

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 482
Judiciary I Committee Substitute Adopted 4/21/15
House Committee Substitute Favorable 6/22/16
Proposed Conference Committee Substitute S482-PCCS45553-BB-1

Short Title: LLC Clarifications & Emp. Invention Ownership.

(Public)

Sponsors:

Referred to:

March 26, 2015

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND CLARIFYING CHANGES TO THE LIMITED LIABILITY COMPANY ACT AND TO FURTHER DEFINE AN EMPLOYER'S AND EMPLOYEE'S RIGHTS TO INVENTIONS INVENTED BY THE EMPLOYEE.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 57D-2-30(b)(1) is recodified as G.S. 57D-2-30(b)(1)a.

SECTION 1.(b) G.S. 57D-2-30(b)(2) is recodified as G.S. 57D-2-30(b)(1)b.

SECTION 1.(c) G.S. 57D-2-30(b)(7) is recodified as G.S. 57D-2-30(b)(1)c.

SECTION 2. G.S. 57D-2-30(b), as amended by Section 1 of this act, reads as

rewritten:

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

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

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

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



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1 c. Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02,
2 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of
3 57D-6-02(2), and 57D-6-07(b) and (f), and all sections and subsections
4 of Article 9 of this Chapter other than G.S. 57D-9-21(b), (c), and (e),
5 57D-9-22(b), 57D-9-23(b), 57D-9-31(b) through (e), 57D-9-41(b), (d),
6 and (f), and 57D-9-42(b)-(f).

7 (2) Recodified as G.S. 57D-2-30(b)(1)b.

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

10 (4) Diminish the rights and protections of members under G.S. 57D-3-04(a), except
11 as permitted by and otherwise subject to subsections (b) through (f) of
12 G.S. 57D-3-04.

13 (5) Eliminate the right of a member to bring a derivative action under Article 8 of
14 this Chapter unless the operating agreement provides an alternative remedy,
15 which may include the right to bring a direct action in lieu of a derivative action
16 or modifying the procedures provided in Article 8 of this Chapter governing
17 derivative actions.

18 (6) Eliminate the right of a member to bring an action to have the LLC judicially
19 dissolved under clause (i) in G.S. 57D-6-02(2), unless the operating agreement
20 provides an alternative remedy.

21 (7) Recodified as G.S. 57D-2-30(b)(1)c."

22 **SECTION 3.** G.S. 57D-9-20 reads as rewritten:

23 **"§ 57D-9-20. Conversion.**

24 (a) An eligible entity other than an LLC may convert to an LLC if both of the following
25 requirements are met:

26 (1) The conversion is permitted by the law governing the organization and internal
27 affairs of the converting entity.

28 (2) The converting entity complies with the requirements of this Part and, to the
29 extent applicable, the law governing its organization and internal affairs
30 immediately before the conversion.

31 (b) The conversion of a charitable or religious corporation to an LLC is permitted by law if
32 the sole member of the surviving entity immediately after the conversion is a charitable or
33 religious corporation. This subsection shall not limit the ability of an eligible entity to convert to
34 an LLC if otherwise permitted by law.

35 (c) For purposes of this section, charitable or religious corporation shall be as defined in
36 G.S. 55A-1-40(4)."

37 **SECTION 4.** G.S. 66-57.2 reads as rewritten:

38 **"§ 66-57.2. Employer's rights.**

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

47 (b) An employer's ownership of an employee's invention, discovery, or development that
48 has or becomes vested in the employer by contract or by operation of law shall not be subject to
49 revocation or rescission in the event of a dispute between the employer and employee concerning
50 payment of compensation or benefits to the employee, subject to any contrary provision in the
51 employee's written employment agreement. The foregoing provision shall not apply where the

1 employee proves that the employer acquired ownership of the employee's invention, discovery, or
2 development fraudulently.

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

5 **SECTION 5.** Chapter 55A of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 11A.

8 "Conversions.

9 "Part 1. Reserved.

10 **"§§ 55A-11A-1 through 55A-11A-8: Reserved.**

11 "Part 2. Conversion of Corporation.

12 **"§ 55A-11A-9: Reserved.**

13 **"§ 55A-11A-10. Conversion.**

14 A charitable or religious corporation may convert to a domestic limited liability company if
15 the converting charitable or religious corporation complies with the requirements of this Part and
16 the requirements of G.S. 57D-9-20, 57D-9-21, and 57D-9-22."

17 **SECTION 6.** This act becomes effective October 1, 2016. Sections 1 and 2 of this act
18 apply to operating agreements entered into on or after that date.