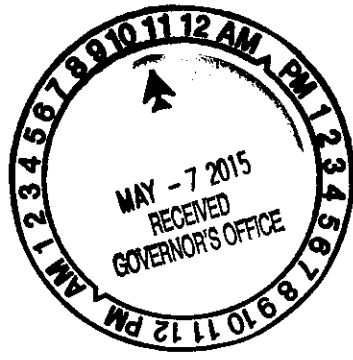


ACT No. 2015 - 165

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



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ENROLLED, An Act,

To amend Sections 10A-5A-1.05, 10A-5A-1.06, 10A-5A-1.07, 10A-5A-4.06, and 10A-5A-12.01, as added by Act 2014-144, Code of Alabama 1975, as added by Act 2014-144, 2014 Regular Session (Acts 2014), relating to the Alabama Limited Liability Company Law of 2014, to clarify that the law of the state in which a foreign limited liability company is formed governs the internal affairs of that entity; to clarify the treatment of a limited liability company and a foreign limited liability company for purposes of certain taxation; to clarify that under normal circumstances the liability of a member of a limited liability company for wrongful distributions is limited to the amount of the distributions received; to make technical corrections in cross references; and to amend certain transition provisions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 10A-5A-1.05, 10A-5A-1.06, 10A-5A-1.07, and 10A-5A-4.06, and 10A-5A-12.01, as added by Act 2014-144, of the Code of Alabama 1975, as added by Act 2014-144, 2014 Regular Session (Acts 2014), are amended to read as follows:

"§10A-5A-1.05.

"(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.

1 "§10A-5A-1.06.

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

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

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

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

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

1 of the Uniform Commercial Code, and all successor statutes
2 thereto.

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

5 "(g) Sections ~~10A-1-1.03(75), (84), (91), and (94)~~
6 10A-1-1.03 (73), (81), (88), and (91) shall have no
7 application to this chapter.

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

10 "§10A-5A-1.07.

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

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

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

1 "§10A-5A-4.06.

2 "(a) (1) A limited liability company shall not make a
3 distribution to a member to the extent that at the time of the
4 distribution, after giving effect to the distribution, all
5 liabilities of the limited liability company, other than
6 liabilities to members on account of their transferable
7 interests and liabilities for which the recourse of creditors
8 is limited to specific property of the limited liability
9 company, exceed the fair value of the assets of the limited
10 liability company, except that the fair value of the property
11 that is subject to a liability for which recourse of creditors
12 is limited shall be included in the assets of the limited
13 liability company only to the extent that the fair value of
14 the property exceeds that liability.

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

1 (a) (1) or the limited liability company agreement, shall not
2 be liable for the amount of the distribution.

3 "(b) (1) A series shall not make a distribution to a
4 member associated with the series to the extent that at the
5 time of the distribution, after giving effect to the
6 distribution, all liabilities of the series, other than
7 liabilities to members associated with the series on account
8 of their transferable interests and liabilities for which the
9 recourse of creditors is limited to specific property of the
10 series, exceed the fair value of the assets of the series,
11 except that the fair value of the property that is subject to
12 a liability for which recourse of creditors is limited shall
13 be included in the assets of the series only to the extent
14 that the fair value of the property exceeds that liability.

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

1 subsection (b) (1) or the limited liability company agreement,
 2 shall not be liable for the amount of the distribution.

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

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

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

12 "(e) For purposes of Sections 10A-5A-4.06(a) and
 13 10A-5A-4.06(b), distribution does not include amounts
 14 constituting reasonable compensation for present or past
 15 services or reasonable payments made in the ordinary course of
 16 the limited liability company's activities and affairs under a
 17 bona fide retirement plan or other benefits program.

18 "(f) This section shall not apply to distributions
 19 made in accordance with Section 10A-5A-7.06 or Section
 20 10A-5A-11.14."

21 "§10A-5A-12.01.

22 "(a) Before January 1, 2017, this chapter governs
 23 only:

24 "(1) a limited liability company formed on or after
 25 January 1, 2015; and

1 "(2) except as otherwise provided in subsection (c),
2 a limited liability company formed before January 1, 2015,
3 which elects, in the manner provided in the limited liability
4 company's operating agreement or as provided for by law for
5 amending or restating the limited liability company's
6 operating agreement, to be subject to this chapter.

7 "(b) Except as otherwise provided in subsection (c),
8 on and after January 1, 2017, this chapter governs all limited
9 liability companies.

10 "(c) For purposes of applying this chapter to a
11 limited liability company formed before January 1, 2015:

12 "(1) the limited liability company's formation
13 document, whether articles of organization or certificate of
14 formation, is deemed to be the limited liability company's
15 certificate of formation;

16 "(2) if the limited liability company's formation
17 document, whether articles of organization or certificate of
18 formation, contains the information required in Section
19 10A-5A-2.01(a)(1)(5), the limited liability company shall not
20 be required to amend or restate its formation document,
21 whether articles of organization or certificate of formation,
22 to conform with this chapter operating agreement is deemed to
23 be the limited liability company's limited liability company
24 agreement;

1 "(3) provisions in the limited liability company's
2 formation documents, whether articles of organization or
3 certificate of formation, shall operate as if those provisions
4 were in the limited liability company's limited liability
5 company agreement;

6 "(4) if the limited liability company's formation
7 document, whether articles of organization or certificate of
8 formation, is amended or restated on or after January 1, 2015,
9 and the limited liability company's formation document,
10 whether articles of organization or certificate of formation,
11 is in conflict with the limited liability company's limited
12 liability agreement, then Section 10A-5A-1.10(d) shall govern;
13 and

14 "(5) any amendment or restatement of the limited
15 liability company's formation document, whether articles of
16 organization or certificate of formation, on or after January
17 1, 2015, shall conform with this chapter."

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

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[Handwritten Signature]

Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 31-MAR-15, as amended.

Jeff Woodard
Clerk

Senate
House

05-MAY-15
05-MAY-15

Amended and Passed
Concurred in Senate Amendment

APPROVED

May 14, 2015

TIME

800 AM

Robert Bentley

GOVERNOR

Alabama Secretary Of State

Act Num....: 2015-165
Bill Num....: H-54

Recv'd 05/14/15 02:16pmSLF

Boole

SPONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 54

YEAS 94 NAYS 0

JEFF WOODARD, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JEFF WOODARD, Clerk

CONFERENCE COMMITTEE

House Conferees

SENATE ACTION

DATE: 2-31 2015

RD 1 RFD FRJ ED

This Bill was referred to the Standing Committee of the Senate on FRJ ED

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s) ___ w/sub ___ by a vote of yeas 11 nays 0 abstain 0

this 92 day of April 2015
X [Signature] Chairperson

DATE: 4-9 2015

RF FAV RD 2 CAL

DATE: ___ 20__

RE-REFERRED RE-COMMITTED
Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB 54.

YEAS 28 NAYS 0

PATRICK HARRIS, Secretary