



SENATE BILL 482: LLC Act Clarification.

2016-2017 General Assembly

Committee: House Judiciary I
Introduced by: Sens. Barringer, Lee
Analysis of: Second Edition

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Prepared by: Erika Churchill
Committee Counsel

SUMMARY: *The Proposed Committee Substitute for Senate Bill 482 would make technical and clarifying changes to the Limited Liability Company Act and further define an employer's and employee's rights to inventions invented by an employee.*

CURRENT LAW & BILL ANALYSIS:

LLC Clarifications and Changes. The North Carolina Limited Liability Company Act, codified as Chapter 57D of the General Statutes, governs the creation, operation, and dissolution of limited liability companies. Operating agreements govern the internal affairs of an LLC and the rights, duties, and obligations of the following:

- The interest owners, and the rights of any other persons to become interest owners, in relation to each other, the LLC, and their ownership interests or rights to acquire ownership interests.
- The company officials in relation to each other, the LLC, and the interest owners.

Subject to certain statutory limitations, the provisions of the operating agreement control, and the provisions of the operating agreement are severable. Each provision applies to the extent it is valid and enforceable. Operating agreements do not have to be in writing; they can be established in the same ways as any contract: written, oral, or implied assent among the parties to the contract. Oral or implied provisions in the operating agreement may not supplant, vary, disclaim, or nullify any contrary or inconsistent written provisions to the detriment of the rights of persons who are not parties to the operating agreement to the extent that they reasonably rely on those written provisions in the operating agreement.

An entity may convert to an LLC if both of the following apply:

- The law governing the organization and internal affairs of the entity permit the conversion.
- The entity complies with Part 2 of Chapter 55D of the General Statutes.

Sections 1 and 2 would make technical and clarifying changes to a provision of the Limited Liability Act concerning operating agreements.

Section 3 would clarify that a religious or charitable organization may convert to an LLC, if the sole member of the LLC of the surviving entity is a religious or charitable organization. For this purpose, a 'religious or charitable organization is any corporation that is a 501(c)(3) organization, or that is organized exclusively for one or more of the purposes specified in section 501(c)(3) and that upon dissolution must distribute its assets to a charitable or religious corporation, the United States, a state or an entity that is exempt under section 501(c)(3).

Karen Cochrane-Brown
Director



Legislative Analysis
Division
919-733-2578

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Inventions Developed by Employees. Article 10A of Chapter 66 of the General Statutes statutorily provides that any provision in an employment agreement stating that an employee is to assign or offer to assign any of that employee's rights in an invention to that employee's employer does not apply to an invention that the employee developed entirely on their own time without using the employer's equipment, supplies, facility or trade secret information. Exceptions to this general rule are those inventions that meet either of the following criteria:

- Relate to the employer's business or actual or demonstrably anticipated research or development.
- Result from any work performed by the employee for the employer.

An employer may not require a provision of an employment agreement contradictory to the above as a condition of employment or continued employment. An employer may require that the employee report all inventions developed by the employee, solely or jointly, during the term of employment to the employer.

Section 4 would amend Article 10A of Chapter 66 to provide that an employer's vested ownership in an employee's invention would not be subject to revocation or rescission in the event of a dispute over compensation or benefits unless there was a contrary provision in the written employment agreement, unless the employee proves that the employer acquired ownership of the invention fraudulently.

EFFECTIVE DATE: October 1, 2016.