

1 SB113
2 165016-1
3 By Senator Orr
4 RFD: Judiciary
5 First Read: 03-MAR-15

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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 the treatment of a
16 limited liability company and a foreign limited
17 liability company for purposes of certain taxation.

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

23 This bill would also make technical
24 corrections in cross references.

25
26 A BILL
27 TO BE ENTITLED

1 AN ACT

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

16 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

17 Section 1. Sections 10A-5A-1.05, 10A-5A-1.06,
18 10A-5A-1.07, and 10A-5A-4.06 of the Code of Alabama 1975, as
19 added by Act 2014-144, 2014 Regular Session (Acts 2014), are
20 amended to read as follows:

21 "§10A-5A-1.05.

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

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

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

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

3 "~~(d)~~(4) the availability and liability of the assets
4 of a series or the limited liability company for the
5 obligations of another series or the limited liability
6 company.

7 "(b) The law of this state or other jurisdiction
8 under which a foreign limited liability company is formed
9 governs:

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

12 "(2) the liability of a member as a member for the
13 debts, obligations, or other liabilities of a foreign limited
14 liability company, or series thereof;

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

17 "(4) the availability and liability of the assets of
18 a series or the foreign limited liability company for the
19 obligations of another series or the foreign limited liability
20 company.

21 "§10A-5A-1.06.

22 "(a) It is the policy of this chapter and this state
23 to give maximum effect to the principles of freedom of
24 contract and to the enforceability of limited liability
25 company agreements.

1 "(b) Unless displaced by particular provisions of
2 this chapter, the principles of law and equity supplement this
3 chapter.

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

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

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

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

25 "(g) Sections ~~10A-1-1.03(75), (84), (91), and (94)~~
26 10A-1-1.03 (73), (81), (88), and (91) shall have no
27 application to this chapter.

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

3 "§10A-5A-1.07.

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

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

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

19 "§10A-5A-4.06.

20 "(a) (1) A limited liability company shall not make a
21 distribution to a member to the extent that at the time of the
22 distribution, after giving effect to the distribution, all
23 liabilities of the limited liability company, other than
24 liabilities to members on account of their transferable
25 interests and liabilities for which the recourse of creditors
26 is limited to specific property of the limited liability
27 company, exceed the fair value of the assets of the limited

1 liability company, except that the fair value of the property
2 that is subject to a liability for which recourse of creditors
3 is limited shall be included in the assets of the limited
4 liability company only to the extent that the fair value of
5 the property exceeds that liability.

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

18 "(b)(1) A series shall not make a distribution to a
19 member associated with the series to the extent that at the
20 time of the distribution, after giving effect to the
21 distribution, all liabilities of the series, other than
22 liabilities to members associated with the series on account
23 of their transferable interests and liabilities for which the
24 recourse of creditors is limited to specific property of the
25 series, exceed the fair value of the assets of the series,
26 except that the fair value of the property that is subject to
27 a liability for which recourse of creditors is limited shall

1 be included in the assets of the series only to the extent
2 that the fair value of the property exceeds that liability.

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

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

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

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

24 "(e) For purposes of Sections 10A-5A-4.06(a) and
25 10A-5A-4.06(b), distribution does not include amounts
26 constituting reasonable compensation for present or past
27 services or reasonable payments made in the ordinary course of

1 the limited liability company's activities and affairs under a
2 bona fide retirement plan or other benefits program.

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

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