

2014 Legislative Update

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The 2014 Legislative Session was fast paced. The Legislature adjourned sine die on Thursday, April 3rd, which is almost a month earlier than the last possible day allowed by law. Despite the early adjournment, the legislature made use of all 30 legislative days allowed by law.

In total, 1103 bills were introduced and received a first reading and a total of 269 passed both houses and were transmitted to the Governor. Of those 269 bills that passed both houses, 84 were local bills and 22 were bills that were sunset bills involving only one agency or board.

Complete copies of the legislation addressed herein or any other legislation considered during the 2014 Regular Session can be found by visiting <http://alisondb.legislature.state.al.us>

Alabama Law Institute Legislation

HB2 (Act 2014-144) - Revised Limited Liability Act of 2015

Representative Paul DeMarco and Senator Rodger Smitherman

This Act updates Alabama's Limited Liability Company Law. It continues the practice of updating the law as the laws governing limited liability companies continue to evolve. This Act, like its predecessors, is not based on a single source, but rather has borrowed concepts and provisions from a variety of sources. A few noteworthy features of this Act are:

(a) Contractual Nature. The Act focuses on the contractual nature of the limited liability company. There are few mandatory provisions in the Act; consequently, most features of a limited liability company can be modified by the parties to suit their needs. The Act includes many default provisions that apply if the members do not modify them in the limited liability company agreement.

(b) Mandatory Safeguards. Despite the emphasis on allowing the parties to make their own contract, the Act provides that certain obligations, such as the implied contractual covenant of good faith and fair dealing, cannot be modified.

(c) Notice Filing. In keeping with the contractual nature of the limited liability company, the filings required to form, dissolve, merge, or convert a limited liability company are designed only to notify the State and third parties that the limited liability company exists and how to contact it. The details about the limited liability company will be contained in the limited liability company agreement.

(d) Right To Direct. A person's right to direct and oversee the activities and affairs of the limited liability company will be determined by the limited liability company agreement. If the limited liability company agreement is silent, the members will direct and oversee the activities and affairs of the company.

(e) Right to Bind. There is no statutory authority to bind. Rather, a person's authority to bind the limited liability company will be governed by the limited liability company agreement and the law of agency.

(f) Purposes. The rules governing limited liability companies are phrased in terms of "activities and affairs," reflecting the fact that limited liability companies can be used for purposes other than carrying on a business (*e.g.*, holding title to property, estate planning).

(g) Series. Series provisions are provided throughout the Act in an effort to accommodate the appearance of series rules in many other state limited liability company laws. The Act permits a limited liability company to establish, by way of its certificate of formation and its limited liability company agreement, one or more designated series of assets with which

certain members may be associated. It is intended that the assets of a series not be liable for the obligations of the limited liability company or another series.

SB28 (Act 2014-374) – UCC Article 9 Amendments

Senator Cam Ward and Representative Mike Jones

Article 9 of the Uniform Commercial Code governs secured transactions in personal property. It provides the rules governing any transaction (other than a finance lease) that couples a debt with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor may repossess and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest."

In 2001, Alabama enacted the 1998 Revisions to Article 9 which are in effect in all states and the District of Columbia. Alabama's current law is codified as Chapter 9A of Title 7 of the Code of Alabama. The 2010 amendments to Article 9 modify the existing statute to respond to filing issues and address other matters that have arisen in practice following a decade of experience with the current law.

One of the most importance aspects of the amendments is that it provides greater guidance as to the name of an individual debtor to be provided on a financing statement. For business entities and other registered organizations, the amendments will clarify the proper name for perfection purposes.

Other improvements made by the Amendments to Article 9 of the Uniform Commercial Code include:

1. the amendments provide greater protection for an existing secured party having a security interest in after-acquired property when its debtor merges with another entity;

2. the amendments also deal with perfection issues arising on after-acquired property when a debtor (individual or organization) moves to a new jurisdiction by giving the filer perfection for four months in collateral acquired post-move; and
3. a safe harbor for the transfer of chattel paper in conformance with the Uniform Electronic Transactions Act is included.

SB61 (Act 2014-293) – Title 10A Merger and Conversion Amendments

Senator Arthur Orr and Representative Bill Poole

This bill improves and modernizes the laws by which Alabama businesses are able to effectuate mergers with other entities- whether they be organized in Alabama or another state. These changes will better serve the needs of Alabama businesses as they grow in diversity.

Likewise this bill will allow Alabama businesses a full range of conversion opportunities. Conversion is the process by which an entity changes its organizational type for example a corporation could become a limited liability company, without creating a new entity. This is also the process whereby an entity formed in another state can become an Alabama entity- also known as domestication. The bill clarifies that conversion only changes the entity type but does not disrupt the continuity of the business. The bill also provides that any unique identifiers assigned by the Secretary of State carry forward after the conversion process.

In 2011 the new Alabama and Nonprofit Entities Code became effective. Since that time the Institute created the Standing Committee on Business Entities to continuously address amendments to improve the operation of Alabama's business formation and governance laws, as needed over time.

These proposed revisions to the merger and conversion portions contained in Chapter 1 of the Alabama Business and Nonprofit Entities Code are the second project completed by the

this committee. During the 2012 Legislative Session the Alabama Legislature passed a bill to amend aspects of the name reservation process as recommended by the committee.

These amendments allow the surviving entity in a merger or conversion to maintain their unique state identification number with the State of Alabama and will minimize the transitional burdens on these companies.

SB162 (Act 2014-299) – Uniform Partition of Heirs Property

Senator Jerry Fielding and Representative Marcel Black

The Uniform Partition of Heirs Property Act attempts to address a problem faced by many middle to low-income families who own real property: dispossession of their land through a forced sale. For many of these families, real estate is their single most valuable asset.

In summary, the Uniform Partition of Heirs Property Act preserves the right of a co-tenant to sell his or her interest in inherited real estate, while ensuring that the other co-tenants will have the necessary due process to prevent a forced sale: notice, appraisal, and right of first refusal. If the other co-tenants do not exercise their right to purchase property from the seller, the court must order a partition-in-kind if feasible, and if not, a commercially reasonable sale for fair market value.

It is important to note that the act only applies to heirs' property – one or more co-tenants must have received his or her property interest from a relative – and only when there is no written agreement governing partition among the owners. If both of those conditions exist, the act requires certain protections when a co-tenant files for a partition order.

1. The co-tenant requesting the partition must give notice to all of the other co-tenants.

2. The court must order an independent appraisal to determine the property's fair market value as a single parcel. If any co-tenant objects to the appraised value, the court must hold a hearing to consider other evidence.
3. Any co-tenant (except the co-tenant(s) requesting partition-by-sale) may buy the interest of the co-tenant seeking partition for a proportional share of the court-determined fair market value. The co-tenants have 45 days to exercise their right of first refusal, and if exercised, another 60 days in which to arrange for financing. If more than one co-tenant elects to buy the shares of the co-tenant(s) seeking partition, the court will pro-rate the sellers' shares among the buyers according to their existing fractional ownership percentages.
4. If no co-tenant elects to purchase shares from the co-tenant(s) seeking partition, the court must order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group. UPHPA specifies the factors a court must consider when determining whether partition-in-kind is appropriate.
5. If partition-in-kind is inappropriate and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner. If an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the co-tenants as a group, the court may order a sale by one of those methods.

This act would supplement Chapter 6 of Title 35 of the Code of Alabama which would continue to apply to partition of all property not deemed to be heir property.

Election Law

HB9 (Act 2014-399) – Alabama Informed Voter Act

This legislation creates the Fair Ballot Commission that would review and approve ballot language for constitutional amendments. The bill would further provide for the posting of information on proposed constitutional amendments in advance of them appearing on a ballot.

HB62 (Act 2014-6) – Absentee Voting

This bill changes the deadlines for qualification and certification of candidates and for the printing and distribution of ballots. The bill also allows the use of federal write-in absentee ballots by overseas voters.

SB235 (Act 2014-428) – Voter Registration

Extends to cut-off for voter registration back to 14 days prior to an election.

Civil Procedure

HB64 (Act 2014-124) – Sovereign Immunity

This bill codifies the standards by which state employees, including education employees, are entitled to sovereign immunity.

HB107 (Act 2014-240) – Workers Compensation

Increases the maximum allowed amount for burial expenses.

HB376 (Act 2014-350) – Juvenile Court Jurisdiction

Clarifies that Juvenile Court has exclusive jurisdiction for the termination of parental rights.

HB543 (Act 2014-455) – Judicial Recusal

This bill repeals the current judicial recusal statute and replaces it with the new test. The new statute creates a rebuttal presumption that recusal should under certain circumstances where a party or attorney has contributed a significant percentage of the campaign contributions received by a judge.

State and Local Government

HB20 (Act 2014-414) – Inventory of State-owned Real Property

This bill requires the finance department to develop and maintain a website that shows an inventory of state agency facilities and lands.

HB24 (Act 2014-404) – Contractor Prompt Pay

This bill amends the prompt pay for public works contracts to require payment within 35 days of the submission of appropriate documentation or within 10 days of the receipt of funds in the case of projects involving federal funds.

HB30 (Act 2014-457) – Administrative Procedures Act Amendments

These amendments to the Administrative Procedures Act allow for an agency that has submitted a rule for consideration to withdraw that proposed rule without action of the Legislative Council. The bill also clarifies the definition of covered agencies to exclude any boards of plans administered by public pension systems.

HB82 (Act 2014-321) – Debt Collection

This allows for counties and municipalities to set off debts owed as a result of administrative and judicial proceedings against income tax returns.

HB97 (Act 2014-331) – Tax Collection

This allows the revenue department to suspend the collection of taxes and fees where the cost of collection is higher than the amount collected.

HB105 (Act 2014-146) – Taxpayer Bill of Rights

This creates an independent tribunal to replace the Administrative Law Division of the Department of Revenue.

HB 108 (Act 2014-415) – Electronic Filing of Business Personal Property Tax Returns

Requires the Department of Revenue to develop an online electronic filing system to allow for the filing of business personal property returns.

HB136 (Act 2014-401) – Local Government Health Insurance Program

The Alabama Local Government Health Insurance Program, established by statute, is administered by the Alabama State Employees' Insurance Board without local government representation. This act will establish a separate board to direct the operation of the local government program.

HB155 (Act 2014-82) – Public Service Commission

This bill removes retail service complaints for telephone service from the jurisdiction of the Public Service Commission.

HB299 (Act 2014-334) – Municipal Employees

This bill will allow a municipality to require employees to be paid by direct deposit of their wages.

HB360 (Act 2014-173) – Municipal Law Limitations

This act will prohibit a municipality from requiring an employer to provide employees with vacation or other forms of leave, paid or unpaid, that is not required by state or federal law.

SB36 Act 2014-440) – Ethics Revolving Door

Amends the revolving door provision of the ethics act so that lobbying by a former legislator is prohibited as to the entire legislature and not just the body where the member served.

SB59 (Act 2014-378) – Purchasing

Allows for the purchasing of certain items from vendors not on statewide contract where savings can be achieved.

SB113 (Act 2014-166) – Circuit Clerks

Allows AOC to create and implement uniform rules to require all circuit clerks to accept credit and debit cards.

SB173 (Act 2014-133) – Real Estate Purchase Disclosure

Requires disclosure of certain information related to the purchase of real property by governmental bodies and entities. The information that must be disclosed includes the appraised value, the date of appraisal and the identity of the appraiser.

SB400 (Act 2014-433) – Tax Levies

This bill would require all counties to levy property taxes in 2015, and after that, commissions would only have to repeat that step if rates change. The bill also ratifies all past levies.

Real Property

HB46 (Act 2014-332) – Subdivision Regulation

This bill amends the law as it relates to municipal subdivision developments to allow parties to enter into an agreement for the sale of a lot in a proposed subdivision. The bill also provides that a county engineer may authorize a developer to pre-sale lots under certain circumstances.

SB291 (Act 2014-279) – Landlord Tenant Act Amendments

Amends the Landlord Tenant Act to allow for a longer period of time to return deposits and to provide that a landlord may deem property abandoned if electric service has been terminated for seven consecutive days.

Family Law

HB48 (Act 2014-413) – Adoption Tax Credit

This bill provides a \$1,000 tax credit for certain qualified adoptions.

Criminal Law

HB54 (Act 2014-239) – Interference with Public Safety Communications

This bill criminalizes the interference, damage, or destruction of public safety communications.

The crime is classified as a Class C felony.

HB225 (Act 2014-348) – Financial Crimes Statute of Limitations

Extends the statute of limitations for felony theft of property, extortion, bribery securities fraud, and theft by deception from 3 to 5 years.

HB450 (Act 2014-444) – Negotiating a Worthless Negotiable Instrument

Amends the term negotiable instrument to include electronic drafts for purposes of the crime of negotiation a worthless negotiable instrument.

SB2 (Act 2014-435) – Kelly’s Law

Provides that the murder of a person who is under a protection order issued against the defendant is a capital offense.

SB89 (Act 2014-427) – Boating Under the Influence

Conforms the penalty for DUI and BUI for criminal negligent homicide or assault in the first degree.

SB108 (Act 2014-292) – Expungement

Provides for the sealing of arrest records for persons not convicted of a crime under certain circumstances.

SB151 (Act 2014-275) – Bestiality

Creates and defines the crime of bestiality which is a Class A Misdemeanor.

SB174 (Act 2014-277) – Carly's Law

Creates an affirmative defense to a charge of unlawful possession of Marijuana for a person in possession of derivative oils with a prescription for the treatment of an epileptic condition. This also provides for research for a program by the UAB Department of Neurology.

SB332 (Act 2014-306) – Comprehensive Criminal Proceeds Forfeiture Act

Establishes a uniform procedure for the forfeiture of property connected to the commission of felony crimes.

Abortion

HB489 (Act 2014-441) – Waiting Period

Increases the waiting period for an abortion to 48 hours following the provision of initial information.

HB494 (Act 2014-445) – Parental Consent

Changes the procedure followed by a physician in ensuring that parental consent exists for a minor seeking an abortion. The bill also modifies the procedure for judicial bypass for a minor who does not have consent.

Public Benefit Reforms

SB63 (Act 2014-438) – TANF Drug Testing

Provides for drug testing of TANF recipients who have been convicted of a crime related to drug use or possession in the past five years.

SB114 (Act 2014-424) – Public Assistance Fraud

Provides for penalties and defines what constitutes fraud in obtaining public benefits.

SB115 (2014-425) – Employment Search

Requires persons receiving certain public benefits to show proof of job search.

SB116 (2014-419) – Spending Restrictions

Restricts the use of TANF benefits to prevent the purchase of alcohol, tobacco and lottery tickets.

Education

HB129 (Act 2014-325) – Private School Tax Exemptions

Provides for private schools, colleges and universities to continue to be exempt from state and local school taxes for property, including lunches, sold within the school.

HB156 (Act 2014-405) – Anaphylaxis Preparedness Program

This will create the anaphylaxis preparedness program that will require the State School Board to implement a program to have pre-measured autoinjectable epinephrine at every public school campus by the 2015 school year.

HB191 (Act 2014-403) – Drop Out

This bill will prohibit a student who withdraws from school to attend an accredited online school from being considered a drop out.

HB472 (Act 2014-448) – Two-Year School Presidents

Allows the chancellor of post-secondary education to appoint interim presidents for two-year schools and colleges.

SB7 (Act 2014-185) – Unfunded Mandates

This is a proposed constitutional amendment to remove the exception for local boards of education from the unfunded mandate restriction of the Constitution.

SB297 (Act 2014-421) – Sex Offender Prohibitions

Prohibits a sex offender who was convicted of a crime with a minor from being within 500 feet of a public school property during instructional hours.