



SENATE BILL 439: Amend & Restate NC Limited Liability Co. Act

2013-2014 General Assembly

Committee:	Senate Judiciary I	Date:	April 15, 2013
Introduced by:	Sens. Clodfelter, Barringer, Brunstetter	Prepared by:	Bill Patterson
Analysis of:	First Edition		Committee Counsel

SUMMARY: *Senate Bill 439 rewrites the North Carolina Limited Liability Company Act.*

CURRENT LAW: The North Carolina Limited Liability Company Act, codified as Chapter 57C of the General Statutes, governs the creation, operation, and dissolution of limited liability companies.

BILL ANALYSIS: Section 1 of the bill repeals Chapter 57C in its entirety, and Section 2 reenacts it as Chapter 57D, with substantial revisions, including:

- Operating agreements would not have to be in writing; they could be established in the same ways as any contract: written, oral, or implied assent among the parties to the contract
- Rights and duties of parties as set forth in the Act could be freely modified, waived, or nullified by agreement
- New defined terms are added to provide a more detailed framework for carrying out the ownership and management of LLCs
- Provisions relating to low-profit LLCs are deleted
- Provisions are added to clarify matters that may be agreed upon by members, including:
 - Management duties
 - Exculpation and indemnification
 - Penalties
 - Alternative dispute resolution
 - Information access rights
- Provisions governing foreign LLCs would be harmonized with their counterparts under the Business Corporations Act
- Various provisions of the Act would be clarified and coordinated with relevant State and federal law

Sections 3 through 30 make various conforming changes to other statutory provisions.

Sections 31 and 32 exempt ownership interests in LLCs from UCC Article 9 provisions that might result in encumbrances to a member's economic interest in breach of the operating agreement, which could adversely affect the interest of the other members

EFFECTIVE DATE: This act becomes effective January 1, 2014, except as otherwise provided in new Chapter 57D, Article 11 (Transition Provisions).

BACKGROUND: Senate Bill 439 is the product of four years of work by the LLC Act Revisions Task Force of the North Carolina Bar Association's Business Law Section.

