of State when he or she is acting as an agent for service of process for
18 certain entities; to provide for related matters; to repeal conflicting laws; and for other
19 purposes.

20 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

21 **PART I**
22 **SECTION 1-1.**

23 Article 8 of Chapter 2 of Title 14 of the Official Code of Georgia Annotated, relating to
24 directors and officers, is amended by revising subsections (a) and (b) of Code Section
25 14-2-801, relating to the requirement for and duties of board of directors, as follows:

26 ~~"(a) Except Each corporation must have a board of directors, except~~ as provided in Article
 27 9 of this chapter or in a written agreement meeting the requirements of Code Section
 28 14-2-732, each corporation must have a board of directors.

29 (b) All corporate powers shall be exercised by or under the authority of the board of
 30 directors of the corporation, and the business and affairs of the corporation shall be
 31 managed by or under the direction, and subject to oversight, of; its board of directors,
 32 subject to any limitation set forth in the articles of incorporation, in rights, options, or
 33 warrants permitted by paragraph (2) of subsection (d) of Code Section 14-2-624, or except
 34 as provided in an agreement among the shareholders meeting the requirements of Code
 35 Section 14-2-732."

36 SECTION 1-2.

37 Said article is further amended by revising subsection (b) of Code Section 14-2-803, relating
 38 to number and election of directors, as follows:

39 "(b) The number of directors may be increased or decreased from time to time by
 40 amendment to, or in the manner provided in, the articles of incorporation or the bylaws.
 41 ~~The articles of incorporation or bylaws may authorize the shareholders or the board of~~
 42 ~~directors to fix or change the number of directors or may establish a variable range for the~~
 43 ~~size of the board of directors by fixing a minimum and maximum number of directors. If~~
 44 ~~a variable range is established, the number of directors may be fixed or changed from time~~
 45 ~~to time, within the minimum and maximum, by the shareholders or, if the articles or bylaws~~
 46 ~~so provide, by the board of directors."~~

47 SECTION 1-3.

48 Said article is further amended by revising Code Section 14-2-806, relating to staggered
 49 terms for directors, as follows:

50 "14-2-806.

51 (a) The articles of incorporation or a bylaw adopted by the shareholders may provide for
 52 staggering the terms of ~~the~~ directors by dividing the total number of directors into two or
 53 three groups, ~~with each group containing one-half or one-third of the total, as near as may~~
 54 ~~be.~~ In that event, the terms of directors in the first group expire at the first annual
 55 shareholders' meeting after their election, the terms of the second group expire at the
 56 second annual shareholders' meeting after their election, and the terms of the third group,
 57 if any, expire at the third annual shareholders' meeting after their election. At each annual
 58 shareholders' meeting held thereafter, directors shall be chosen for a term of two years or
 59 three years, as the case may be, to succeed those whose terms expire.

60 (b) ~~If directors have staggered terms and the number of directors is thereafter changed:~~

61 ~~(1) Any increase or decrease in the number of directors shall be so apportioned among~~
 62 ~~the classes as to make all classes as nearly equal in number as possible; and~~
 63 ~~(2) When the number of directors is increased and any newly created directorships are~~
 64 ~~filled by the board, the terms of the additional directors shall expire at the next annual~~
 65 ~~election of directors by the shareholders."~~

66 SECTION 1-4.

67 Said article is further amended by revising Code Section 14-2-821, relating to action without
 68 meeting, as follows:

69 "14-2-821.

70 (a) Except to the extent ~~Unless~~ the articles of incorporation or bylaws ~~provide otherwise~~
 71 require that action by the board of directors be taken at a meeting, action required or
 72 permitted by this chapter to be taken ~~at a~~ by the board of ~~directors' meeting~~ directors may
 73 be taken without a meeting if ~~the action is taken by all members of the board. The action~~
 74 ~~must be evidenced by one or more consents in writing or by electronic transmission~~
 75 ~~describing the action taken, signed by each director, and delivered to the corporation for~~
 76 ~~inclusion in the minutes or filing with the corporate records~~ each director signs a consent
 77 describing the action to be taken or ratified and delivers it to the corporation.

78 (b) A director's consent may be withdrawn by a revocation signed by the director and
 79 delivered to the corporation prior to delivery to the corporation of unrevoked written
 80 consents signed by all the directors.

81 (c) Action taken under this Code section is the act of the board of directors when one or
 82 more consents signed by all the directors are delivered to the corporation. The consent may
 83 specify the time at which the action taken thereunder is to be effective.

84 ~~(b)(d)~~ (d) A consent signed and delivered by a director under this Code section has the effect
 85 of action taken at a meeting ~~vote of the board of directors~~ and may be described as such in
 86 any document."

87 SECTION 1-5.

88 Said article is further amended by revising Code Section 14-2-825, relating to committees,
 89 as follows:

90 "14-2-825.

91 (a) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, a
 92 board of directors may create one or more committees and appoint members of the board
 93 of directors to serve on ~~them~~ any such committee. Each committee may have one or more
 94 members, who serve at the pleasure of the board of directors.

95 (b) Code Sections 14-2-820 through 14-2-824, ~~which govern meetings, action without~~
 96 ~~meetings, notice and waiver of notice, and quorum and voting requirements~~ apply both to
 97 committees of the board of directors, ~~apply to committees and to their members as well.~~

98 (c) To the extent specified by the board of directors or in the articles of incorporation or
 99 bylaws, each committee may exercise the authority powers of the board of directors under
 100 Code Section 14-2-801.

101 (d) A committee may not, however:

102 (1) Approve or propose to shareholders action that this chapter requires to be approved
 103 by shareholders;

104 (2) Fill vacancies on the board of directors or, subject to subsection (f) of this Code
 105 section, on any of its committees;

106 (3) Amend articles of incorporation pursuant to Code Section 14-2-1002 except that a
 107 committee may, to the extent authorized ~~in a resolution or resolutions adopted by action~~
 108 of the board of directors, amend the articles of incorporation to fix the designations,
 109 preferences, limitations, and relative rights of shares pursuant to Code Section 14-2-602
 110 or to increase or decrease the number of shares contained in a series of shares established
 111 in accordance with Code Section 14-2-602 but not below the number of such shares then
 112 issued; or

113 (4) Adopt, amend, or repeal bylaws; ~~or~~

114 ~~(5) Approve a plan of merger not requiring shareholder approval.~~

115 (e) The creation of, delegation of authority to, or action by a committee does not alone
 116 constitute compliance by a director with the standards of conduct described in Code
 117 Section 14-2-830.

118 (f) The board of directors may appoint one or more directors as alternate members of any
 119 committee to replace any absent or disqualified member during the member's absence or
 120 disqualification. Unless the articles of incorporation or the bylaws or the board action
 121 creating the committee or appointing one or more directors as alternate members provide
 122 otherwise, in the event of the absence or disqualification of a member of a committee, the
 123 member or members of the committee present at any meeting and not disqualified from
 124 voting, unanimously, may appoint another director to act in place of the absent or
 125 disqualified member."

126 SECTION 1-6.

127 Said article is further amended by revising subsection (a) of Code Section 14-2-831, relating
 128 to derivative actions, as follows:

129 "(a) Subject to Code Sections 14-2-830 and 14-2-842, a ~~A~~ derivative proceeding, as
 130 defined in ~~subsection (a) paragraph (1)~~ of Code Section 14-2-740, may be brought by a

131 shareholder, or an action may be brought by the corporation, against one or more directors
 132 or officers of the corporation to procure for the benefit of the corporation a judgment for
 133 the following relief:

134 (1) Subject to any provision of the articles of incorporation authorized pursuant to
 135 paragraph (4) of subsection (b) of Code Section 14-2-202, to ~~To~~ compel the defendant
 136 to account for official conduct or to decree any other relief called for by his or her official
 137 conduct in the following cases:

138 (A) The neglect of, failure to perform, or other violation of his or her duties in the
 139 management of the corporation or in the disposition of corporate assets;

140 (B) The acquisition, transfer to others, loss, or waste of corporate assets due to any
 141 neglect of, failure to perform, or other violation of duties; or

142 (C) The appropriation, in violation of his or her duties, of any business opportunity of
 143 the corporation;

144 (2) To enjoin a proposed unlawful conveyance, assignment, or transfer of corporate
 145 assets or other unlawful transaction where there is sufficient evidence that it will be
 146 made; and

147 (3) To set aside an unlawful conveyance, assignment, or transfer of corporate assets
 148 where the transferee knew of its unlawfulness and is made a party to the action."

149 **SECTION 1-7.**

150 Said article is further amended by revising subsections (b) and (c) of Code Section 14-2-840,
 151 relating to required officers, as follows:

152 "(b) The board of directors may elect individuals to fill one or more offices of the
 153 corporation. A duly appointed officer may appoint one or more officers ~~or assistant~~
 154 ~~officers~~ if authorized by the bylaws or the board of directors.

155 (c) The bylaws or the board of directors shall ~~delegate~~ assign to one of the officers
 156 responsibility for preparing the minutes of the directors' and shareholders' meetings and for
 157 maintaining and authenticating records of the corporation required to be kept under
 158 subsections (a) of Code Sections 14-2-1601 and 14-2-1602."

159 **SECTION 1-8.**

160 Said article is further amended by revising Code Section 14-2-841, relating to duties of
 161 officers, as follows:

162 "14-2-841.

163 Each officer has the authority and shall perform the ~~duties~~ functions set forth in the bylaws
 164 or, to the extent consistent with the bylaws, the ~~duties~~ functions prescribed by the board of
 165 directors or by direction of an officer authorized by the board of directors to prescribe the

166 ~~duties~~ functions of other officers. Unless the articles of incorporation, bylaws, or a
 167 ~~resolution~~ action of the board of directors of a corporation provide otherwise, the chief
 168 executive officer (or the president if no person has been designated as chief executive
 169 officer) of a corporation shall have authority to conduct all ordinary business on behalf of
 170 such corporation and may execute and deliver on behalf of a corporation any contract,
 171 conveyance, or similar document not requiring approval by the board of directors or
 172 shareholders as provided in this chapter."

173 **SECTION 1-9.**

174 Said article is further amended by revising Code Section 14-2-843, relating to resignation and
 175 removal of officers, as follows:

176 "14-2-843.

177 (a) An officer may resign at any time by delivering notice ~~in writing or by electronic~~
 178 ~~transmission~~ to the corporation. A resignation is effective when the notice is ~~effective~~
 179 delivered unless the notice specifies a future later effective ~~date~~ time. A copy of the notice
 180 of resignation as delivered to the corporation may be filed with the Secretary of State.

181 (b) ~~A board of directors may remove any officer at any time with or without cause. Unless~~
 182 ~~the bylaws provide otherwise, any officer or assistant officer appointed by an authorized~~
 183 ~~officer pursuant to subsection (b) of Code Section 14-2-840 may be removed at any time~~
 184 ~~with or without cause by any officer having authority to appoint such officer or assistant~~
 185 ~~officer. An officer may be removed at any time with or without cause by:~~

186 (1) The board of directors;

187 (2) The officer who appointed such officer, unless the bylaws or the board of directors
 188 provide otherwise; or

189 (3) Any other officer if authorized by the bylaws or the board of directors."

190 **SECTION 1-10.**

191 Said article is further amended by revising paragraph (1) of subsection (f) of Code Section
 192 14-2-859, relating to application of part, as follows:

193 "(1) To advance funds to pay for or reimburse expenses in accordance with Code Section
 194 14-2-853 or subsection (c) of Code Section 14-2-856 to the fullest extent permitted by
 195 law; and"

196 **SECTION 1-11.**

197 Said article is further amended by adding a new part to read as follows:

"Part 7

198

199 14-2-870.

200 (a) A corporation may disclaim, in its articles of incorporation or bylaws or by action of
201 its shareholders or board of directors, any interest of the corporation in, or in being offered,
202 or in excluding directors or officers from taking advantage of or participating in, specific
203 business opportunities or classes or categories of business opportunities that are, have been,
204 or may be in the future presented to the corporation or to one or more of its directors or
205 officers. For purposes of this part, the terms 'director' and 'directors' include a person or
206 persons other than directors to the extent discretion or powers of the board of directors are
207 vested in such person or persons pursuant to Code Sections 14-2-732, 14-2-920, or
208 14-2-922.

209 (b) A director's or officer's taking advantage of, or participating in, directly or indirectly,
210 a specific business opportunity may not be the subject of equitable relief, or give rise to an
211 award of damages or other sanctions against the director or officer, in a proceeding by a
212 shareholder or by or in the right of the corporation on the ground that such opportunity
213 should have been first offered to the corporation or that the corporation had an interest in,
214 or in being offered, or in excluding the director or officer from taking advantage of or
215 participating in, such opportunity, to the extent the corporation has disclaimed any such
216 interest with respect to such business opportunity pursuant to subsection (a) of this Code
217 section, either with respect to the specific business opportunity or with respect to a class
218 or category of business opportunities that includes such opportunity.

219 (c) Action by the shareholders or board of directors of the corporation approving a
220 disclaimer pursuant to subsection (a) of this Code section that applies to a director with
221 respect to a specific past, present, or future business opportunity shall be effective for all
222 purposes if the director brings such opportunity to the attention of the corporation (if such
223 opportunity is not known to the corporation) and:

224 (1) Such disclaimer is approved by qualified directors in compliance with the procedures
225 set forth in Code Section 14-2-862, as if the decision being made concerned a director's
226 conflicting interest transaction; or

227 (2) Such disclaimer is approved by shareholders' action taken in compliance with the
228 procedures set forth in Code Section 14-2-863, as if the decision being made concerned
229 a director's conflicting interest transaction;

230 except that, rather than making 'required disclosure' as defined in Code Section 14-2-860,
231 in each case the director shall have made prior disclosure to those approving such
232 disclaimer on behalf of the corporation of all material facts concerning the business
233 opportunity that are then known to the director, subject to subsection (e) of this Code

234 section, and that a 'qualified director' is a director who, at the time action is to be taken
 235 under paragraph (1) of subsection (c) of this Code section, would be a qualified director
 236 under subsection (d) of Code Section 14-2-862 if the business opportunity were a director's
 237 conflicting interest transaction.

238 (d) Action by the board of directors or shareholders of the corporation approving a
 239 disclaimer pursuant to subsection (a) of this Code section that applies to an officer with
 240 respect to a specific past, present, or future business opportunity shall be effective for all
 241 purposes if the officer brings such opportunity to the attention of the corporation (if such
 242 opportunity is not known to the corporation) and such disclaimer is approved by the board
 243 of directors or shareholders in compliance with the procedures set forth in Code Section
 244 14-2-864, as if the decision being made concerned an officer's conflicting interest
 245 transaction, except that, rather than making 'required disclosure' as defined in Code Section
 246 14-2-864, in each case the officer shall have made prior disclosure to those approving such
 247 disclaimer on behalf of the corporation of all material facts concerning the business
 248 opportunity that are then known to the officer, subject to subsection (e) of this Code
 249 section.

250 (e) Notwithstanding subsections (c) or (d) of this Code section, a director or officer is not
 251 obligated to make prior disclosure to those approving a disclaimer on behalf of the
 252 corporation pursuant to subsection (c) or (d) of this Code section of all material facts
 253 concerning the business opportunity subject to such disclaimer that are then known to the
 254 director or officer to the extent that the director or officer reasonably believes that doing
 255 so would violate a duty imposed under law, a legally enforceable obligation of
 256 confidentiality, or a professional ethics rule, provided that such director or officer discloses
 257 to those acting on behalf of the corporation:

258 (1) All information required to be disclosed that is not so violative; and
 259 (2) The nature of the director's or officer's duty not to disclose the confidential
 260 information.

261 (f) In any proceeding seeking equitable relief or other remedies based upon an alleged
 262 improper taking advantage of or participation in a business opportunity by a director or
 263 officer, directly or indirectly, the fact that the director or officer did not employ the
 264 procedures described in this Code section before taking advantage of the opportunity shall
 265 not:

266 (1) Create an inference that the opportunity should have been first presented to the
 267 corporation, that the corporation had an interest in, or in being offered, or in excluding
 268 the director or officer from taking advantage of or participating in, such opportunity or
 269 that the director or officer has or will have appropriated the opportunity in violation of
 270 his or her duties by taking advantage of or participating in the opportunity; or

271 (2) Alter the burden of proof otherwise applicable to establish that the director or officer
 272 breached a duty to the corporation in the circumstances."

273 **PART II**

274 **SECTION 2-1.**

275 Title 14 of the Official Code of Georgia Annotated, relating to corporations, partnerships,
 276 and associations, is amended in Code Section 14-2-140, relating to code definitions
 277 applicable to business corporations, by adding two new paragraphs to read as follows:

278 "(13.1) 'Foreign limited liability company' means a limited liability company formed
 279 under the laws of a jurisdiction other than this state."

280 "(16.1) 'Limited liability company' means any limited liability company formed under
 281 Chapter 11 of this title."

282 **SECTION 2-2.**

283 Said title is further amended in Code Section 14-3-140, relating to definitions applicable to
 284 nonprofit corporations, by adding two new paragraphs to read as follows:

285 "(16.1) 'Foreign limited liability company' means a limited liability company formed
 286 under the laws of a jurisdiction other than this state."

287 "(19.1) 'Limited liability company' means any limited liability company formed under
 288 Chapter 11 of this title."

289 **SECTION 2-3.**

290 Said title is further amended in Code Section 14-8-2, relating to definitions applicable to
 291 partnerships, by adding two new paragraphs to read as follows:

292 "(4.1) 'Foreign limited liability company' means a limited liability company formed
 293 under the laws of a jurisdiction other than this state."

294 "(6.1) 'Limited liability company' means any limited liability company formed under
 295 Chapter 11 of this title."

296 **SECTION 2-4.**

297 Said title is further amended in Code Section 14-9-101, relating to definitions applicable to
 298 the "Georgia Revised Uniform Limited Partnership Act," by adding two new paragraphs to
 299 read as follows:

300 "(3.1) 'Foreign limited liability company' means a limited liability company formed
 301 under the laws of a jurisdiction other than this state."

302 "(6.1) 'Limited liability company' means any limited liability company formed under
 303 Chapter 11 of this title."

304 **PART III**

305 **SECTION 3-1.**

306 Said title is further amended by revising Code Section 14-2-501, relating to registered office
 307 and registered agent applicable to business corporations, as follows:

308 "14-2-501.

309 Each corporation must continuously maintain in this state:

310 (1) A registered office that may be the same as any of its places of business; and

311 (2) A registered agent, who may be:

312 (A) A person who resides in this state and whose business office is identical with the
 313 registered office;

314 (B) A domestic corporation, ~~or~~ nonprofit domestic corporation, or domestic limited
 315 liability company whose business office is identical with the registered office; or

316 (C) A foreign corporation, ~~or~~ nonprofit foreign corporation, or foreign limited liability
 317 company authorized to transact business in this state whose business office is identical
 318 with the registered office."

319 **SECTION 3-2.**

320 Said title is further amended by revising Code Section 14-2-1507, relating to registered office
 321 and registered agent of foreign corporation applicable to business corporations, as follows:

322 "14-2-1507.

323 Each foreign corporation authorized to transact business in this state must continuously
 324 maintain in this state:

325 (1) A registered office that may be the same as any of its places of business; and

326 (2) A registered agent, who may be:

327 (A) An individual who resides in this state and whose business office is identical with
 328 the registered office;

329 (B) A domestic corporation, ~~or~~ nonprofit domestic corporation, or domestic limited
 330 liability company whose business office is identical with the registered office; or

331 (C) A foreign corporation, ~~or~~ foreign or nonprofit corporation, or foreign limited
 332 liability company authorized to transact business in this state whose business office is
 333 identical with the registered office."

334 **SECTION 3-3.**

335 Said title is further amended by revising Code Section 14-3-501, relating to registered office
336 and registered agent applicable to nonprofit corporations, as follows:

337 "14-3-501.

338 Each corporation must continuously maintain in this state:

339 (1) A registered office with the same address as that of the registered agent; and

340 (2) A registered agent, who may be:

341 (A) A person who resides in this state and whose office is identical with the registered
342 office;

343 (B) A domestic business or nonprofit corporation or domestic limited liability company
344 formed under this chapter or under Chapter 2 of this title whose office is identical with
345 the registered office; or

346 (C) A foreign business or nonprofit corporation or foreign limited liability company
347 authorized to transact business in this state whose office is identical with the registered
348 office."

349 **SECTION 3-4.**

350 Said title is further amended by revising Code Section 14-3-1507, relating to registered office
351 and registered agent of foreign corporation applicable to nonprofit corporations, as follows:

352 "14-3-1507.

353 Each foreign corporation authorized to transact business in this state must continuously
354 maintain in this state:

355 (1) A registered office that may be the same as any of its places of business; and

356 (2) A registered agent, who may be:

357 (A) An individual who resides in this state and whose business office is identical with
358 the registered office;

359 (B) A domestic corporation, ~~or~~ domestic business corporation, or domestic limited
360 liability company whose business office is identical with the registered office; or

361 (C) A foreign corporation, ~~or~~ foreign business corporation, or foreign limited liability
362 company authorized to transact business in this state whose business office is identical
363 with the registered office."

364 **SECTION 3-5.**

365 Said title is further amended by revising subsection (b) of Code Section 14-8-46, relating to
366 registered office and registered agent required for foreign limited liability partnership, as
367 follows:

368 "(b) A registered agent must be an individual resident of this state, a domestic corporation,
 369 professional corporation, or limited liability company, or a foreign corporation or limited
 370 liability company authorized to do business in this state."

371 **SECTION 3-6.**

372 Said title is further amended by revising subsection (b) of Code Section 14-9-902.1, relating
 373 to registered agent and office under the "Georgia Revised Uniform Limited Partnership Act,"
 374 as follows:

375 "(b) An agent for service of process must be an individual resident of this state, a domestic
 376 corporation, professional corporation, or limited liability company, or a foreign corporation
 377 or limited liability company authorized to do business in this state."

378 **SECTION 3-7.**

379 Said title is further amended by revising subsection (b) of Code Section 14-11-209, relating
 380 to registered office and registered agent applicable to limited liability companies, as follows:

381 "(b) A registered agent must be an individual resident of this state, a corporation, another
 382 limited liability company, or a foreign corporation or a foreign limited liability company
 383 having a certificate of authority to transact business in this state."

384 **SECTION 3-8.**

385 Said title is further amended by revising subsection (b) of Code Section 14-11-703, relating
 386 to registered office and registered agent applicable to foreign limited liability companies, as
 387 follows:

388 "(b) A registered agent must be an individual resident of this state, a corporation, limited
 389 liability company, or a foreign corporation or another foreign limited liability company
 390 having a certificate of authority to transact business in this state."

391 **PART IV**

392 **SECTION 4-1.**

393 Said title is further amended by revising subsection (i) of Code Section 14-8-46, relating to
 394 registered office and registered agent required for foreign limited liability partnership,
 395 Secretary of State as agent for service of process, and venue, as follows:

396 "(i) Whenever a foreign limited liability partnership required to procure a certificate of
 397 authority to do business in this state shall fail to appoint or maintain a registered agent in
 398 this state, or whenever its registered agent cannot with reasonable diligence be found at the
 399 registered office, the Secretary of State shall be an agent of such foreign limited liability

400 partnership upon whom any process, notice, or demand may be served. Service on the
 401 Secretary of State of any such process, notice, or demand shall be made by delivering to
 402 and leaving with the Secretary of State or with any persons designated by the Secretary of
 403 State to receive such service ~~two copies~~ a copy of such process, notice, or demand. The
 404 plaintiff or his or her attorney shall certify in writing to the Secretary of State that the
 405 foreign limited liability partnership failed either to maintain a registered office or appoint
 406 a registered agent in this state and that he or she has forwarded by registered mail or
 407 statutory overnight delivery such process, service, or demand to the last registered agent
 408 at the last registered office listed on the records of the Secretary of State and that service
 409 cannot be effected at such office."

410 **SECTION 4-2.**

411 Said title is further amended by revising subsection (f) of Code Section 14-11-209, relating
 412 to registered office and registered agent relative to limited liability companies, as follows:

413 "(f) Whenever a limited liability company shall fail to appoint or maintain a registered
 414 agent in this state or whenever its registered agent cannot with reasonable diligence be
 415 found at the registered office, then the Secretary of State shall be an agent of such limited
 416 liability company upon whom any process, notice, or demand may be served. Service on
 417 the Secretary of State of any such process, notice, or demand shall be made by delivering
 418 to and leaving with him or her or with any other person or persons designated by the
 419 Secretary of State to receive such service ~~two copies~~ a copy of such process, notice, or
 420 demand. The plaintiff or his or her attorney shall certify in writing to the Secretary of State
 421 that the limited liability company failed either to maintain a registered office or appoint a
 422 registered agent in this state and that he or she has forwarded by registered or certified mail
 423 or statutory overnight delivery such process, notice, or demand to the most recent
 424 registered office listed on the records of the Secretary of State and that service cannot be
 425 effected at such office."

426 **SECTION 4-3.**

427 Said title is further amended by revising subsection (h) Code Section 14-11-703, relating to
 428 registered office and registered agent and service on Secretary of State relative to foreign
 429 limited liability companies, as follows:

430 "(h) Whenever a foreign limited liability company required to procure a certificate of
 431 authority to transact business in this state shall fail to appoint or maintain a registered agent
 432 in this state, or whenever its registered agent cannot with reasonable diligence be found at
 433 the registered office, then the Secretary of State shall be an agent of such foreign limited
 434 liability company upon whom any process, notice, or demand may be served. Service on

435 the Secretary of State of any such process, notice, or demand shall be made by delivering
436 to and leaving with him or her or with any other person or persons designated by the
437 Secretary of State to receive such service ~~two copies~~ a copy of such process, notice, or
438 demand. The plaintiff or his or her attorney shall certify in writing to the Secretary of State
439 that the foreign limited liability company failed either to maintain a registered office or
440 appoint a registered agent in this state and that he or she has forwarded by registered or
441 certified mail or statutory overnight delivery such process, notice, or demand to the last
442 registered agent at the most recent registered office listed on the records of the Secretary
443 of State and that service cannot be effected at such office."

444

PART V

445

SECTION 5-1.

446 All laws and parts of laws in conflict with this Act are repealed.