

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 412
Judiciary I Committee Substitute Adopted 4/1/09

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

36 (2) In the case of an assignee ~~of~~ or other person having only the rights of an
37 assignee under G.S. 57C-5-02 with respect to an interest of a member, upon



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1 ~~compliance with the provisions of G.S. 57C-5-04(a). member in a limited~~
2 ~~liability company, as provided in G.S. 57C-5-04(a); and~~

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

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

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

10 **"§ 57C-4-06. Restrictions on making distributions.**

11 ...

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

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

17 **"§ 57C-5-04. Right of assignee to become a member.**

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

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

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

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

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

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

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

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

49 **"§ 57C-5-05. Powers of legal representative of a deceased, incompetent, or dissolved**
50 **member.**

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

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

13 "**§ 57C-6-01. Dissolution.**

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

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

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

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

48 "**§ 57C-10-03. Rules of ~~construction.~~ construction; policy.**

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

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

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

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

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

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