

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 412
PROPOSED COMMITTEE SUBSTITUTE S412-PCS85188-ST-8

Short Title: Modify NC Limited Liability Company Act.

(Public)

Sponsors:

Referred to:

March 5, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE VARIOUS CHANGES TO THE NORTH CAROLINA LIMITED
3 LIABILITY COMPANY ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 57C-1-20 reads as rewritten:

6 "**§ 57C-1-20. Filing requirements.**

7 (a) A document required or permitted by this Chapter to be filed by the Secretary of
8 State must be filed under Chapter 55D of the General Statutes.

9 (b) A document submitted on behalf of a domestic or foreign limited liability company
10 must be executed:

11 (1) By a ~~manager~~ manager, director, or executive of the limited liability
12 company;

13 (2) If the limited liability company has not been formed or ~~if no initial members~~
14 ~~of the limited liability company have been identified in the manner provided~~
15 ~~in this Chapter, if the limited liability company has never had any members,~~
16 by an organizer; or

17 (3) If the limited liability company is in the hands of a receiver, trustee, or other
18 court-appointed fiduciary, by that fiduciary."

19 **SECTION 2.** G.S. 57C-3-01 reads as rewritten:

20 "**§ 57C-3-01. Admission of members.**

21 (a) Unless the articles of organization of a limited liability company provide otherwise,
22 each person executing the articles of organization of a limited liability company in the capacity
23 of a member, and each person who is otherwise named in the articles of organization as a
24 member of the limited liability company, becomes a member at the time that the filing by the
25 Secretary of State of the articles of organization of the limited liability company becomes
26 effective.

27 (b) A person may be admitted as a member of a limited liability company:

28 (1) In the case of a person acquiring a membership interest ~~directly~~ from the
29 limited liability company, (i) upon being so identified as a member by the
30 organizers of the limited liability company in accordance with
31 ~~G.S. 57C-2-20(e) or G.S. 57C-2-20(c),~~ (ii) ~~upon compliance with~~ as
32 provided in the articles of organization or operating agreement or, if the
33 articles of organization or operating agreement do not so provide, upon the



1 unanimous consent of the ~~members; and~~ members, or (iii) upon being
2 designated or otherwise appointed as a member under G.S. 57C-6-01(4);

3 (2) In the case of an assignee ~~of~~ or other person having only the rights of an
4 assignee under G.S. 57C-5-02 with respect to an interest of a member, upon
5 compliance with the provisions of G.S. 57C-5-04(a), member in a limited
6 liability company, as provided in G.S. 57C-5-04(a); and

7 (3) In connection with a business entity converting or merging into the limited
8 liability company under Part 1 or Part 2 of Article 9A of this Chapter.

9 (c) Nothing in this Chapter precludes a person from being a member of a limited
10 liability company because that person has not made, and has no obligation to make, any
11 contributions to the limited liability company and has no right to receive any distributions from
12 the limited liability company or share in any profits or losses of the limited liability company."

13 **SECTION 3.** G.S. 57C-4-06 is amended by adding a new subsection to read:

14 "**§ 57C-4-06. Restrictions on making distributions.**

15 ...

16 (f) As used in this section, "distribution" does not include amounts constituting
17 reasonable compensation for present or past services and does not include reasonable payments
18 made in the ordinary course of business under a bona fide retirement plan or other benefits
19 program."

20 **SECTION 4.** G.S. 57C-5-04 reads as rewritten:

21 "**§ 57C-5-04. Right of assignee to become a member.**

22 (a) An assignee of (or other person having only the rights of an assignee under
23 G.S. 57C-5-02 with respect to) an interest in a limited liability company may become a member
24 only with ~~the assignee's consent and, except as otherwise provided in the articles of~~
25 ~~organization or operating agreement, only if the other members unanimously agree.~~ that
26 person's consent and:

27 (1) By meeting the requirements provided in the articles of organization or
28 operating agreement;

29 (2) By the unanimous consent of the members, if the articles of organization or
30 operating agreement do not provide otherwise; or

31 (3) In the manner permitted under G.S. 57C-6-01(4), if the limited liability
32 company ceases to have any members.

33 The consent of a member may be evidenced ~~in any manner specified as provided in the articles~~
34 ~~of organization or operating agreement, but in the absence of such specification, consent shall~~
35 ~~agreement. If the articles of organization or operating agreement do not provide otherwise, then~~
36 ~~consent is to~~ be evidenced by a written instrument, dated and signed by the member, or
37 evidenced by a vote taken at a meeting of members.

38 (b) An assignee who becomes a member has, to the extent assigned, the rights and
39 powers, and is subject to the restrictions and liabilities, of a member under the articles of
40 organization, any operating agreements, and this Chapter. Notwithstanding the preceding
41 sentence, unless otherwise provided in a written operating agreement, an assignee who
42 becomes a member is liable for any obligations of his assignor to make contributions under
43 G.S. 57C-4-02 (liability for contribution) but shall not be liable for obligations of his assignor
44 under G.S. 57C-4-07 (liability upon wrongful distribution). However, the assignee is not
45 obligated for liabilities unknown to the assignee at the time the assignee became a member and
46 which could not be ascertained from the articles of organization or a written operating
47 agreement.

48 (c) Whether or not an assignee of a membership interest becomes a member, the
49 assignor is not released from ~~his liability to the limited liability company that the assignor may~~
50 ~~have under G.S. 57C-4-02 (liability for contribution) and G.S. 57C-4-07 (liability upon~~
51 ~~wrongful distribution).~~ or G.S. 57C-4-07."

1 **SECTION 5.** G.S. 57C-5-05 reads as rewritten:

2 "**§ 57C-5-05. Powers of legal representative of a deceased, incompetent, or dissolved**
3 **member.**

4 ~~Unless otherwise provided in the articles of organization or a written operating agreement,~~
5 ~~if a member who is an individual dies or a court of competent jurisdiction adjudges the member~~
6 ~~to be incompetent to manage his person or his property, the member's executor, administrator,~~
7 ~~guardian, conservator, or other legal representative may exercise all of the member's rights for~~
8 ~~the purpose of settling his estate or administering his property, including any power the~~
9 ~~member had under the articles of organization or a written operating agreement to give an~~
10 ~~assignee the right to become a member. If~~ Unless otherwise provided in the articles of
11 ~~organization or a written operating agreement, if a member is a corporation, trust, or other~~
12 ~~entity and is dissolved or terminated, the powers of that member may be exercised by its legal~~
13 ~~representative or successor for the purpose of liquidating, winding up, and making final~~
14 ~~distributions of the entity's assets to its owners, beneficiaries, or creditors."~~

15 **SECTION 6.** G.S. 57C-6-01 reads as rewritten:

16 "**§ 57C-6-01. Dissolution.**

17 A limited liability company is dissolved and its affairs shall be wound up at or upon the
18 first to occur of the following:

- 19 (1) The time specified in the articles of organization or a written operating
20 agreement;
- 21 (2) The happening of an event specified in the articles of organization or a
22 written operating agreement;
- 23 (3) The written consent of all ~~members;~~ members or, if the limited liability
24 company never had any members, a majority of the organizers;
- 25 (4) ~~Unless otherwise provided in the articles of organization or a written~~
26 ~~operating agreement, at such time that the limited liability company no~~
27 ~~longer has any members. The foregoing to the contrary notwithstanding,~~
28 ~~unless otherwise provided in the articles of organization or a written~~
29 ~~operating agreement, a limited liability company shall not be dissolved and~~
30 ~~is not required to be wound up by reason of any event of withdrawal of the~~
31 ~~last remaining member if, within 90 days after the event of withdrawal, the~~
32 ~~assignee or the fiduciary of the estate of the last remaining member agrees in~~
33 ~~writing that the business of the limited liability company may be continued~~
34 ~~until the admission of the assignee or the fiduciary of the estate of the~~
35 ~~member or its designee to the limited liability company as a member,~~
36 ~~effective as of the occurrence of the event that causes the withdrawal of the~~
37 ~~last remaining member; The 90th day after the day on which a limited~~
38 ~~liability company that once had one or more members ceases to have any~~
39 ~~members, unless within that 90-day period, one or more persons are~~
40 ~~designated or otherwise admitted, with their consent, as members either as~~
41 ~~provided by the articles of organization or a written operating agreement or,~~
42 ~~if the articles of organization or written operating agreement do not so~~
43 ~~provide, are designated or otherwise admitted as members by the assignee~~
44 ~~(or other person having only the rights of an assignee under G.S. 57C-5-02~~
45 ~~who controls the interest) of the person who was the last member of the~~
46 ~~limited liability company; or~~
- 47 (5) Entry of a decree of judicial dissolution under G.S. 57C-6-02, or the filing
48 by the Secretary of State of a certificate of dissolution under G.S. 57C-6-03."

49 **SECTION 7.** G.S. 57C-6-06.1 is repealed.

50 **SECTION 8.** G.S. 57C-10-03 reads as rewritten:

51 "**§ 57C-10-03. Rules of ~~construction.~~ construction; policy.**

1 (a) The rules that statutes in derogation of the common law are to be strictly construed
2 shall have no application to this Chapter.

3 (b) The law of estoppel shall apply to this Chapter.

4 (c) The law of agency shall apply under this Chapter.

5 (d) This Chapter shall not be construed so as to impair the obligations of any contract
6 existing when this Chapter goes into effect, nor to affect any action or proceedings begun or
7 right accrued before this Chapter takes effect.

8 (e) Except as otherwise provided in this Chapter, it is the policy of this Chapter to give
9 the maximum effect to the principle of freedom of contract and to the enforceability of
10 operating agreements."

11 **SECTION 9.** This act becomes effective January 1, 2010.