

1 SB332  
2 149824-1  
3 By Senators Scofield, Ward, Dial, Blackwell, Reed, Pittman,  
4 Marsh and Waggoner  
5 RFD: Governmental Affairs  
6 First Read: 12-MAR-13

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8 SYNOPSIS: This bill would require judges of probate  
9 to use the same online filing system as that used  
10 by the Secretary of State.

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12 A BILL  
13 TO BE ENTITLED  
14 AN ACT

15  
16 To amend Section 10A-1-4.02, Code of Alabama 1975,  
17 to require judges of probate to use the same online filing  
18 system as that used by the Secretary of State.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 10A-1-4.02, Code of Alabama 1975,  
21 is amended to read as follows:

22 "§10A-1-4.02.

23 "(a) The following filing instruments shall be  
24 delivered to the judge of probate for filing, except as the  
25 chapter applicable to an entity or other provision of this  
26 title provides for filing by the Secretary of State or another  
27 filing officer:

1           "(1) certificates of formation or any amendments or  
2 restatements thereof;

3           "(2) certificates of termination;

4           "(3) certificates of revocation of termination;

5           "(4) certificates of correction to any filing  
6 instrument required to be delivered to the office of the judge  
7 of probate for filing; and

8           "(5) any other filing instrument required or  
9 permitted under this title to be delivered to the judge of  
10 probate for filing.

11           "(b) Any of the following filing instruments  
12 delivered to the office of the judge of probate for filing  
13 shall be accompanied by an additional exact or conformed copy  
14 to permit the judge of probate to transmit to the Secretary of  
15 State a certified copy thereof as required by subsection (g):

16           "(1) certificates of formation;

17           "(2) amendments to certificates of formation that  
18 alter the name of any entity;

19           "(3) restated certificates of formation;

20           "(4) certificates of termination;

21           "(5) certificates of revocation of termination; and

22           "(6) certificates of correction correcting any of  
23 the foregoing filing instruments.

24           "(c) The following filing instruments shall be  
25 delivered to the Secretary of State for filing:

26           "(1) certificates of merger, articles of  
27 consolidation, and articles of share exchange;

1           "(2) registration of a foreign entity for authority  
2 to transact business in this state;

3           "(3) the annual report of a business corporation,  
4 which may be made as provided in Section 10A-2-16.22 by filing  
5 with the Department of Revenue the public record information  
6 required by Chapter 14A of Title 40, together with the  
7 prescribed fee for the annual report;

8           "(4) for corporations created by an act of the  
9 Legislature prior to the adoption of the Constitution of  
10 Alabama of 1901, or for entities which have resulted from a  
11 merger, share exchange, or conversion, all filing instruments  
12 required by this title to be delivered to the judge of probate  
13 for filing shall be delivered to the Secretary of State for  
14 filing;

15           "(5) any other filing instrument required or  
16 permitted under this title to be delivered to the Secretary of  
17 State for filing;

18           "(6) articles of correction of any filing instrument  
19 required or permitted to be delivered to the Secretary of  
20 State for filing; and

21           "(7) any other filing instrument required or  
22 permitted to be filed under this title and not expressly  
23 required or permitted to be delivered to the Secretary of  
24 State or judge of probate or other designated filing office  
25 for filing.

26           "(d) The filing of partnership statements shall be  
27 as provided in Section 10A-8-1.06.

1           "(e) Articles of merger or share exchange delivered  
2 to the Secretary of State for filing shall be accompanied by  
3 the additional number of exact or conformed copies of articles  
4 as may be required for purposes of subsection (g) hereof.

5           "(f) If the judge of probate or Secretary of State,  
6 as the case may be, finds that a filing instrument delivered  
7 under this section and Section 10A-1-4.01 substantially  
8 conforms to the provisions of this title that apply to the  
9 entity and that all required fees have been paid, and if, in  
10 the case of a certificate of formation or an amendment to a  
11 certificate of formation that would change the name of the  
12 entity, the judge of probate finds that the name of the entity  
13 has been reserved under Section 10A-1-5.11, the judge of  
14 probate or Secretary of State, as the case may be, shall file  
15 it immediately upon delivery by:

16           "(1) endorsing "filed," together with his or her  
17 name and official title and the date and time of receipt on  
18 the instrument and all copies required hereunder and on the  
19 receipt for the filing fee;

20           "(2) accepting it into the filing system adopted by  
21 the judge or probate or Secretary of State and assigning the  
22 instrument a date of filing; and

23           "(3) delivering a copy thereof, endorsed as provided  
24 in subdivision (1), with the filing fee receipt, or  
25 acknowledgment of receipt of the instrument if no filing fee  
26 is required, to the entity or its representative.

1           "(g) In the case of any of the filing instruments  
2 described in subsection (b), the judge of probate shall within  
3 10 days transmit a certified copy of the filing instrument to  
4 the Secretary of State. In the case of articles of merger,  
5 conversion, or share exchange, the Secretary of State shall  
6 promptly transmit a certified copy of the articles of merger,  
7 conversion, or share exchange to the office of the judge of  
8 probate of the county in which each of the entities'  
9 certificates of formation are filed.

10           "(h) If the judge of probate or Secretary of State,  
11 as the case may be, refuses to file a filing instrument, he or  
12 she shall return it to the domestic or foreign entity or its  
13 representative within seven days after the filing instrument  
14 was delivered, together with a brief, written explanation of  
15 the reason for his or her refusal.

16           "(i) The judge of probate's or Secretary of State's  
17 duty to file filing instruments under this title is  
18 ministerial. His or her filing or refusing to file a filing  
19 instrument does not:

20           "(1) affect the validity or invalidity of the filing  
21 instrument in whole or in part;

22           "(2) relate to the correctness or incorrectness of  
23 information contained in the filing instrument; or

24           "(3) create a presumption that the filing instrument  
25 is valid or invalid or that information contained in the  
26 filing instrument is correct or incorrect.

1           "(j) The Secretary of State shall keep an  
2 alphabetical list of domestic and foreign entities, the  
3 certificates of formation, or registrations for authority to  
4 transact business in this state for which are filed in his or  
5 her office, together with the data contained in the filing  
6 instruments.

7           "(k) If the office of the Secretary of State  
8 provides an online filing system for use by business entities,  
9 a probate judge shall use that same online filing system.  
10 Nothing in this subsection shall change the fee schedules or  
11 record keeping requirements for the Secretary of State or  
12 judges of probate."

13           Section 2. This act shall become effective on the  
14 first day of the third month following its passage and  
15 approval by the Governor, or its otherwise becoming law.