

1 HB54
2 164551-2
3 By Representative Poole
4 RFD: Commerce and Small Business
5 First Read: 03-MAR-15
6 PFD: 02/27/2015

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Sections 10A-5A-1.05, 10A-5A-1.06,
9 10A-5A-1.07, and 10A-5A-4.06, Code of Alabama 1975, as added
10 by Act 2014-144, 2014 Regular Session (Acts 2014), relating to
11 the Alabama Limited Liability Company Law of 2014, to clarify
12 that the law of the state in which a foreign limited liability
13 company is formed governs the internal affairs of that entity;
14 to clarify the treatment of a limited liability company and a
15 foreign limited liability company for purposes of certain
16 taxation; to clarify that under normal circumstances the
17 liability of a member of a limited liability company for
18 wrongful distributions is limited to the amount of the
19 distributions received; and to make technical corrections in
20 cross references.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 10A-5A-1.05, 10A-5A-1.06,
23 10A-5A-1.07, and 10A-5A-4.06 of the Code of Alabama 1975, as
24 added by Act 2014-144, 2014 Regular Session (Acts 2014), are
25 amended to read as follows:

26 "§10A-5A-1.05.

27 "(a) The law of this state governs:

1 "~~(a)~~ (1) the organization and internal affairs of a
2 limited liability company, or series thereof;

3 "~~(b)~~ (2) the liability of a member as a member for
4 the debts, obligations, or other liabilities of a limited
5 liability company, or series thereof;

6 "~~(c)~~ (3) the authority of the members and agents of a
7 limited liability company, or series thereof; and

8 "~~(d)~~ (4) the availability and liability of the assets
9 of a series or the limited liability company for the
10 obligations of another series or the limited liability
11 company.

12 "(b) The law of ~~this~~ the state or other jurisdiction
13 under which a foreign limited liability company is formed
14 governs:

15 "(1) the organization and internal affairs of a
16 foreign limited liability company, or series thereof;

17 "(2) the liability of a member as a member for the
18 debts, obligations, or other liabilities of a foreign limited
19 liability company, or series thereof;

20 "(3) the authority of the members and agents of a
21 foreign limited liability company, or series thereof; and

22 "(4) the availability and liability of the assets of
23 a series or the foreign limited liability company for the
24 obligations of another series or the foreign limited liability
25 company.

26 "\$10A-5A-1.06.

1 "(a) It is the policy of this chapter and this state
2 to give maximum effect to the principles of freedom of
3 contract and to the enforceability of limited liability
4 company agreements.

5 "(b) Unless displaced by particular provisions of
6 this chapter, the principles of law and equity supplement this
7 chapter.

8 "(c) The rule that statutes in derogation of the
9 common law are to be strictly construed shall have no
10 application to this chapter.

11 "(d) The use of any gender shall be applicable to
12 all genders. The captions contained in this chapter are for
13 purposes of convenience only and shall not control or affect
14 the construction of this chapter.

15 "(e) Sections 7-9A-406 and 7-9A-408 of the Uniform
16 Commercial Code, and all successor statutes thereto, do not
17 apply to any interest in a limited liability company,
18 including all rights, powers, and interests arising under a
19 limited liability company agreement or this chapter. This
20 provision prevails over Sections 7-9A-406 and 7-9A-408 of the
21 Uniform Commercial Code, and all successor statutes thereto,
22 and is expressly intended to permit the enforcement of the
23 provisions of a limited liability company agreement that would
24 otherwise be ineffective under Sections 7-9A-406 and 7-9A-408
25 of the Uniform Commercial Code, and all successor statutes
26 thereto.

1 "(f) Division E of Article 3 of Chapter 1 of this
2 title shall have no application to this chapter.

3 "(g) Sections ~~10A-1-1.03(75), (84), (91), and (94)~~
4 10A-1-1.03 (73), (81), (88), and (91) shall have no
5 application to this chapter.

6 "(h) Section 10A-1-2.13(c) shall have no application
7 to this chapter.

8 "§10A-5A-1.07.

9 "Subject to Section 10A-5A-3.01:

10 "(a) The terms "partnership" and "limited
11 partnership," when used in any chapter or title other than the
12 Alabama Limited Liability Company Law of 2014, the Alabama
13 General Partnership Law, and the Alabama Limited Partnership
14 Law, and any successors of those laws, include a limited
15 liability company organized under this chapter, unless the
16 context requires otherwise.

17 "(b) Notwithstanding subsection (a), for purposes of
18 taxation, other than Chapter 14A of Title 40, a limited
19 liability company or foreign limited liability company shall
20 be treated as a partnership unless it is classified otherwise
21 for federal income tax purposes, in which case it shall be
22 classified in the same manner as it is for federal income tax
23 purposes.

24 "§10A-5A-4.06.

25 "(a) (1) A limited liability company shall not make a
26 distribution to a member to the extent that at the time of the
27 distribution, after giving effect to the distribution, all

1 liabilities of the limited liability company, other than
2 liabilities to members on account of their transferable
3 interests and liabilities for which the recourse of creditors
4 is limited to specific property of the limited liability
5 company, exceed the fair value of the assets of the limited
6 liability company, except that the fair value of the property
7 that is subject to a liability for which recourse of creditors
8 is limited shall be included in the assets of the limited
9 liability company only to the extent that the fair value of
10 the property exceeds that liability.

11 "(2) A member who receives a distribution in
12 violation of subsection (a)(1) or the limited liability
13 company agreement, and who knew at the time of the
14 distribution that the distribution violated subsection (a)(1)
15 or the limited liability company agreement, shall be liable to
16 the limited liability company for the amount of the
17 distribution received by that member. A member who receives a
18 distribution in violation of subsection (a)(1) or the limited
19 liability company agreement, and who did not know at the time
20 of the distribution that the distribution violated subsection
21 (a)(1) or the limited liability company agreement, shall not
22 be liable for the amount of the distribution.

23 "(b)(1) A series shall not make a distribution to a
24 member associated with the series to the extent that at the
25 time of the distribution, after giving effect to the
26 distribution, all liabilities of the series, other than
27 liabilities to members associated with the series on account

1 of their transferable interests and liabilities for which the
2 recourse of creditors is limited to specific property of the
3 series, exceed the fair value of the assets of the series,
4 except that the fair value of the property that is subject to
5 a liability for which recourse of creditors is limited shall
6 be included in the assets of the series only to the extent
7 that the fair value of the property exceeds that liability.

8 "(2) A member associated with a series who receives
9 a distribution in violation of subsection (b) (1) or the
10 limited liability company agreement, and who knew at the time
11 of the distribution that the distribution violated subsection
12 (b) (1) or the limited liability company agreement, shall be
13 liable to that series for the amount of the distribution
14 received by that member. A member associated with a series who
15 receives a distribution in violation of subsection (b) (1) or
16 the limited liability company agreement, and who did not know
17 at the time of the distribution that the distribution violated
18 subsection (b) (1) or the limited liability company agreement,
19 shall not be liable for the amount of the distribution.

20 "(3) Subsection (a) shall not apply to a
21 distribution made by a series.

22 "(c) Except as provided in subsection (d), this
23 section shall not affect any obligation or liability of a
24 member under other applicable law for the amount of a
25 distribution.

1 "(d) An action under this section or other
2 applicable law is barred if not commenced within two years
3 after the distribution.

4 "(e) For purposes of Sections 10A-5A-4.06(a) and
5 10A-5A-4.06(b), distribution does not include amounts
6 constituting reasonable compensation for present or past
7 services or reasonable payments made in the ordinary course of
8 the limited liability company's activities and affairs under a
9 bona fide retirement plan or other benefits program.

10 "(f) This section shall not apply to distributions
11 made in accordance with Section 10A-5A-7.06 or Section
12 10A-5A-11.14."

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

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Commerce and
Small Business..... 03-MAR-15

Read for the second time and placed
on the calendar 1 amendment 18-MAR-15

Read for the third time and passed
as amended..... 31-MAR-15

Yeas 95, Nays 0, Abstains 1

Jeff Woodard
Clerk