

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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SENATE DRS15195-ML-136 (03/10)

Short Title: LLC Act Clarification.

(Public)

Sponsors: Senators Barringer and Lee (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE A TECHNICAL AND CLARIFYING CHANGE TO THE LIMITED  
3 LIABILITY COMPANY ACT.

4 The General Assembly of North Carolina enacts:

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

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

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

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

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

27 c. Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02,  
28 57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of  
29 57D-6-02(2), 57D-6-07(b) and (f), and, except as provided in  
30 sub-sub-subdivision 1. of this sub-subdivision, all sections and  
31 subsections of Article 9 of this Chapter.

32 1. Subject to the limitations set forth in sub-subdivisions a. and  
33 b. of this subdivision, an operating agreement may supplant,  
34 vary, disclaim, or nullify the provisions of G.S. 57D-9-21(b),  
35 (c), and (e), 57D-9-22(b), 57D-9-23(b), 57D-9-31(b) through  
36 (e), 57D-9-41(b), (d), and (f), and 57D-9-42(b).



- 1           ~~(3)~~(2) Diminish the rights and protections of the LLC under G.S. 57D-4-05 and  
2           G.S. 57D-4-06.
- 3           ~~(4)~~(3) Diminish the rights and protections of members under G.S. 57D-3-04(a),  
4           except as permitted by and otherwise subject to subsections (b) through (f)  
5           of G.S. 57D-3-04.
- 6           ~~(5)~~(4) Eliminate the right of a member to bring a derivative action under Article 8  
7           of this Chapter unless the operating agreement provides an alternative  
8           remedy, which may include the right to bring a direct action in lieu of a  
9           derivative action or modifying the procedures provided in Article 8 of this  
10          Chapter governing derivative actions.
- 11          ~~(6)~~(5) Eliminate the right of a member to bring an action to have the LLC judicially  
12          dissolved under clause (i) in G.S. 57D-6-02(2), unless the operating  
13          agreement provides an alternative remedy.
- 14          ~~(7)~~ ~~Are set forth in this section, G.S. 57D-1-01, 57D-2-01(d), 57D-2-02,~~  
15          ~~57D-2-03, 57D-2-20, 57D-3-23, 57D-5-01, 57D-6-01, clause (ii) of~~  
16          ~~57D-6-02(2), 57D-6-07(b) and (f), and all sections and subsections of Article~~  
17          ~~9 of this Chapter other than G.S. 57D-9-21(b), (c), and (e), 57D-9-22(b),~~  
18          ~~57D-9-23(b), 57D-9-31(b) through (c), 57D-9-41(b), (d), and (f), and~~  
19          ~~57D-9-42(b)."~~

20          **SECTION 2.** This act is effective when it becomes law.