**A** **BILL**

TO AMEND SECTION 33‑44‑303, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LIABILITY OF MEMBERS OR MANAGERS OF LIMITED LIABILITY COMPANIES, SO AS TO PROVIDE THAT A MEMBER OR MANAGER CANNOT BE HELD PERSONALLY LIABLE FOR A DEBT, OBLIGATION, OR LIABILITY OF THE COMPANY, WHETHER ARISING IN CONTRACT, TORT, OR OTHERWISE AND TO REMOVE FROM THE COMMENTS LANGUAGE THAT STATES THAT MEMBERS OR MANAGERS WOULD BE RESPONSIBLE FOR ACTS OR OMISSIONS TO THE EXTENT THAT THOSE ACTS OR OMISSIONS WOULD BE ACTIONABLE IN CONTRACT OR TORT AGAINST THE MEMBER OR MANAGER IF THAT PERSON WERE ACTING IN AN INDIVIDUAL CAPACITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 33‑44‑303, as enacted by Act No. 343 of 1996, is amended to read:

“Section 33‑44‑303. (a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager ~~is not~~ cannot be held personally liable for a debt, obligation, or liability of the company, whether arising in contract, tort, or otherwise ~~solely by reason of being or acting as a member or manager~~.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) a provision to that effect is contained in the articles of organization; and

(2) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision.”

COMMENT

A member or manager, as an agent of the company, is not liable for the debts, obligations, and liabilities of the company simply because of the agency. ~~A member or manager is responsible for acts or omissions to the extent those acts or omissions would be actionable in contract or tort against the member or manager if that person were acting in an individual capacity.~~ Where a member or manager delegates or assigns the authority or duty to exercise appropriate company functions, the member or manager is ordinarily not personally liable for the acts or omissions of the officer, employee, or agent if the member or manager has complied with the duty of care set forth in Section 33‑44‑409(c).

Under Section 33‑44‑303(c), the usual liability shield may be waived, in whole or in part, provided the waiver is reflected in the articles of organization and the member has consented in writing to be bound by the waiver. The importance and unusual nature of the waiver consent requires that the consent be evidenced by a writing and not merely an unwritten record. See Comments to Section 33‑44‑205. The effect of a waiver on the federal tax classification of the company is determined by federal law.

SECTION 2. This act takes effect upon approval by the Governor.

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