

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 482
PROPOSED COMMITTEE SUBSTITUTE S482-PCS25232-TU-10

Short Title: LLC Act Clarification.

(Public)

Sponsors:

Referred to:

March 26, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LIMITED
3 LIABILITY COMPANY ACT AND TO FURTHER DEFINE AN EMPLOYER'S AND
4 EMPLOYEE'S RIGHTS TO INVENTIONS INVENTED BY THE EMPLOYEE.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 57D-2-30(b) reads as rewritten:

7 "(b) The operating agreement may not ~~supplant, vary, disclaim, or nullify the provisions~~
8 ~~of this Chapter or their application to the extent the provisions do any of the following:~~

9 (1) Supplant, vary, disclaim, or nullify the provisions of this Chapter or their
10 application to the extent the provisions:

11 a. Concern the functions of, including the filings and payments to be
12 made, and the manner in which they are to be made by or to the
13 Secretary of State, the Attorney General, the courts, or any other
14 governmental official, agency, or authority, including ~~Article~~ Articles
15 1 and 9 of this Chapter, G.S. 57D-2-21(a), 57D-2-22(a), 57D-2-23,
16 57D-2-24, 57D-2-40, 57D-6-02(1), 57D-6-03(a) through (c),
17 57D-6-04, 57D-6-05, 57D-6-06, the last sentence of
18 G.S. 57D-6-07(c), 57D-6-09, and 57D-10-01; except, the operating
19 agreement may provide the forum in which disputes concerning the
20 LLC or the rights and duties of interest owners and other parties to
21 the operating agreement are to be ~~resolved~~ resolved, and other
22 decisions and the manner in which decisions, of interest owners and
23 other parties to the operating agreement, are to be made.

24 ~~(2)~~ b. Apply to persons who are not parties to or otherwise bound by the
25 operating agreement, including the extent to which G.S. 57D-5-03
26 may be applicable to such persons or for which they may be entitled
27 to recovery or other relief thereunder, or the extent to which
28 G.S. 57D-1-02, 57D-6-08(1), 57D-6-10, 57D-6-11, 57D-6-12, and
29 57D-6-13 are applicable to ~~creditors or~~ such persons.

30 c. Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02,
31 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of
32 57D-6-02(2), and 57D-6-07(b) and (f).

33 (3) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and
34 G.S. 57D-4-06.



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- 1 (4) Diminish the rights and protections of members under G.S. 57D-3-04(a),
2 except as permitted by and otherwise subject to subsections (b) through (f)
3 of G.S. 57D-3-04.
- 4 (5) Eliminate the right of a member to bring a derivative action under Article 8
5 of this Chapter unless the operating agreement provides an alternative
6 remedy, which may include the right to bring a direct action in lieu of a
7 derivative action or modifying the procedures provided in Article 8 of this
8 Chapter governing derivative actions.
- 9 (6) Eliminate the right of a member to bring an action to have the LLC judicially
10 dissolved under clause (i) in G.S. 57D-6-02(2), unless the operating
11 agreement provides an alternative remedy.
- 12 ~~(7) Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02,~~
13 ~~57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of~~
14 ~~57D-6-02(2), 57D-6-07(b) and (f), and all sections and subsections of Article~~
15 ~~9 of this Chapter other than G.S. 57D-9-21(b), (c), and (e), 57D-9-22(b),~~
16 ~~57D-9-23(b), 57D-9-31(b) through (e), 57D-9-41(b), (d), and (f), and~~
17 ~~57D-9-42(b)."~~

18 **SECTION 2.** G.S. 66-57.2 reads as rewritten:

19 **"§ 66-57.2. Employer's rights.**

20 (a) An employer may not require a provision of an employment agreement made
21 unenforceable under G.S. 66-57.1 as a condition of employment or continued employment. An
22 employer, in an employment agreement, may require that the employee report all inventions
23 developed by the employee, solely or jointly, during the term of his employment to the
24 employer, including those asserted by the employee as nonassignable, for the purpose of
25 determining employee or employer rights. ~~If required by a contract between the employer and~~
26 ~~the United States or its agencies, the employer may require that full title to certain patents and~~
27 ~~inventions be in the United States.~~

28 (b) An employer's ownership of an employee's invention, discovery, or development
29 that has or becomes vested in the employer by contract or by operation of law shall not be
30 subject to revocation or rescission in the event of a dispute between the employer and employee
31 concerning payment of compensation or benefits to the employee, subject to any contrary
32 provision in the employee's written employment agreement. The foregoing provision shall not
33 apply where the employee proves that the employer acquired ownership of the employee's
34 invention, discovery, or development fraudulently.

35 (c) If required by a contract between the employer and the United States or its agencies,
36 the employer may require that full title to certain patents and inventions be in the United
37 States."

38 **SECTION 3.** This act becomes effective October 1, 2015. Section 1 of this act
39 applies to operating agreements entered on or after that date.