

48-3a-406 Liability for improper distributions.

- (1) Except as otherwise provided in Subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 48-3a-405 and in consenting to the distribution fails to comply with Section 48-3a-409, the member or manager is personally liable to the limited liability company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 48-3a-405.
- (2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in Subsection (1) applies to the other members and not the member that the operating agreement relieves of authority and responsibility.
- (3) A person that receives a distribution knowing that the distribution violated Section 48-3a-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-3a-405.
- (4) A person against which an action is commenced because the person is liable under Subsection (1) may:
 - (a) implead any other person that is liable under Subsection (1) and seek to enforce a right of contribution from the person; and
 - (b) implead any person that received a distribution in violation of Subsection (3) and seek to enforce a right of contribution from the person in the amount the person received in violation of Subsection (3).
- (5) An action under this section is barred unless commenced not later than two years after the distribution.

Enacted by Chapter 412, 2013 General Session