

ENROLLED ACT NO. 24, HOUSE OF REPRESENTATIVES

SIXTY-FOURTH LEGISLATURE OF THE STATE OF WYOMING
2018 BUDGET SESSION

AN ACT relating to limited liability companies; authorizing limited liability companies to establish series of members, managers, transferable interests or assets as specified; specifying powers; providing for limitations on liabilities; providing for management, termination and dissolution; authorizing distributions to members; imposing a requirement on foreign limited liability companies that establish series; requiring rulemaking; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 17-29-211 is created to read:

17-29-211. Series of members, managers, transferable interests or assets.

(a) An operating agreement may establish or provide for the establishment of one (1) or more designated series of members, managers, transferable interests or assets. This section shall govern any matter with respect to a series to the extent not otherwise provided in the operating agreement.

(b) Subject to subsection (c) of this section, if an operating agreement establishes or provides for the establishment of a particular series:

(i) The debts, obligations or other liabilities of the particular series, whether arising in contract, tort or otherwise, shall be enforceable against the assets of the series only and not against:

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(A) The assets of the limited liability company generally or any other series thereof;

(B) Any member of the limited liability company.

(ii) The debts, obligations or other liabilities of the limited liability company generally or any other series thereof, whether arising in contract, tort or otherwise, shall not be enforceable against the assets of the particular series.

(c) The limitations on liabilities in subsection (b) of this section shall only apply if:

(i) The records for the particular series that account for the assets of the series are separately maintained from the records that account for the assets of the limited liability company or any other series thereof. Records that reasonably identify the assets of a particular series, including by specific listing, category, type, quantity, computational or allocational formula or procedure such as a percentage or share of assets or by any other method where the identity of the assets is objectively determinable, shall be deemed to account for the assets of the particular series separately from the assets of the limited liability company or any other series thereof;

(ii) The operating agreement specifically provides for the limitations on liabilities; and

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(iii) Notice of the limitations on liabilities of the particular series is included in the articles of organization. Notice under this paragraph shall be sufficient whether or not the limited liability company has established or referenced any particular series in the notice.

(d) Nothing in this section, an operating agreement or articles of organization shall restrict:

(i) A series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any or all of the debts, obligations or other liabilities of the limited liability company generally or any other series thereof shall be enforceable against the assets of the series;

(ii) A limited liability company from agreeing in the operating agreement or otherwise that any or all of the debts, obligations or other liabilities of a series shall be enforceable against the assets of the limited liability company generally; or

(iii) Notwithstanding W.S. 17-29-304(a), a member or manager from agreeing in the operating agreement or otherwise to be personally liable for any or all of the debts, obligations or other liabilities of a series.

(e) A series established under this section shall have the power and capacity to, in its own name, contract, hold title to assets including real, personal and intangible property, grant liens and security interests and sue and be sued. A series may:

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(i) Have separate rights, powers or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations;

(ii) Carry on any lawful purpose regardless of whether for profit, except for the purpose of acting as a financial institution or acting as an insurer as defined in W.S. 26-1-102(a)(xvi);

(iii) Hold assets directly or indirectly, including in the name of the series or the name of the limited liability company.

(f) An operating agreement that establishes or provides for the establishment of a series may:

(i) Provide for classes or groups of members or managers of the series having the relative rights, powers and duties specified in the operating agreement;

(ii) Provide for and specify the future creation of additional classes or groups of members or managers of the series having the relative rights, powers and duties as may be established, including rights, powers and duties senior to existing classes and groups of members or managers of the series;

(iii) Provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers of the series;

(iv) Provide that any member or class or group of members of a series shall have no voting rights;

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(v) Grant to all or certain identified members or managers or class or group of members or managers of the series the right to vote on any matter separately or with all or any class or group of members or managers of the series. Voting by members or managers may be on a per capita, number, financial interest, class, group or other basis.

(g) The management of a series shall be vested as follows:

(i) In the members of the series pursuant to W.S. 17-29-407(b). A member shall cease to be a member of a series upon the divestment of all of the member's transferable interests of the series. The fact that a person ceases to be a member of a particular series shall not by itself cause the person to cease to be a member of the limited liability company or any other series thereof or cause the termination of the series, regardless of whether the person was the last remaining member of the series; or

(ii) If the operating agreement provides for the management of the series in whole or in part by a manager, the management shall be vested in one (1) or more managers who shall be chosen as provided in the operating agreement and who shall hold the offices and have the responsibilities as specified in the agreement. A manager shall cease to be a manager of a series as provided in an operating agreement and subject to W.S. 17-29-407(c)(v). The fact that a person ceases to be a manager of a particular series shall not by itself cause the person to cease to be a manager of the limited liability company or any other series thereof.

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(h) Notwithstanding W.S. 17-29-404 and subject to subsections (j) and (m) of this section, if a member of a series becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date for allocations and distributions associated with a series.

(j) Notwithstanding W.S. 17-29-405(a), a limited liability company may make a distribution with respect to a series that has been established under this section unless the total assets of the series after the distribution would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon winding up and termination of members whose preferential rights are superior to those of the persons receiving the distribution. A member that receives a distribution knowing that the distribution was made in violation of this subsection is personally liable to the series for the amount of the distribution. This subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution, except that any action under this subsection shall be subject to W.S. 17-29-406(e). For purposes of this subsection, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

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(k) Subject to W.S. 17-29-702, a series established under this section may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of the series shall not affect the limitations on liabilities of the series as provided in subsection (b) of this section. A series is terminated and its affairs shall be wound up upon the occurrence of any of the following:

(i) The dissolution of the limited liability company under W.S. 17-29-702;

(ii) The time or happening of events specified in the operating agreement;

(iii) The vote or consent of members of the series who own more than two-thirds (2/3) of the interests in the profits of the series; or

(iv) On application by a member or manager of the series, the entry of a court order terminating the series on the grounds that it is not reasonably practicable to carry on the purposes of the series in conformity with the operating agreement.

(m) A person winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take all actions with respect to the series as authorized by W.S. 17-29-702. The person shall provide for the claims and obligations of the series and distribute the assets of the series as provided in W.S. 17-29-708. Actions taken in accordance with this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee appointed in accordance with this

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subsection. Notwithstanding W.S. 17-29-702, the following persons may wind up the affairs of a series:

(i) A manager of the series who has not wrongfully terminated the series;

(ii) If the series has no manager who qualifies under paragraph (i) of this subsection, the members of the series or a person approved by the members;

(iii) The members who own more than fifty (50%) percent of the interests in the profits of the series;

(iv) On application of a member or manager of the series or any personal representative or assignee of the member or manager, and upon cause shown, a court or a liquidating trustee appointed by the court.

(n) A foreign limited liability company doing business in this state and governed by an operating agreement that establishes or provides for the establishment of one (1) or more designated series of members, managers, transferable interests or assets shall state the following on its certificate of authority:

(i) That the operating agreement of the foreign limited liability company establishes or provides for the establishment of series having separate rights, powers or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations;

(ii) If any of the debts, obligations or other liabilities of any particular series, whether arising in contract, tort or otherwise, shall be enforceable against

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the assets of the particular series only and not against the assets of the foreign limited liability company generally or any other series thereof;

(iii) If any of the debts, obligations or other liabilities of the foreign limited liability company generally or any other series thereof, whether arising in contract, tort or otherwise, shall be enforceable against the assets of the particular series.

Section 2. The secretary of state shall promulgate reasonable rules and regulations necessary to carry out the purposes of this act.

ORIGINAL HOUSE
BILL NO. HB0126

ENGROSSED

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Section 3.

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2018.

(b) Section 2 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk