

HOUSE BILL NO. HB0126

Limited liability companies-series.

Sponsored by: Representative(s) Olsen, Brown, Harshman,
Larsen, Lindholm, Miller and Zwonitzer and
Senator(s) Driskill, Nethercott and Rothfuss

A BILL

for

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

10

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

12

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

14

1 **17-29-211. Series of members, managers, transferable**
2 **interests or assets.**

3

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

10

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

14

15 (i) The debts, obligations or other liabilities
16 of the particular series, whether arising in contract, tort
17 or otherwise, shall be enforceable against the assets of
18 the series only and not against the assets of the limited
19 liability company generally or any other series thereof;

20

21 (ii) The debts, obligations or other liabilities
22 of the limited liability company generally or any other
23 series thereof, whether arising in contract, tort or

1 otherwise, shall not be enforceable against the assets of
2 the particular series.

3

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

6

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

20

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

23

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

7

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

10

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

17

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

23

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

5

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

11

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

16

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

21

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

4

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

7

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

11

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

18

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

23

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

3
4 (v) Grant to all or certain identified members
5 or managers or class or group of members or managers of the
6 series the right to vote on any matter separately or with
7 all or any class or group of members or managers of the
8 series. Voting by members or managers may be on a per
9 capita, number, financial interest, class, group or other
10 basis.

11

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

14

15 (i) In the members of the series in proportion
16 to each member's interest in the profits of the series,
17 except that the decision of members owning more than fifty
18 percent (50%) of the interest in the profits of the series
19 shall control. A member shall cease to be a member of a
20 series upon the assignment of all of the member's
21 transferable interests of the series. The fact that a
22 person ceases to be a member of a particular series shall
23 not by itself cause the person to cease to be a member of

1 the limited liability company or any other series thereof
2 or cause the termination of the series, regardless of
3 whether the person was the last remaining member of the
4 series; or

5
6 (ii) If the operating agreement provides for the
7 management of the series in whole or in part by a manager,
8 the management shall be vested in one (1) or more managers
9 who shall be chosen as provided in the operating agreement
10 and who shall hold the offices and have the
11 responsibilities as specified in the agreement. A manager
12 shall cease to be a manager of a series as provided in an
13 operating agreement and subject to W.S. 17-29-407(c)(v).
14 The fact that a person ceases to be a manager of a
15 particular series shall not by itself cause the person to
16 cease to be a manager of the limited liability company or
17 any other series thereof.

18

19 (h) Notwithstanding W.S. 17-29-404 and subject to
20 subsections (j) and (m) of this section, if a member of a
21 series becomes entitled to receive a distribution, the
22 member has the status of, and is entitled to all remedies
23 available to, a creditor of the series with respect to the

1 distribution. An operating agreement may provide for the
2 establishment of a record date for allocations and
3 distributions associated with a series.

4

5 (j) Notwithstanding W.S. 17-29-405(a), a limited
6 liability company may make a distribution with respect to a
7 series that has been established under this section unless
8 the total assets of the series after the distribution would
9 be less than the sum of its total liabilities plus the
10 amount that would be needed, if the series were to be
11 dissolved, wound up and terminated at the time of the
12 distribution, to satisfy the preferential rights upon
13 winding up and termination of members whose preferential
14 rights are superior to those of the persons receiving the
15 distribution. A member that receives a distribution
16 knowing that the distribution was made in violation of this
17 subsection is personally liable to the series for the
18 amount of the distribution. This subsection shall not
19 affect any obligation or liability of a member under an
20 agreement or other applicable law for the amount of a
21 distribution, except that any action under this subsection
22 shall be subject to W.S. 17-29-406(e). For purposes of
23 this subsection, "distribution" does not include amounts

1 constituting reasonable compensation for present or past
2 services or reasonable payments made in the ordinary course
3 of business under a bona fide retirement plan or other
4 benefits program.

5

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

14

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

17

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

20

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

1

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

7

8 (m) A person winding up the affairs of a series may,
9 in the name of the limited liability company and for and on
10 behalf of the limited liability company and the series,
11 take all actions with respect to the series as authorized
12 by W.S. 17-29-702. The person shall provide for the claims
13 and obligations of the series and distribute the assets of
14 the series as provided in W.S. 17-29-708. Actions taken in
15 accordance with this subsection shall not affect the
16 liability of members and shall not impose liability on a
17 liquidating trustee appointed in accordance with this
18 subsection. Notwithstanding W.S. 17-29-702, the following
19 persons may wind up the affairs of a series:

20

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

23

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

4
5 (iii) The members who own more than fifty (50%)
6 percent of the interests in the profits of the series;

7
8 (iv) On application of a member or manager of
9 the series or any personal representative or assignee of
10 the member or manager, and upon cause shown, a court or a
11 liquidating trustee appointed by the court.

12
13 (n) A foreign limited liability company doing
14 business in this state and governed by an operating
15 agreement that establishes or provides for the
16 establishment of one (1) or more designated series of
17 members, managers, transferable interests or assets shall
18 state the following on its certificate of authority:

19
20 (i) That the operating agreement of the foreign
21 limited liability company establishes or provides for the
22 establishment of series having separate rights, powers or
23 duties with respect to specified property or obligations of

1 the foreign limited liability company or profits and losses
2 associated with specified property or obligations;

3

4 (ii) If any of the debts, obligations or other
5 liabilities of any particular series, whether arising in
6 contract, tort or otherwise, shall be enforceable against
7 the assets of the particular series only and not against
8 the assets of the foreign limited liability company
9 generally or any other series thereof;

10

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

16

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

20

21 **Section 3.**

22

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

3

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

8

9

(END)