

1 HB54  
2 164551-3  
3 By Representative Poole  
4 RFD: Commerce and Small Business  
5 First Read: 03-MAR-15  
6 PFD: 02/27/2015

1  
2 ENROLLED, An Act,

3 To amend Sections 10A-5A-1.05, 10A-5A-1.06,  
4 10A-5A-1.07, 10A-5A-4.06, and 10A-5A-12.01, as added by Act  
5 2014-144, Code of Alabama 1975, as added by Act 2014-144, 2014  
6 Regular Session (Acts 2014), relating to the Alabama Limited  
7 Liability Company Law of 2014, to clarify that the law of the  
8 state in which a foreign limited liability company is formed  
9 governs the internal affairs of that entity; to clarify the  
10 treatment of a limited liability company and a foreign limited  
11 liability company for purposes of certain taxation; to clarify  
12 that under normal circumstances the liability of a member of a  
13 limited liability company for wrongful distributions is  
14 limited to the amount of the distributions received; to make  
15 technical corrections in cross references; and to amend  
16 certain transition provisions.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Sections 10A-5A-1.05, 10A-5A-1.06,  
19 10A-5A-1.07, and 10A-5A-4.06, and 10A-5A-12.01, as added by  
20 Act 2014-144, of the Code of Alabama 1975, as added by Act  
21 2014-144, 2014 Regular Session (Acts 2014), are amended to  
22 read as follows:

23 "§10A-5A-1.05.

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

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

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

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

8           "~~(d)~~ (4) the availability and liability of the assets  
9 of a series or the limited liability company for the  
10 obligations of another series or the limited liability  
11 company.

12           "(b) The law of this the state or other jurisdiction  
13 under which a foreign limited liability company is formed  
14 governs:

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

17           "(2) the liability of a member as a member for the  
18 debts, obligations, or other liabilities of a foreign limited  
19 liability company, or series thereof;

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

22           "(4) the availability and liability of the assets of  
23 a series or the foreign limited liability company for the  
24 obligations of another series or the foreign limited liability  
25 company.

1           "§10A-5A-1.06.

2           "(a) It is the policy of this chapter and this state  
3 to give maximum effect to the principles of freedom of  
4 contract and to the enforceability of limited liability  
5 company agreements.

6           "(b) Unless displaced by particular provisions of  
7 this chapter, the principles of law and equity supplement this  
8 chapter.

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

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

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

1 of the Uniform Commercial Code, and all successor statutes  
2 thereto.

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

5 "(g) Sections ~~10A-1-1.03(75), (84), (91), and (94)~~  
6 10A-1-1.03 (73), (81), (88), and (91) shall have no  
7 application to this chapter.

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

10 "§10A-5A-1.07.

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

12 "(a) The terms "partnership" and "limited  
13 partnership," when used in any chapter or title other than the  
14 Alabama Limited Liability Company Law of 2014, the Alabama  
15 General Partnership Law, and the Alabama Limited Partnership  
16 Law, and any successors of those laws, include a limited  
17 liability company organized under this chapter, unless the  
18 context requires otherwise.

19 "(b) Notwithstanding subsection (a), for purposes of  
20 taxation, other than Chapter 14A of Title 40, a limited  
21 liability company or foreign limited liability company shall  
22 be treated as a partnership unless it is classified otherwise  
23 for federal income tax purposes, in which case it shall be  
24 classified in the same manner as it is for federal income tax  
25 purposes.

1           "§10A-5A-4.06.

2           "(a) (1) A limited liability company shall not make a  
3 distribution to a member to the extent that at the time of the  
4 distribution, after giving effect to the distribution, all  
5 liabilities of the limited liability company, other than  
6 liabilities to members on account of their transferable  
7 interests and liabilities for which the recourse of creditors  
8 is limited to specific property of the limited liability  
9 company, exceed the fair value of the assets of the limited  
10 liability company, except that the fair value of the property  
11 that is subject to a liability for which recourse of creditors  
12 is limited shall be included in the assets of the limited  
13 liability company only to the extent that the fair value of  
14 the property exceeds that liability.

15           "(2) A member who receives a distribution in  
16 violation of subsection (a) (1) or the limited liability  
17 company agreement, and who knew at the time of the  
18 distribution that the distribution violated subsection (a) (1)  
19 or the limited liability company agreement, shall be liable to  
20 the limited liability company for the amount of the  
21 distribution received by that member. A member who receives a  
22 distribution in violation of subsection (a) (1) or the limited  
23 liability company agreement, and who did not know at the time  
24 of the distribution that the distribution violated subsection

1 (a) (1) or the limited liability company agreement, shall not  
2 be liable for the amount of the distribution.

3 "(b) (1) A series shall not make a distribution to a  
4 member associated with the series to the extent that at the  
5 time of the distribution, after giving effect to the  
6 distribution, all liabilities of the series, other than  
7 liabilities to members associated with the series on account  
8 of their transferable interests and liabilities for which the  
9 recourse of creditors is limited to specific property of the  
10 series, exceed the fair value of the assets of the series,  
11 except that the fair value of the property that is subject to  
12 a liability for which recourse of creditors is limited shall  
13 be included in the assets of the series only to the extent  
14 that the fair value of the property exceeds that liability.

15 "(2) A member associated with a series who receives  
16 a distribution in violation of subsection (b) (1) or the  
17 limited liability company agreement, and who knew at the time  
18 of the distribution that the distribution violated subsection  
19 (b) (1) or the limited liability company agreement, shall be  
20 liable to that series for the amount of the distribution  
21 received by that member. A member associated with a series who  
22 receives a distribution in violation of subsection (b) (1) or  
23 the limited liability company agreement, and who did not know  
24 at the time of the distribution that the distribution violated

1 subsection (b) (1) or the limited liability company agreement,  
 2 shall not be liable for the amount of the distribution.

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

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

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

12 "(e) For purposes of Sections 10A-5A-4.06(a) and  
 13 10A-5A-4.06(b), distribution does not include amounts  
 14 constituting reasonable compensation for present or past  
 15 services or reasonable payments made in the ordinary course of  
 16 the limited liability company's activities and affairs under a  
 17 bona fide retirement plan or other benefits program.

18 "(f) This section shall not apply to distributions  
 19 made in accordance with Section 10A-5A-7.06 or Section  
 20 10A-5A-11.14."

21 "§10A-5A-12.01.

22 "(a) Before January 1, 2017, this chapter governs  
 23 only:

24 "(1) a limited liability company formed on or after  
 25 January 1, 2015; and



1           "(2) except as otherwise provided in subsection (c),  
2 a limited liability company formed before January 1, 2015,  
3 which elects, in the manner provided in the limited liability  
4 company's operating agreement or as provided for by law for  
5 amending or restating the limited liability company's  
6 operating agreement, to be subject to this chapter.

7           "(b) Except as otherwise provided in subsection (c),  
8 on and after January 1, 2017, this chapter governs all limited  
9 liability companies.

10           "(c) For purposes of applying this chapter to a  
11 limited liability company formed before January 1, 2015:

12           "(1) the limited liability company's formation  
13 document, whether articles of organization or certificate of  
14 formation, is deemed to be the limited liability company's  
15 certificate of formation;

16           "(2) if the limited liability company's formation  
17 document, whether articles of organization or certificate of  
18 formation, contains the information required in Section  
19 10A-5A-2.01(a)(1)(5), the limited liability company shall not  
20 be required to amend or restate its formation document,  
21 whether articles of organization or certificate of formation,  
22 to conform with this chapter operating agreement is deemed to  
23 be the limited liability company's limited liability company  
24 agreement;

1           "(3) provisions in the limited liability company's  
2 formation documents, whether articles of organization or  
3 certificate of formation, shall operate as if those provisions  
4 were in the limited liability company's limited liability  
5 company agreement;

6           "(4) if the limited liability company's formation  
7 document, whether articles of organization or certificate of  
8 formation, is amended or restated on or after January 1, 2015,  
9 and the limited liability company's formation document,  
10 whether articles of organization or certificate of formation,  
11 is in conflict with the limited liability company's limited  
12 liability agreement, then Section 10A-5A-1.10(d) shall govern;  
13 and

14           "(5) any amendment or restatement of the limited  
15 liability company's formation document, whether articles of  
16 organization or certificate of formation, on or after January  
17 1, 2015, shall conform with this chapter."

18           Section 2. This act shall become effective ~~on the~~  
19 ~~first day of the third month~~ immediately following its passage  
20 and approval by the Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

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President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in  
and was passed by the House 31-MAR-15, as amended.

Jeff Woodard  
Clerk

Senate	<hr/> 05-MAY-15 <hr/>	Amended and Passed
House	<hr/> 05-MAY-15 <hr/>	Concurred in Senate Amendment