

1 HB54
2 164551-1
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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8 SYNOPSIS: Under existing law, the Alabama Limited
9 Liability Company Law of 2014, provides for the
10 formation of limited liability companies.

11 This bill would clarify that the law of the
12 state in which a foreign limited liability company
13 is formed governs the internal affairs of that
14 entity.

15 This bill would clarify that, under normal
16 circumstances, the liability of a member of a
17 limited liability company for wrongful
18 distributions is limited to the amount of the
19 distributions received.

20 This bill would also make technical
21 corrections in cross references.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
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1 To amend Sections 10A-5A-1.05, 10A-5A-1.06, and
2 10A-5A-4.06, Code of Alabama 1975, as added by Act 2014-144,
3 2014 Regular Session (Acts 2014), relating to the Alabama
4 Limited Liability Company Law of 2014, to clarify that the law
5 of the state in which a foreign limited liability company is
6 formed governs the internal affairs of that entity; to clarify
7 that under normal circumstances the liability of a member of a
8 limited liability company for wrongful distributions is
9 limited to the amount of the distributions received; and to
10 make technical corrections in cross references.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Sections 10A-5A-1.05, 10A-5A-1.06, and
13 10A-5A-4.06 of the Code of Alabama 1975, as added by Act
14 2014-144, 2014 Regular Session (Acts 2014), are amended to
15 read as follows:

16 "§10A-5A-1.05.

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

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

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

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

25 "~~(d)~~ (4) the availability and liability of the assets
26 of a series or the limited liability company for the

1 obligations of another series or the limited liability
2 company.

3 "(b) The law of this state or other jurisdiction
4 under which a foreign limited liability company is formed
5 governs:

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

8 "(2) the liability of a member as a member for the
9 debts, obligations, or other liabilities of a foreign limited
10 liability company, or series thereof;

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

13 "(4) the availability and liability of the assets of
14 a series or the foreign limited liability company for the
15 obligations of another series or the foreign limited liability
16 company.

17 "§10A-5A-1.06.

18 "(a) It is the policy of this chapter and this state
19 to give maximum effect to the principles of freedom of
20 contract and to the enforceability of limited liability
21 company agreements.

22 "(b) Unless displaced by particular provisions of
23 this chapter, the principles of law and equity supplement this
24 chapter.

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

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

5 "(e) Sections 7-9A-406 and 7-9A-408 of the Uniform
6 Commercial Code, and all successor statutes thereto, do not
7 apply to any interest in a limited liability company,
8 including all rights, powers, and interests arising under a
9 limited liability company agreement or this chapter. This
10 provision prevails over Sections 7-9A-406 and 7-9A-408 of the
11 Uniform Commercial Code, and all successor statutes thereto,
12 and is expressly intended to permit the enforcement of the
13 provisions of a limited liability company agreement that would
14 otherwise be ineffective under Sections 7-9A-406 and 7-9A-408
15 of the Uniform Commercial Code, and all successor statutes
16 thereto.

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

19 "(g) Sections ~~10A-1-1.03(75), (84), (91), and (94)~~
20 10A-1-1.03 (73), (81), (88), and (91) shall have no
21 application to this chapter.

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

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. A
14 member associated with a series who receives a distribution in
15 violation of subsection (b) (1) or the limited liability
16 company agreement, and who did not know at the time of the
17 distribution that the distribution violated subsection (b) (1)
18 or the limited liability company agreement, shall not be
19 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 following its passage and
15 approval by the Governor, or its otherwise becoming law.