

2009 DRAFTING REQUEST

Bill

Received: **01/13/2010**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Jason Fields (608) 266-3756**

By/Representing: **Lori Youngman**

This file may be shown to any legislator: **NO**

Drafter: **csundber**

May Contact:

Addl. Drafters:

Subject: **Bus. Assn. - LLCs**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Fields@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Low-profit limited liability companies

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 01/27/2010	jdyer 01/28/2010		_____			
/P1	csundber 02/01/2010	jdyer 02/01/2010	rschluet 01/28/2010	_____	lparisi 01/28/2010		
/P2	csundber 03/02/2010	jdyer 03/02/2010	rschluet 02/02/2010	_____	lparisi 02/02/2010		State
/1			rschluet	_____	sbasford	cduerst	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
			03/02/2010 _____		03/02/2010	03/03/2010	

FE Sent For: "1" @ intro. 3/26/10

<END>

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/1			rschluet	_____	sbasford		

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

03/02/2010 _____ 03/02/2010

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/P1	csundber 02/01/2010	jdyer 02/01/2010	rschluet 01/28/2010	_____	lparisi 01/28/2010		
/P2		1 3/2 jld	rschluet 02/02/2010	_____	lparisi 02/02/2010		

Handwritten notes:
1 3/2 jld
rschluet
02/02/2010
JF
3/2/10

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/?	csundber 01/27/2010	jdye 01/28/2010					
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/P1		PZ 2/1 jld rschluet 01/28/2010			lparisi 01/28/2010		
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FE Sent For:

<END>
2/2

2009 DRAFTING REQUEST

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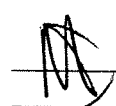
Low-profit limited liability companies

Instructions:

See attached

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1/?	csundber	PI 1/28 JLD					
			1/26	-15 F J F	1/28		

FE Sent For:

<END>

Sundberg, Christopher

From: Youngman, Lori
Sent: Wednesday, January 13, 2010 11:45 AM
To: Sundberg, Christopher
Subject: Rep. Fields' L3C draft information
Attachments: L3C History.htm; LegislativeandRegulatory01.pdf; L3C draft language.DOC

Chris,

Attached is draft language and some background information on "Low-profit Limited Liability Company". Rep. Fields would like to get this drafted as soon as possible.

Please feel free to contact me if you have any questions or need more information.

Lori Youngman
Office of State Rep. Jason Fields
221 North State Capitol
PO Box 8952
Madison, WI 53708
608-266-3756

**Proposed Amendments to
the Wisconsin Limited Liability Company Act
to Implement the Low-Profit Limited Liability Company**

s. 183.0102 is hereby amended by inserting the following new paragraph (12m):

(12m) "Low-profit limited liability company" means a limited liability company formed under this chapter, which is organized for a business purpose that satisfies, and is at all times operated to satisfy, each of the requirements set forth in s. 183.0106 (1m).

s. 183.0103 (1) is hereby amended as follows:

(1) The name of a limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited liability co." or end with the abbreviation "L.L.C." or "LLC"; provided, however, that if the limited liability company is a low-profit limited liability company, its name shall instead contain the words "low-profit limited liability company" or end with the abbreviation "L3.C." or "L3C". The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under s. 183.0106 (1) and, if the limited liability company is a low-profit limited liability company, s. 183.0106 (1m).

s. 183.0106 is hereby amended by inserting the following new paragraph (1m):

(1m) Notwithstanding the foregoing provisions of s. 183.0106 (1), a limited liability company that is a low-profit limited liability company must be organized for a business purpose that satisfies, and ~~is~~ at all times operated to satisfy, ~~each~~ of the following requirements:
must be all

(a) The limited liability company (i) significantly furthers the accomplishment of one or more religious, charitable, scientific, literary or educational purposes within the meaning of section 170(c)(2)(B) of the Internal Revenue Code of 1986, as amended, and (ii) would not have been formed but for the entity's relationship to the accomplishment of such one or more religious, charitable, scientific, literary or educational purposes;

(b) No significant purpose of the limited liability company is the production of income or the appreciation of property; provided, however, that the fact that the entity produces significant income or capital appreciation shall not, in the absence of other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property; and

(c) No purpose of the limited liability company is to accomplish one or more political or legislative purposes within the meaning of section 170(c)(2)(D) of the Internal Revenue Code of 1986, as amended.

If a limited liability company that met the requirements of s. 183.0106 (1m) (a) through (c) at its formation at any time ceases to satisfy any one or more of those requirements, then the company shall cease to be a low-profit limited liability company; provided,

however, that if the company otherwise complies with this chapter, the company shall continue to exist as a limited liability company and its name shall be changed to satisfy the requirements of s. 183.0103 (1).

s. 183.0120 (1) (f) is hereby amended as follows:

(f) A brief description of the nature of the domestic or foreign limited liability company's business, and if the limited liability company is a low-profit limited liability company, a brief description of how its business furthers the purposes set forth in s. 183.0106 (1m) (a).

s. 183.0202 is hereby amended by adding the following as new paragraph (7):

(7) If the limited liability company is a low-profit limited liability company, a statement that it is a low-profit limited liability company and that it is organized for a business purpose that satisfies, and will be at all times operated to satisfy, each of the requirements set forth in s. 183.0106 (1m).

s. 183.09025 (1) is hereby amended as follows:

(1) The department may bring a proceeding under sub. (2) to administratively dissolve any limited liability company that does not deliver to the department the limited liability company's complete annual report within one year after the annual report is due. The department may also bring a proceeding under sub. (2) to administratively dissolve any low-profit limited liability company that has ceased to meet any of the requirements in s. 183.0106 (1m), and has failed for 60 days after ceasing to meet those requirements to file articles of amendment with the Commission, amending its name to conform with the requirements in s. 183.0103 (1) governing limited liability company names.

**THE L3C: LOW-PROFIT LIMITED LIABILITY COMPANY
RESEARCH BRIEF
JULY 2008**



THE L3C DESIGNATION

The L3C, or Low-Profit Limited Liability Company, is a new type of corporate designation that is a cross between a nonprofit and for-profit corporation. The L3C was enacted by the Vermont legislature in May 2008 and builds upon the existing Limited Liability Company (LLC) structure.

- **The L3C is a specific type of LLC.** L3Cs are like LLCs in that they have the liability protection of a corporation, the flexibility of a partnership and the ability to be sold in pieces. Unlike the basic LLC, however, L3Cs are specifically formed to further a socially beneficial mission and can qualify as a program related investment, or PRI. As a LLC, L3Cs are not tax-exempt.
- **Organizing as a L3C is similar to organizing as a LLC.** According to the Vermont legislation, organizing as a L3C is the same as organizing as a LLC, “except that the L3C designation must be indicated when the articles of organization are filed and the name must include the words ‘L3C.’”¹

BRIDGING THE GAP: “THE FOR-PROFIT WITH A NONPROFIT SOUL”

The L3C designation is meant to bridge the gap between the capabilities of nonprofit and for-profit corporations. At its core, the L3C is a profit-generating entity with a social mission as its primary objective.

- **L3Cs create a market for investment in financially risky, but socially beneficial activities.** A L3C organization will be able to access capital in situations where the profit potential of a business is too low to warrant the risk of investment by traditional investors. The corresponding return on investment profile and private sector resources available for each type of organization are outlined below:

Type of Corporation	Organizational Purpose(s)	Potential Rate of Financial Return on Investment (ROI)	Private Sector Resources
Limited Liability Company (LLC)	Financial	5% or greater	Market driven; making money and building wealth
Low-Profit Limited Liability Company (L3C)	Financial and mission-related	Between 0% and 5%	Philanthropic source invests with a lower than market rate of return; philanthropic investment lowers the risk and raises potential ROI for subsequent investors
Nonprofit (501(c)(3) or other tax-exempt organization)	Mission-related	0% to negative 100%	Market incentives inadequate or non-existent

Source: Americans for Community Development

¹ Poulin, Betty. “Low-Profit Limited Liability Company.” Vermont Secretary of State, Corporations Division, July 2008. http://www.sec.state.vt.us/corps/dobiz/llc/llc_l3c.htm

CANDIDATES FOR THE L3C DESIGNATION

In addition to having a socially beneficial mission, strong candidates for the L3C structure are organizations that:

- **Have cash flow.** Since investors will be seeking a return on their investment in a L3C, the organization must consistently generate revenue.
- **Are entrepreneurial in finding ways to generate revenue.** Organizations that are willing to supplement their current services with additional revenue-generating activities will be more attractive to investors.²

Existing nonprofits can utilize the L3C structure in two ways: reincorporating as a L3C or establishing a subsidiary. If a nonprofit generates enough earned income to qualify as "low profit," it could reincorporate as a stand-alone L3C. However, the most likely scenario for existing nonprofits will be establishing subsidiaries to conduct qualifying activities.

CURRENT L3C ACTIVITIES

With the enactment of the Vermont legislation, a L3C can incorporate in Vermont, but headquarter or operate in another state or country. Due to the newness of the enacted legislation, L3Cs and their potential investors are still in the planning phases. Current L3C activities include:

- **Interest in the structure is spreading to other states.** The states of North Carolina, Oregon, Georgia, Michigan and Minnesota are all interested in and/or working to adopt L3C legislation.
- **Eleven L3Cs currently exist.** Robert Lang, who is spearheading the L3C effort, and his colleagues have established "L3C Advisors L3C" to help organizations adopt this structure. Eleven other L3Cs have been established but, at this time, L3C Advisors L3C is the most active organization.
- **Foundations are interested in investing in L3Cs, but none have currently done so.** According to Robert Lang, a handful of foundations have been interested in funding L3Cs, but have not yet committed any funds.
- **The Council on Foundations has put seeking a private letter ruling on L3Cs on hold.** When the L3C legislation was first enacted, the Council on Foundations contemplated approaching the Internal Revenue Service (IRS) about a blanket private letter ruling on L3Cs qualifying for PRI. Since the L3C legislation was written in such a way as to comply with all PRI regulations, the COF has decided to see how activity surrounding the L3C develops before approaching the IRS with any requests. This issue will be reexamined by the COF in January of 2009.

SPEARHEADING THE L3C INITIATIVE

- **Robert M. Lang, Jr.:** President and CEO, The Mary Elizabeth & Gordon B. Mannweiler Foundation Inc.
- **Marc Owens:** Partner, Caplin & Drysdale; Former director of the Internal Revenue Service's Exempt Organizations Division

The L3C structure is characterized by its flexibility, and organizations and investors are developing creative models to capitalize on the L3C opportunity. Some specific examples of L3Cs that are in the planning phases include:

- **The National Cancer Coalition.** The National Cancer Coalition will operate a clinic offering low-cost early-detection and cancer treatment services for women in Paraguay, generating revenue from patient fees while providing health services to a population in need.

² Lang, Robert. Community Wealth Ventures interview. July 18, 2008.

- **The Montana Food Bank.** The MT Food Bank provides farmers with access to its food processing plant to process and deliver fresh, local food to Montana grocery stores. The food processing program is also a training program for Montana prisoners.

More general models include health clinics, charter schools, music venues and museums, among others.³

IMPLICATIONS FOR FOUNDATIONS

The opportunities for foundations with the L3C center on PRIs and the opportunity to invest in organizations that have both financial and social returns. For a foundation, the L3C provides several positive benefits:

- **Reduces the costs of PRIs.** Since the L3C legislation in Vermont was written in such a way as to comply with all PRI regulations, the structure eliminates the need for private letter rulings or legal opinions for foundation investment in L3Cs.
- **Attracts outside investors.** Investment in a L3C can be layered, delivering returns according to the needs of the investor (low or no return to a foundation, greater returns for a market-driven investor). Foundations will be able to serve as early-stage investors by taking on more financial risk, in exchange for a high social return. Further, early foundation investment will pave the way for more market-driven investment.
- **Satisfies a foundation's philanthropic mandate.** Investment in a L3C would allow a foundation to invest in an organization that is meeting community needs, while providing an opportunity for a foundation to generate a modest return. To be successful at investing in a L3C opportunity will most likely require close coordination between the program staff and the foundation's investment officers.

FOR FURTHER READING

Austin, James E., et. al. "Capitalizing on Convergence." Stanford Social Innovation Review, Winter 2007. http://www.ssireview.org/images/articles/2007WI_feature_austinetal.pdf

Billitteri, Thomas J. "Mixing Mission and Business: Does Social Enterprise Need A New Legal Approach?" The Aspen Institute, January 2007. http://www.nonprofitresearch.org/usr_doc/New_Legal_Forms_Report_FINAL.pdf

Lang, Robert. "Charitable Returns." Worth Magazine, April 2006. <http://www.worth.com/Editorial/Money-Meaning/Philanthropy/Opportunities-Exposures-Philanthropy-Charitable>Returns.asp>

Lang, Robert. "Overview." Americans for Community Development. <http://www.americansforcommunitydevelopment.org/>

Peeler, Heather. "The L3C: A New Tool for Social Enterprise." Community Wealth Vanguard, August 2007. <http://www.communitywealth.com/Newsletter/August%202007/L3C.html>

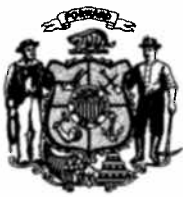
Poulin, Betty. "Low-Profit Limited Liability Company." Vermont Secretary of State, Corporations Division, July 2008. http://www.sec.state.vt.us/corps/dobiz/llc/llc_l3c.htm

Searing, Jane M. "Capital With A Conscience." Journal of Accountancy Online, July 2008. http://www.aicpa.org/PUBS/jofa/jul2008/capital_conscience.htm

Wolk, Andrew. "Social Entrepreneurship & Government: A New Breed of Entrepreneurs Developing Solutions to Social Problems." Root Cause, 2007. http://www.rootcause.org/assets/files/SE_and_Gov_Wolk.pdf

³ Lang, Robert. Community Wealth Ventures interview. July 18, 2008.





In: 1/27/10 Wanted: Tues. 2/2/10

State of Wisconsin
2009 - 2010 LEGISLATURE

PI
LRB-4122R
CTS:..... RMMR
JLD

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

x Gen

1

AN ACT ...; relating to: low-profit limited liability companies. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

SECTION 1. 183.0102 (12m) ^x of the statutes is created to read:

3

183.0102 (12m) "Low-profit limited liability company" means a limited

4

liability company that is formed under this chapter and that satisfies s. 183.0106

5

(1m) (a) and (b). ✓

6

SECTION 2. 183.0103 (1) of the statutes is amended to read:

7

183.0103 (1) The name of a limited liability company as set forth in its articles

8

of organization must contain the words "limited liability company" or "limited liability co." or end with the abbreviation "L.L.C." or "LLC" ^{⊖ ← strike period} (except that the name of

9

a low-profit limited liability company shall contain the words "low-profit limited ^{strike → " " ← score quotation mark}

10

score period
no delete

1 liability company or end with the abbreviation "L.3.C." or "L3C". The name may not
 2 contain language stating or implying that the limited liability company is organized
 3 for any purpose other than that permitted under s. 183.0106 (1) or, if the limited
 4 liability company is a low-profit limited liability company, language stating or
 5 implying that the limited liability company is organized for any purpose other than
 6 that permitted under s. 183.0106 (1m) (a).

History: 1993 a. 112; 1995 a. 27, 97; 2005 a. 441.

SECTION 3. 183.0106 (1m) of the statutes is created to read:

183.0106 (1m) (a) Notwithstanding sub. (1), a limited liability company that
 is a low-profit limited liability company may only be organized for a purpose that
 significantly furthers the accomplishment of a religious, charitable, scientific,
 literary, or educational purpose under section 170 (c) (2) (B) of the Internal Revenue
 Code. A limited liability company may be organized as a low-profit limited liability
 company only if the limited liability company would not have been formed but for the
 limited liability company's relationship to the accomplishment of the religious,
 charitable, scientific, literary, or educational purpose.

(b) The production of income or the appreciation of property may not be a
 significant purpose of a low-profit limited liability company. The accomplishment
 of a political or legislative purpose, as defined under section 170 (c) (2) (D) of the
 Internal Revenue Code, may not be any purpose of the limited liability company.

(c) If a limited liability company that satisfied pars. (a) and (b) when it was
 formed later ceases to satisfy par. (a) and (b), it is no longer a low-profit limited
 liability company, but if the limited liability company otherwise complies with this
 chapter, it shall continue to exist as a limited liability company and is subject to s.
 183.0103 (1). A limited liability company's production of significant income or capital

1

21

1 appreciation is not, in the absence of other factors, conclusive evidence of a
2 significant purpose involving the production of income or the appreciation of
3 property.

4 SECTION 4. 183.0120 (1) (f) of the statutes is amended to read:

5 183.0120 (1) (f) A brief description of the nature of the domestic or foreign
6 limited liability company's business and, if it is a low-profit limited liability
7 company, a brief description of how its business furthers the accomplishment of a
8 religious, charitable, scientific, literary, or educational purpose under section 170 (c)
9 (2) (B) of the Internal Revenue Code.

10 History: 1995 a. 27, 225; 2003 a. 33.

11 SECTION 5. 183.0202 (7) of the statutes is created to read:

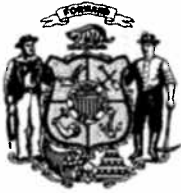
12 183.0202 (7) If the limited liability company is a low-profit limited liability
13 company, a statement that it is a low-profit limited liability company and that it is
14 organized for a business purpose that satisfies s. 183.0106 (1m) (a) and (b).

15 SECTION 6. 183.09025 (1) of the statutes is renumbered 183.09025 (1) (intro.)
16 and amended to read:

17 183.09025 (1) (intro.) GROUNDS FOR ADMINISTRATIVE DISSOLUTION. The
18 department may bring a proceeding under sub. (2) to administratively dissolve any
19 limited liability company that does not deliver to the department the limited liability
20 company's complete annual report within one year after the annual report is due.
21 The department may also bring a proceeding under sub. (2) to administratively
22 dissolve a low-profit limited liability company if all of the following apply:

23 SECTION 7. 183.09025 (1) (a) of the statutes is created to read:

24 183.09025 (1) (a) The low-profit limited liability company does not satisfy any
of the requirements under s. 183.0106 (1m) (a) and (b).



In: 2/1/10 wanted: soon

State of Wisconsin
2009 - 2010 LEGISLATURE

PZ
LRB-4122/PT
CTS:jld:rs RMNR

DN

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INS

Regen

x
1 AN ACT *to renumber and amend* 183.09025 (1); *to amend* 183.0103 (1) and
2 183.0120 (1) (f); and *to create* 183.0102 (12m), 183.0106 (1m), 183.0202 (7),
3 183.09025 (1) (a) and 183.09025 (1) (b) of the statutes; **relating to:** low-profit
4 limited liability companies. ✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version. ✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 183.0102 (12m) of the statutes is created to read:
6 183.0102 (12m) "Low-profit limited liability company" means a limited
7 liability company that is formed under this chapter and that satisfies s. 183.0106
8 (1m) (a) and (b).
9 SECTION 2. 183.0103 (1) of the statutes is amended to read:
10 183.0103 (1) The name of a limited liability company as set forth in its articles
11 of organization must contain the words "limited liability company" or "limited

1 liability co.” or end with the abbreviation “L.L.C.” or “LLC”,” except that the name
2 of a low-profit limited liability company shall contain the words “low-profit limited
3 liability company” or end with the abbreviation “L.3.C.” or “L3C.” The name may not
4 contain language stating or implying that the limited liability company is organized
5 for any purpose other than that permitted under s. 183.0106 (1) or, if the limited
6 liability company is a low-profit limited liability company, language stating or
7 implying that the limited liability company is organized for any purpose other than
8 that permitted under s. 183.0106 (1m) (a).

9 **SECTION 3.** 183.0106 (1m) of the statutes is created to read:

10 183.0106 (1m) (a) Notwithstanding sub. (1), a limited liability company that
11 is a low-profit limited liability company may only be organized for a purpose that
12 significantly furthers the accomplishment of a religious, charitable, scientific,
13 literary, or educational purpose under section 170 (c) (2) (B) of the Internal Revenue
14 Code. A limited liability company may be organized as a low-profit limited liability
15 company only if the limited liability company would not have been formed but for the
16 limited liability company’s relationship to the accomplishment of the religious,
17 charitable, scientific, literary, or educational purpose.

18 (b) The production of income or the appreciation of property may not be a
19 significant purpose of a low-profit limited liability company. The accomplishment
20 of a political or legislative purpose, as defined under section 170 (c) (2) (D) of the
21 Internal Revenue Code, may not be any purpose of the limited liability company.

22 (c) If a limited liability company that satisfied pars. (a) and (b) when it was
23 formed later ceases to satisfy pars. (a) and (b), it is no longer a low-profit limited
24 liability company, but if the limited liability company otherwise complies with this
25 chapter, it shall continue to exist as a limited liability company and is subject to s.

1 183.0103 (1). A limited liability company's production of significant income or capital
2 appreciation is not, in the absence of other factors, conclusive evidence of a
3 significant purpose involving the production of income or the appreciation of
4 property.

5 **SECTION 4.** 183.0120 (1) (f) of the statutes is amended to read:

6 183.0120 (1) (f) A brief description of the nature of the domestic or foreign
7 limited liability company's business and, if it is a low-profit limited liability
8 company, a brief description of how its business furthers the accomplishment of a
9 religious, charitable, scientific, literary, or educational purpose under section 170 (c)
10 (2) (B) of the Internal Revenue Code.

11 **SECTION 5.** 183.0202 (7) of the statutes is created to read:

12 183.0202 (7) If the limited liability company is a low-profit limited liability
13 company, a statement that it is a low-profit limited liability company and that it is
14 organized for a business purpose that satisfies s. 183.0106 (1m) (a) and (b).

15 **SECTION 6.** 183.09025 (1) of the statutes is renumbered 183.09025 (1) (intro.)
16 and amended to read:

17 183.09025 (1) GROUND FOR ADMINISTRATIVE DISSOLUTION. (intro.) The
18 department may bring a proceeding under sub. (2) to administratively dissolve any
19 limited liability company that does not deliver to the department the limited liability
20 company's complete annual report within one year after the annual report is due.
21 The department may also bring a proceeding under sub. (2) to administratively
22 dissolve a low-profit limited liability company if all of the following apply:

23 **SECTION 7.** 183.09025 (1) (a) of the statutes is created to read:

24 183.09025 (1) (a) The low-profit limited liability company does not satisfy any
25 of the requirements under s. 183.0106 (1m) (a) and (b).

g

1 **SECTION 8.** 183.09025 (1) (b) of the statutes is created to read:
2 183.09025 (1) (b) The low-profit limited liability company has failed to amend
3 its name to comply with s. 183.0103 (1) within 60 days after ceasing to satisfy any
4 of the requirements under s. 183.0106 (1m) (a) and (b).

5

(END)

d-note
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**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4122/P2dn

CTS: A:...

date

Jld

Representative Fields: ✓

This is preliminary draft based on the proposed language submitted as drafting instructions. Please review it carefully to ensure it is consistent with your intent. ✓

*

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-4122/P2ins
CTS:.....

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SECTION 1. 183.0102 (12m) of the statutes is created to read:

183.0102 (12m) "Low-profit limited liability company" means a limited liability company ^{that is} formed under this chapter and ^{which} is organized for a business purpose that satisfies, and is at all times operated to satisfy, each of the requirements set forth in s. 183.0106 (1m).

****NOTE: If the above language is intended to impose a substantive requirement that a L3C be at all times operated to satisfy the requirements of s. 183.0106 (1m), the requirement should be located in s. 183.0106 (1m).

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SECTION 2. 183.0103 (1) of the statutes is amended to read:

183.0103 (1) The name of a limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited liability co." or end with the abbreviation "L.L.C." or "LLC", except that the name of a low-profit limited liability company shall contain the words "low-profit limited liability company" or end with the abbreviation "L.3.C." or "L3C." The name may not contain language stating or implying that the limited liability company is organized for any purpose other than that permitted under s. 183.0106 (1), and, if the limited liability company is a low-profit limited liability company, s. 183.0106 (1m).

History: 1993 a. 112; 1995 a. 27, 97; 2005 a. 441.

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SECTION 3. 183.0106 (1m) of the statutes is created to read:

183.0106 (1m) (a) Notwithstanding sub. (1), a limited liability company that is a low-profit limited liability company shall be organized for a business purpose that satisfies, and is at all times operated to satisfy, each of the following requirements:

****NOTE: If the intent of the language above is to require that a L3C be organized for a purpose that satisfies certain requirements and that the L3C be all times operated to satisfy that purpose, it will need to be rewritten. As written, the language above



INSERT
CONT

requires that a L3C be organized for a purpose that satisfies certain requirements and that *the purpose* be at all times operated to satisfy certain requirements.

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1. The limited liability company[✓] significantly furthers the accomplishment of a religious, charitable, scientific, literary³ or educational purposes within the meaning of section 170 (c) (2) (B) of the Internal Revenue Code[✓], and the limited liability company would not have been formed but for the entity's relationship to the accomplishment of the religious, charitable, scientific, literary[✓], or educational purpose.

2. No significant purpose of the limited liability company[✓] is the production of income or the appreciation of property, but the fact that the entity produces significant income or capital appreciation[✓] is not, in the absence of other factors, conclusive evidence of a significant purpose involving the production of income or the appreciation of property.[✓]

****NOTE: The language preceding these paragraphs signals that it will be followed by requirements that apply to the *purpose* for which a L3C is organized, but the preceding paragraphs instead set out requirements that apply to the L3C itself. Also, the language in proposed par. (b) that sets out an evidentiary standard for determining whether an L3C has an impermissible significant purpose does not quite belong in a paragraph describing the purposes for which a L3C may be organized.
subdivisions
subdivision

3. No purpose of the limited liability company is to accomplish a political or legislative purpose within the meaning of section 170 (c) (2) (D) of the Internal Revenue Code.[✓]

****NOTE: The preceding paragraph sets out a requirement that applies to the L3C itself, not to the purposes for which a L3C is organized.
subdivision

(b) If a limited liability company that satisfied par. (a)[✓] at its formation at any time ceases to satisfy par. (a),[✓] the company shall cease to be a low-profit limited liability company. If the limited liability company otherwise complies with this chapter,[✓] it shall continue to exist as a limited liability company and its name shall be changed to satisfy s. 183.0103 (1).[✓]



INSERT
CONT

****NOTE: If the language above is not intended to provide for an automatic name change at the moment a L3C ceases to meet the requirements under par. (a), it should probably be rewritten to provide that when an L3C becomes an ordinary LLC by operation of the above language, the LLC must change its name to satisfy s. 183.0103 (1)

1 SECTION 4. 183.0120 (1) (f) of the statutes is amended to read:

2 183.0120 (1) (f) A brief description of the nature of the domestic or foreign
3 limited liability company's business and, if the limited liability company is a
4 low-profit limited liability company, a brief description of how its business furthers
5 a purpose under s. 183.0106 (1m) (a) 1. plain period

History: 1995 a. 27, 225; 2003 a. 33.

6 SECTION 5. 183.0202 (7) of the statutes is created to read:

7 183.0202 (7) If the limited liability company is a low-profit limited liability
8 company, a statement that it is a low-profit limited liability company and that it is
9 organized for a business purpose that satisfies, and will be at all times operated to
10 satisfy, each of the requirements set forth in s. 183.0106 (1m) (a) 1.

****NOTE: As written, the language above requires that a L3C provide a statement that it is organized for a purpose that satisfies certain requirements and that the purpose is at all times operated to satisfy those requirements.

11 SECTION 6. 183.09025 (1) of the statutes is renumbered 183.09025 (1) (intro.)
12 and amended to read:

13 183.09025 (1) (intro.) GROUNDS FOR ADMINISTRATIVE DISSOLUTION. The
14 department may bring a proceeding under sub. (2) to administratively dissolve any
15 limited liability company that does not deliver to the department the limited liability
16 company's complete annual report within one year after the annual report is due.
17 The department may also bring a proceeding under sub. (2) to administratively
18 dissolve any low-profit limited liability company if all of the following apply:

19 SECTION 7. 183.09025 (1) (a) of the statutes is created to read:

20 183.09025 (1) (a) The company has ceased to meet any of the requirements in
21 s. 183.0106 (1m) (a).



INSERT cont

x

1 **SECTION 8.** 183.09025 (1) (b) of the statutes is created to read:
2 183.09025 (1) (b) The company has failed, for at least 60[✓] days after ceasing to
3 meet those requirements, to file articles of amendment that amend the company's
4 name to conform with s. 183.0103 (1) (a)[✓].

(end ins)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4122/P2dn
CTS:jld:rs

February 2, 2010

Representative Fields:

This is a preliminary draft based on the proposed language submitted as drafting instructions. Please review it carefully to ensure it is consistent with your intent.

Christopher T. Sundberg
Legislative Attorney
Phone: (608) 266-9739
E-mail:
christopher.sundberg@legis.wisconsin.gov

Sundberg, Christopher

From: Youngman, Lori
Sent: Monday, March 01, 2010 1:20 PM
To: Sundberg, Christopher
Subject: FW: Draft review: LRB 09-4122/P2 Topic: Low-profit limited liability companies
Attachments: LRB-4122_P2; LRB-4122_P2 Drafters_Note

Chris,

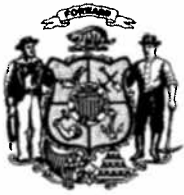
Rep. Fields is happy with this draft. Could you send a regular draft for introduction?

Thank you.

Lori Youngman
Office of State Rep. Jason Fields
221 North State Capitol
PO Box 8952
Madison, WI 53708
608-266-3756

From: Parisi, Lori
Sent: Tuesday, February 02, 2010 12:32 PM
To: Rep.Fields
Subject: Draft review: LRB 09-4122/P2 Topic: Low-profit limited liability companies

Following is the PDF version of draft LRB 09-4122/P2 and drafter's note.



lu: 3/1/10

5004

State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-4122/PZ
CTS:jld:rs
RWN 13

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

2009 BILL

INS A ✓

Reger

X

1 AN ACT *to renumber and amend* 183.09025 (1); *to amend* 183.0103 (1) and
2 183.0120 (1) (f); and *to create* 183.0102 (12m), 183.0106 (1m), 183.0202 (7),
3 183.09025 (1) (a) and 183.09025 (1) (b) of the statutes; **relating to:** low-profit
4 limited liability companies. ✓

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

5 SECTION 1. 183.0102 (12m) of the statutes is created to read:
6 183.0102 (12m) "Low-profit limited liability company" means a limited
7 liability company that is formed under this chapter and that is organized for a
8 business purpose that satisfies, and is at all times operated to satisfy, each of the
9 requirements set forth in s. 183.0106 (1m). ✓

***NOTE: If the above language is intended to impose a substantive requirement that a L3C be at all times operated to satisfy the requirements of s. 183.0106 (1m), the requirement should be located in s. 183.0106 (1m).

1 SECTION 2. 183.0103 (1) of the statutes is amended to read:

2 183.0103 (1) The name of a limited liability company as set forth in its articles
3 of organization must contain the words "limited liability company" or "limited
4 liability co." or end with the abbreviation "L.L.C." or "LLC", except that the name
5 of a low-profit limited liability company shall contain the words "low-profit limited
6 liability company" or end with the abbreviation "L.3.C." or "L3C." The name may not
7 contain language stating or implying that the limited liability company is organized
8 for any purpose other than that permitted under s. 183.0106 (1), and, if the limited
9 liability company is a low-profit limited liability company, s. 183.0106 (1m).

10 SECTION 3. 183.0106 (1m) of the statutes is created to read:

11 183.0106 (1m) (a) Notwithstanding sub. (1), a limited liability company that
12 is a low-profit limited liability company shall be organized for a business purpose
13 that satisfies, and is at all times operated to satisfy, each of the following
14 requirements:

***NOTE: If the intent of the language above is to require that a L3C be organized for a purpose that satisfies certain requirements and that the L3C be all times operated to satisfy that purpose, it will need to be rewritten. As written, the language above requires that a L3C be organized for a purpose that satisfies certain requirements and that the purpose be at all times operated to satisfy certain requirements.

15 1. The limited liability company significantly furthers the accomplishment of
16 a religious, charitable, scientific, literary, or educational purposes within the
17 meaning of section 170 (c) (2) (B) of the Internal Revenue Code, and the limited
18 liability company would not have been formed but for the entity's relationship to the
19 accomplishment of the religious, charitable, scientific, literary, or educational
20 purpose.

21 2. No significant purpose of the limited liability company is the production of
22 income or the appreciation of property, but the fact that the entity produces

1 significant income or capital appreciation is not, in the absence of other factors,
2 conclusive evidence of a significant purpose involving the production of income or the
3 appreciation of property. ✓

****NOTE: The language preceding these subdivisions signals that it will be followed by requirements that apply to the *purpose* for which a L3C is organized, but the preceding subdivisions instead set out requirements that apply to the L3C itself. Also, the language in proposed par. (b) that sets out an evidentiary standard for determining whether an L3C has an impermissible significant purpose does not quite belong in a subdivision describing the purposes for which a L3C may be organized.

4 3. No purpose of the limited liability company is to accomplish a political or
5 legislative purpose within the meaning of section 170 (c) (2) (D) of the Internal
6 Revenue Code. ✓

****NOTE: The preceding subdivision sets out a requirement that applies to the L3C itself, not to the purposes for which a L3C is organized.

7 (b) If a limited liability company that satisfied par. (a) at its formation at any
8 time ceases to satisfy par. (a), the company shall cease to be a low-profit limited
9 liability company. If the limited liability company otherwise complies with this
10 chapter, it shall continue to exist as a limited liability company and its name shall
11 be changed to satisfy s. 183.0103 (1). ✓

****NOTE: If the language above is not intended to provide for an automatic name change at the moment a L3C ceases to meet the requirements under par. (a), it should probably be rewritten to provide that when an L3C becomes an ordinary LLC by operation of the above language, the LLC must change its name to satisfy s. 183.0103 (1).

12 SECTION 4. 183.0120 (1) (f) of the statutes is amended to read: ✓

13 183.0120 (1) (f) A brief description of the nature of the domestic or foreign
14 limited liability company's business and, if the limited liability company is a
15 low-profit limited liability company, a brief description of how its business furthers
16 a purpose under s. 183.0106 (1m) (a) 1.

17 SECTION 5. 183.0202 (7) of the statutes is created to read: ✓

1 183.0202 (7) If the limited liability company is a low-profit limited liability
2 company, a statement that it is a low-profit limited liability company and that it is
3 organized for a business purpose that satisfies, and will be at all times operated to
4 satisfy, each of the requirements set forth in s. 183.0106 (1m) (a) 1. ✓

****NOTE: As written, the language above requires that a L3C provide a statement that it is organized for a purpose that satisfies certain requirements and that *the purpose* is at all times operated to satisfy those requirements.

5 SECTION 6. 183.09025 (1) of the statutes is renumbered 183.09025 (1) (intro.)
6 and amended to read:

7 183.09025 (1) GROUNDS FOR ADMINISTRATIVE DISSOLUTION. (intro.) The
8 department may bring a proceeding under sub. (2) to administratively dissolve any
9 limited liability company that does not deliver to the department the limited liability
10 company's complete annual report within one year after the annual report is due.
11 The department may also bring a proceeding under sub. (2) to administratively
12 dissolve any low-profit limited liability company if all of the following apply:

13 SECTION 7. 183.09025 (1) (a) of the statutes is created to read:

14 183.09025 (1) (a) The company has ceased to meet any of the requirements in
15 s. 183.0106 (1m) (a).

16 SECTION 8. 183.09025 (1) (b) of the statutes is created to read:

17 183.09025 (1) (b) The company has failed, for at least 60 days after ceasing to
18 meet those requirements, to file articles of amendment that amend the company's
19 name to conform with s. 183.0103 (1).

20 (END)

1

Insert A:

Current law authorizes the creation of limited liability companies (LLCs) for any lawful purpose. This bill authorizes the creation of low-profit LLCs (L3Cs), a type of LLC. *

Under the bill, a L3C must be organized for a business purpose that satisfies, and is at all times operated to satisfy, all of the following requirements: 1) the L3C significantly furthers the accomplishment of a religious, charitable, scientific, literary, or education purpose as defined under federal tax law, and would not have been formed but for the entity's relationship to the accomplishment of the religious, charitable, scientific, literary, or education purpose; 2) no significant purpose of the L3C is the production of income or the appreciation of property; and 3) no purpose of the L3C is the accomplishment of a significant political or legislative purpose, as defined under federal tax law. If a L3C at any time ceases to satisfy these requirements, it ceases to be a L3C, but continues to exist as a LLC. *

The bill authorizes the Department of Financial Institutions to bring administrative dissolution proceedings against a L3C if the company has ceased to meet any of the requirements above and has failed to amend its name to reflect it is no longer a L3C within 60 days after ceasing to meet any of the requirements. *

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill. *

Duerst, Christina

From: Youngman, Lori
Sent: Wednesday, March 03, 2010 9:25 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-4122/1 Topic: Low-profit limited liability companies

Please Jacket LRB 09-4122/1 for the ASSEMBLY.