



Ohio Legislative Service Commission

Bill Analysis

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131st General Assembly
(As Introduced)

Reps. Dever, Reineke

BILL SUMMARY

- Authorizes the formation of, and regulates, series limited liability companies (series LLCs) under Ohio Corporate Law.
- Grants a series of members, managers, or LLC interests (series) the power to engage in certain activities under its own name.
- Limits enforcement of the debts of a particular series to that series only and, likewise, prohibits enforcement of debts of another series or the LLC generally against that particular series.
- Permits an LLC member or manager to agree to be personally obligated for any of the debts, obligations, and liabilities of one or more series.
- Specifies that, unless otherwise provided in an LLC's articles of organization, the governing authority of a series consists of the managers or members associated with that series.
- Provides for the appointment and removal of series managers in accordance with the articles of organization.
- Permits an LLC operating agreement to provide for the formation of classes of members associated with a series.
- Specifies that a member generally ceases to be associated with a series upon the assignment of all of the member's interest in the series.
- Generally permits an LLC to make a distribution to a member from a series, unless, immediately after making the distribution, the total amount of the series' liabilities exceeds the fair market value of the series' assets.

- Enumerates the scenarios under which a series must be terminated and its affairs wound up.
- Grants certain individuals and entities the authority to wind up the affairs of a series.
- Specifies that a series terminates on the completion of the winding up of the business and affairs of the series.
- Requires a foreign LLC registering to do business in Ohio to note certain information regarding the formation of a series in its registration application.

CONTENT AND OPERATION

Overview

The bill permits the formation of, and regulates, series limited liability companies (series LLCs) under Ohio Corporate Law. A limited liability company (LLC) is a hybrid type of legal structure that provides the limited liability features of a corporation and the tax efficiencies and operational flexibility of a partnership.¹ A series LLC is a special form of LLC that consists of a master LLC and separate subunit divisions, or series. In general, series LLC statutes allow an LLC to be subdivided into separate series of members (owners), managers, LLC interests, or assets that have separate rights, powers, or duties. Liabilities and obligations incurred by one series will not jeopardize assets held by another series.²

LLC can form a series

The bill permits an LLC operating agreement to provide for one or more designated series of members, managers, or LLC interests (series) that meet both of the following criteria:

(1) Has separate rights, powers, or duties with respect to specified property or obligations of the LLC or profits and losses associated with specified property or obligations;

¹ U.S. Small Business Administration, *Limited Liability Company*, <https://www.sba.gov/starting-business/choose-your-business-structure/limited-liability-company> (accessed July 13, 2016).

² Forbes, *Series LLCs: The Next Generation Of Passthrough Entities*, <http://www.forbes.com/sites/taxanalysts/2015/02/16/series-llcs-the-next-generation-of-passthrough-entities/#916600372e29> (accessed July 11, 2016).



(2) Has a separate business purpose or investment objective.³

Powers of a series

A series has the power to do all of the following in its own name: sue and be sued; contract; hold title to assets, including real, personal, and intangible property; grant liens and security interests; and engage in any lawful activity, including any for-profit or nonprofit purpose other than the business of banking.⁴

Limitation on series debts

The bill limits the enforcement of the debts of a particular series to that series only. Specifically, the debts, liabilities, obligations, and expenses of a particular series are enforceable against the assets of that series only and are not enforceable against the assets of the LLC generally or any other series. Furthermore, unless otherwise provided in the LLC operating agreement, none of the debts, liabilities, obligations, and expenses otherwise existing for the LLC generally or any other series are enforceable against the assets of a particular series.⁵

The limitations described above apply only under the following conditions:

- If the records maintained for a particular series account for the assets associated with that series separately from the other assets of the LLC or any other series;
- If the LLC operating agreement permits the liability limitations described above;
- If the LLC articles of organization filed with the Secretary of State contain notice of the limitations.

Notice contained in the articles of organization satisfies the notice requirement described above regardless of whether (1) the LLC has established any series when the notice is contained in the articles of organization or (2) the notice refers to a specific series of the LLC.⁶

³ R.C. 1705.65.

⁴ R.C. 1705.67.

⁵ R.C. 1705.66(A).

⁶ R.C. 1705.66(B) and (C).

Liability and creditor status of series members

The bill permits a member or manager of an LLC to agree, under an operating or other agreement, to be personally obligated for any of the debts, obligations, and liabilities of one or more series.⁷

Additionally, when a member associated with a series is entitled to receive a distribution, the member has the same status as a creditor of the series and is entitled to any remedy available to a creditor with respect to the distribution.⁸

Governing authority

Unless otherwise provided in an LLC's articles of organization, the governing authority of a series consists of the managers or members associated with the series. If the operating agreement provides for the management of a series in whole or in part by a manager or managers, management of the series is vested in the manager in proportion to the current percentage or other interest of the series held by the manager. A decision of members owning a majority of the percentage or other interest in the profits of the series is controlling.

The bill also provides for the appointment and removal of series managers. Managers must be chosen in the manner provided in the operating agreement and must hold the offices and have the responsibilities set forth in the operating agreement. A manager or managers will cease to hold that position in a series as provided in the operating agreement.

An event that causes a manager to cease being a manager with respect to a particular series does not cause the manager to cease to be a manager of the LLC or any other series of that company.⁹

Establishment of classes of series members

The bill permits an LLC operating agreement to provide for the formation of classes of members associated with a series. Specifically, an operating agreement may do all of the following:

⁷ R.C. 1705.68.

⁸ R.C. 1705.71.

⁹ R.C. 1705.70.



- Establish classes or groups of one or more members or managers associated with a series, each of which has certain express rights, powers, and duties, as permitted by the operating agreement;
- Provide for the manner of establishing additional classes or groups, each of which has certain express rights, powers, and duties (including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series);
- Provide for the taking of an action without the vote or approval of any member or manager or class, or group of members or managers, including (1) amending the operating agreement or (2) creating a class or group of the series of member interests that was not previously outstanding.

An operating agreement also may regulate voting rights in relation to the series. It may specify that all or certain identified members or managers associated with a series, or a specified class or group of members or managers, have the right to vote on any matter separately or with all or any class or group of the members or managers. It also may specify that any member or class or group of members has no voting rights. Finally, it may specify that voting by members or managers may be on a per capita, number, financial interest, class, group, or any other basis.¹⁰

Ceasing to be associated with a series

Unless otherwise provided in the LLC operating agreement, a member ceases to be associated with a series upon the assignment of all of the member's LLC interest in the series. The bill stipulates that except as otherwise specified in the operating agreement, an event that under the bill or the operating agreement causes a member to cease to be a member of a series does not terminate a member's continued membership with the LLC, cause the member to cease to be associated with the series, or terminate the series. These provisions apply regardless of whether the member was the last remaining member associated with the series.¹¹

Distributions

Under the bill, an LLC may make a distribution to a member from a series, unless, immediately after making the distribution, the total amount of the liabilities of the series exceeds the fair market value of the assets associated with the series. However, a distribution does not include reasonable compensation for present or past

¹⁰ R.C. 1705.69.

¹¹ R.C. 1705.74.

services or a reasonable payment made in the ordinary course of business under a bona fide retirement plan or other benefits program.

The liabilities of a series do not include (1) a liability related to the member's membership interest or (2) a liability for which the recourse of creditors is limited to specified property of the series. The assets associated with a series include the fair market value of the property of the series subject to a liability for which the recourse of creditors is limited to specified property of the series only if the fair value of that property exceeds the liability.

A member who knowingly receives an impermissible distribution from a series is liable to the series for the amount of the distribution. The bill further provides that the preceding provisions do not affect the obligations of a member to return a distribution to a series under an LLC agreement or other state or federal law.¹²

Record date

An LLC operating agreement may establish a record date for allocations and distributions for a series.¹³

Termination and winding up of a series

The bill enumerates the scenarios under which a series must be terminated and its affairs wound up.

The first scenario occurs if the LLC's dissolution is required under continuing law: the expiration of a period fixed by the operating agreement or articles of organization for the duration of the LLC; an event specified in the operating agreement as causing the LLC's dissolution; the unanimous written agreement of all members to dissolve; generally, the withdrawal of a member, unless the company's business is continued by the consent of all of the remaining members or under a right to continue stated in the operating agreement; or a decree of judicial dissolution.

The second scenario occurs upon the earliest occurrence of any of the following:

- The time specified for winding up the series in the LLC operating agreement;
- The occurrence of an event specified with respect to the series in the operating agreement;

¹² R.C. 1705.73.

¹³ R.C. 1705.72.

- A court of common pleas orders the winding up and termination of a series, which occurs upon application by or for a series' member and when the court determines that it is not reasonably practicable to carry on the series' business in conformity with the LLC operating agreement;
- Unless otherwise provided in the operating agreement, an affirmative vote approving the winding up of $\frac{2}{3}$ of all members associated with the series who own at least $\frac{2}{3}$ of the profits of the series. If there is more than one class of members associated with the series, an affirmative vote of the members in each class or group who own at least $\frac{2}{3}$ of the profits of that class or group is required.¹⁴

Authority to wind up the affairs of a series

The bill permits the following individuals or entities to wind up the affairs of a series:

(1) A manager associated with the series who has not wrongfully terminated the series;

(2) An affirmative majority vote by the members associated with the series who own at least a majority of the profits of the series or a person approved by the members. If there is more than one class or group of members associated with the series, an affirmative majority vote by each class or group of members who own at least a majority of the profits of that class or group (see **COMMENT 1**).

(3) The court of common pleas, or a liquidating trustee appointed by the court, upon application of any member or manager associated with the series or the member's personal representative or assignee.¹⁵

The person or entity winding up the affairs of a series may take all actions and provide for the claims and obligations of the series and distribute the series' assets as provided in continuing law. The bill clarifies that any action taken in accordance with these provisions does not affect the liability of members and does not impose liability on a liquidating trustee.¹⁶

¹⁴ R.C. 1705.77 and 1705.79.

¹⁵ R.C. 1705.78(A) and (B).

¹⁶ R.C. 1705.78(C) and (D).

Termination of a series

A series terminates on the completion of the winding up of its business and affairs. The termination of a series does not affect the limitation of liabilities of the series as provided under the bill (see "**Limitation on series debts**").¹⁷

Winding up does not trigger dissolution

Except as otherwise provided in an LLC agreement (see **COMMENT 2**), a series and its business and affairs can be terminated and wound up without causing the dissolution of the LLC.¹⁸

Foreign limited liability companies

A foreign LLC registering to do business in Ohio under continuing law must note the following in its registration application:

- Whether its operating agreement establishes or provides for the establishment of one or more designated series of members, managers, or LLC interests;
- Whether any debts, liabilities, and obligations incurred or otherwise existing with respect to a particular series are enforceable against the assets of that series only and not against the assets of the LLC or any other series;
- Whether any debts, liabilities, obligations, and expenses incurred, or otherwise existing with respect to the LLC generally or any other series are enforceable against the assets of a particular series.¹⁹

COMMENT

1. This provision describes an action (a majority vote) and not an individual, individuals, or an entity, as specified by the introductory clause. As such, it is not clear who or what has the authority to wind up the series under this provision. "The members associated with the series, by an affirmative vote of the members who own a majority of the profits of the series, or a person approved by those members" might be what is intended.

¹⁷ R.C. 1705.76.

¹⁸ R.C. 1705.75.

¹⁹ R.C. 1705.80.

2. This provision is likely referring to an LLC operating agreement. "Agreement" alone could possibly be interpreted more broadly than "operating agreement."

HISTORY

ACTION	DATE
Introduced	06-06-16

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