



**Frank
LaRose**

Ohio Secretary of State

START A LIMITED LIABILITY COMPANY IN OHIO



**Helping
entrepreneurs
create a
prosperous
economy for
every Ohio
family.**





Dear Entrepreneur:

Business starts at the Secretary of State's office, and we're working hard to help Ohio entrepreneurs grow and succeed.

Ohioans have a reputation for being creative and industrious. And our state, year after year, is where businesses are growing and thriving. Their success is Ohio's success.

This publication is intended to help you make the decisions necessary to get your business started. Starting a business requires a great deal of planning and work. While this guide will serve as a big help, it does not constitute legal advice. If you have specific questions, please consult a lawyer.

I also encourage you to visit our online resource: OhioBusinessCentral.gov. Through Ohio Business Central, you can file a number of forms online, obtain and request publications, search existing businesses and sign up for our Filing Notification System to track and protect your business from potential identity theft.

If you have further questions regarding corporate filings, please call 877.767.3453 or email business@OhioSoS.gov.

I wish you the best of luck in starting your business. Just as you work to help your venture succeed, we'll be doing our part to continue moving our great state forward.

Yours in service,

A handwritten signature in blue ink that reads "Frank LaRose". The signature is fluid and cursive.

Frank LaRose
Ohio Secretary of State



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Business Identity Theft

Don't Be a Victim

- Thousands of companies around the country have been victims of business identity theft. Protect your identity by signing up for the Ohio Secretary of State's **UCC Watchlist**. The Watchlist helps protect users when fraudulent and incorrect UCC filings are submitted in their name.
- Identity theft affects businesses too. Criminals can use your business' identity to illegally transact business and establish lines of credit. Business Identity Theft costs companies time and money.
- The Secretary of State's office can help you protect your business identity with the **Business Filing Notification System**.



What is the Business Filing Notification System?

The Business Filing Notification System is a free service allowing you to track any filing changes or updates made to your business.

For more information and to sign-up, visit
OhioSoS.gov/IDTheft



PREFACE

This guide has been prepared for informational purposes only and does not constitute legal advice. It is recommended that you seek legal and tax counsel before acting upon this information. For help finding a lawyer in Ohio, visit the Ohio Bar Association at OhioBar.org.

PERSONAL INFORMATION

The Secretary of State's office has the authority to reject any document containing a Social Security number or federal tax identification number. Please remove all personal information from documents prior to filing them.

WHAT IS A LIMITED LIABILITY COMPANY?

A limited liability company (LLC) is a business entity which combines elements of partnership and corporate structures, and may be formed in Ohio for a profit or nonprofit purpose.

Many people decide to form a limited liability company because this business type is typically more flexible than a corporation and it is well-suited for companies with only one owner. Although owners have limited liability, this does not mean they are fully protected from personal liabilities. For example, if a limited liability company is sued, generally the assets of the owners are protected because the business assets are distinct from the personal assets, but there are exceptions under certain circumstances.

Ultimately, you may wish to consult an attorney and/or tax professional before deciding which entity type is best for your company.



FORMS

Pursuant to Ohio Revised Code Section 1705.04, the Secretary of State's office authorizes limited liability companies to conduct business in Ohio. Documents must be filed with the Secretary of State's office before a limited liability company may legally conduct business in Ohio. All forms that are required to be filed with the Secretary of State, including, but not limited to, Articles of Organization, Statutory Agent Updates, Amendments, Conversions, Mergers and Dissolutions, can be obtained directly from the Secretary of State's office.

All forms may be filed online at the Secretary of State's Ohio Business Central website at OhioBusinessCentral.gov. For more information visit the Ohio Secretary of State's website at OhioSoS.gov and click on "Businesses." The filing fee associated with each filing, as well as completion instructions, are provided on each form.

FORMING A LIMITED LIABILITY COMPANY

Ohio Revised Code Section 1705.04 provides that "one or more persons, without regard to residence, domicile, or state of organization, may form a limited liability company." All limited liability companies must register with the Ohio Secretary of State to lawfully conduct business in Ohio.

Filing Articles of Organization

In order to be legally organized, a limited liability company must file Articles of Organization (Articles) with the Ohio Secretary of State. Ohio Revised Code Section 1705.04 provides a list of the information that must be included.

**The Articles must include the following:**

1. The name of the company, which must include one of the following: "limited liability company," "LLC," "L.L.C.," "Ltd.," "Ltd.," or "limited."
2. The period of its duration, but if the Articles or operating agreement do not set forth the period of the duration of the company, its duration is perpetual.
3. Any other provisions that are from the operating agreement or that are not inconsistent with applicable law and that the members elect to set out in the Articles for the regulation of the affairs of the company.
4. An original appointment and acceptance of statutory agent.

The Articles may include the following:

1. The purpose or purposes for which individuals may associate themselves, including for any profit or nonprofit purpose. If no purpose is provided, the purpose of the company is to engage in any for-profit, lawful act or activity for which a limited liability company may be formed.
2. The effective date of organization of the limited liability company, if other than the filing date.
3. The Articles may also include any additional provisions allowed by Chapter 1705 of the Ohio Revised Code.

The limited liability company's legal existence begins upon filing the Articles with the Secretary of State or upon a later date specified in the Articles. The effective date must be the date of filing or a future date and cannot be more than 90 days from the date of filing with the Secretary of State. If the effective date provided has already passed or exceeds the date of filing by more than 90 days, the effective date of



organization will be the date of filing (i.e., the date the filing is received by the Secretary of State).

Please note: A limited liability company's operating agreement and other internal documents are not required to be filed with the Ohio Secretary of State.

The Articles must be signed by an authorized representative of the limited liability company. The legal existence of the company begins upon the filing of the Articles of Organization or on a later date specified in the Articles that is not more than 90 days after the filing.

The filing fee for the Articles is \$99.00.

Choosing a Business Name

The Articles must include a business name. Under Ohio law, limited liability company names must be distinguishable from the name of any other domestic corporation, licensed foreign corporation, limited liability company, limited liability partnership, limited partnership or trade name previously registered with the Secretary of State. If a name is not distinguishable (i.e., conflicts with a previously registered name), it is generally unavailable for registration without consent from the prior registrant.

Before filing Articles, please check the availability of the limited liability company name you wish to use. To determine whether the name you wish to use is available, you may conduct a search on the Secretary of State's website at OhioSoS.gov, or call 877.767.3453, or email the Secretary of State's office at business@OhioSoS.gov.

If a limited liability company submits Articles using a name that is not distinguishable based upon the Secretary of State's records, the Articles will be rejected. The rejection letter will identify the previously-registered, conflicting name and provide contact information for the name's registrant so that



the limited liability company may request written consent to use the name. If the prior registrant gives consent, the limited liability company must submit with its Articles the Consent for Use of Similar Name (Form 590). If the prior registrant refuses consent, a new limited liability company name must be chosen.

The Secretary of State's office is authorized to cancel an entity's license under certain circumstances. The office must hold a canceled entity's name for one year from the date of cancellation to give the entity an opportunity to correct the reason for cancellation and return to good standing using its original name. A canceled corporation lacks legal authority to act and, therefore, cannot consent to the use of its name unless and until it is reinstated. Because of this requirement, if you wish to use a canceled entity's name, you must generally wait one year from the date of cancellation to register the name.

Please note: The Secretary of State will make the final determination on the availability of a business name when the Articles are filed. It is a good idea not to order signs, letterhead or other supplies reflecting the business name until the name is registered. Also, consider having two or three alternative business names in mind in case the desired name is unavailable.

Special Name Considerations

Some business names are subject to unique name requirements or restrictions. For example, if a business wishes to use the word "bank" or "trust" in its name, it must seek approval from the Ohio Department of Commerce - Division of Financial Institutions before filing its Articles with the Secretary of State. Please refer to the Guide to Name Availability on the Secretary of State's website to learn more regarding specific name requirements and restrictions.



Name Reservation

If you choose a business name that is available but you are not ready to file the Articles with the Secretary of State's office, you may reserve the name. A name reservation grants the applicant exclusive rights to use the name for a period of 180 days. The Articles may be filed any time within that 180-day period to form the limited liability company using the reserved name. After 180 days, the name reservation will expire, and the name will again become available for anyone to use. To reserve a name for a proposed new limited liability company name, please submit the Name Reservation (Form 534B) and \$39.00 filing fee.

Appointing a Statutory Agent

At the time of filing its Articles, a limited liability company is required to appoint a statutory agent. The statutory agent is the person or corporation designated to accept any legal process, notice or demand that is served upon the company and is responsible for sharing this information with the limited liability company.

The statutory agent must be one of the following: (1) A natural person who is a resident of this state; or (2) A domestic or foreign corporation, nonprofit corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited partnership association, professional association, business trust, or unincorporated nonprofit association that has a business address in this state.

The Original Appointment of Statutory Agent must include the statutory agent's name and address. The statutory agent **must sign to accept the appointment**. For convenience, the Original Appointment of Statutory Agent has been incorporated into the Articles form.

In the event the name or address of a company's statutory



agent changes, or the statutory agent resigns or dies, the entity must choose a new statutory agent and submit the Statutory Agent Update (Form 521) and filing fee of \$25.00.

ADDITIONAL FILINGS

Over the life of a limited liability company, additional filings with the Ohio Secretary of State may be required. Although limited liability companies are not required to submit annual or biennial filings, certain actions taken by the limited liability company may trigger a filing requirement.

The following is information regarding some of the most common filings the Secretary of State's office receives from limited liability companies. This information is not intended to be exhaustive. You should consider consulting legal counsel and/or the Ohio Revised Code to determine whether and when additional filings must be made with the Secretary of State's office.

Amendments/Restated Articles

As provided in Ohio Revised Code Section 1705.08, a limited liability company may amend or restate the Articles at any time and for any purpose by filing a Certificate of Amendment or Restatement (Form 543A) with the Secretary of State's office.

Articles **must** be amended within 30 days after the occurrence of any of the following:

1. The name of the limited liability company is changed.
2. The period of the limited liability company's duration is changed.
3. Any other information that is set forth in the Articles is changed.



Mergers and Consolidations

Under Ohio law, a limited liability company may merge or consolidate with other types of business entities. A merger is the combining of one or more business entities (also known as merging entities) into one existing entity (also known as the surviving entity). All other entities merging into the surviving entity will cease to exist.

A consolidation differs from a merger in that two or more entities (also known as constituent entities) combine to form an entirely new entity. All consolidating entities cease to exist following the consolidation.

If an Ohio limited liability company is involved in a merger or consolidation, a Certificate of Merger (Form 551) or Certificate of Consolidation (Form 550) must be filed with the Ohio Secretary of State. The filing fee for these forms is \$99.00. Under certain circumstances, additional documentation may also be required. Please refer to Ohio Revised Code Section 1705.38 for details regarding filing requirements.

Conversions

A conversion takes place when a domestic or foreign entity converts into a different type of domestic or foreign entity. The Ohio Revised Code chapter governing each type of entity must permit the conversion. For example, an Ohio limited liability company (the converting entity) may convert into an Ohio corporation (the converted entity) so long as the Ohio Revised Code chapters governing limited liability companies and corporations permit the conversion.

Additionally, a domestic limited liability company may convert into a foreign entity. When two different jurisdictions are involved in a conversion, the laws of each jurisdiction must permit the conversion. For example, if an Ohio limited liability company converts to a Delaware corporation, the laws of Ohio



and Delaware must both permit the conversion.

Ohio law currently permits corporations, limited liability companies, limited partnerships, limited liability partnerships and general partnerships to convert.

When a limited liability company adopts a declaration of conversion pursuant to Ohio Revised Code Section 1705.361 or 1705.371, or at a later time as authorized by the declaration of conversion, the converting entity must file a Certificate of Conversion (Form 700 or 800) with the Secretary of State's office accompanied by a \$99.00 filing fee. Please refer to Ohio Revised Code Section 1705.381 for more information regarding filing requirements.

FREQUENTLY ASKED QUESTIONS

Q: How can I serve a complaint on a limited liability company that has failed to maintain a valid statutory agent?

A: Pursuant to Ohio Revised Code Section 1705.06(H) (2), service may be made upon the Secretary of State. You must submit (1) four copies of the summons and complaint; (2) an affidavit stating the agent cannot be found, no longer has the address listed in Secretary of State's office, or the limited liability company failed to maintain an agent; and (3) a filing fee of \$5.00.

Q: Can a for-profit limited liability company become a nonprofit limited liability company?

A: Yes. Pursuant to Ohio Revised Code Section 1705.08, a limited liability company may amend any information set forth in the Articles of Incorporation. Ohio Revised Code Section 1705.02 permits a limited liability company to be formed for any lawful profit or nonprofit purpose, which is set forth in the Articles of Organization. To change the purpose of the limited liability company, please submit a Certificate of Amendment or Restatement (Form 543A)



and amend the language in the purpose clause.

Q: Can a nonprofit limited liability company become a for-profit limited liability company?

A: Yes. Pursuant to Ohio Revised Code Section 1705.08, a limited liability company may amend any information set forth in the Articles of Incorporation. Ohio Revised Code Section 1705.02 permits a limited liability company to be formed for any lawful profit or nonprofit purpose, which is set forth in the Articles of Organization. To change the purpose of the limited liability company, please submit a Certificate of Amendment or Restatement (Form 543A) and amend the language in the purpose clause.

SUBMITTING FILINGS

For quick and accurate service, complete filing forms online at OhioBusinessCentral.gov and pay with any major credit card. Filings will either be processed automatically upon submission or a review may be required and approval certificate will be sent to your email address after submission.

If you prefer, please obtain a filing form to be submitted by mail or dropped off in person at OhioSoS.gov. Please mail the form to the address provided on the filing form as well as a check, money order or credit card authorization form.

To submit a filing in person please go to the Secretary of State's Client Service Center at 22 North Fourth Street, Columbus, Ohio 43215 between 8:00 a.m. and 5:00 p.m., Monday to Friday. The Client Service Center is closed on holidays and the day after Thanksgiving.



BUSINESS IDENTITY THEFT: DON'T BE A VICTIM

Thousands of companies around the country have been victims of business identity theft. Protect your identity by signing up for the Ohio Secretary of State's UCC Watchlist. The Watchlist helps protect users when fraudulent and incorrect UCC filings are submitted in their name.

Identity theft affects businesses too. Criminals can use your business' identity to illegally transact business and establish lines of credit. Business Identity Theft costs companies time and money.

The Secretary of State's office can help you protect your business identity with the Business Filing Notification System. The Business Filing Notification System is a free service allowing you to track any filing changes or updates made to your business. For more information and to sign-up, visit OhioSoS.gov/IDTheft.





EXPEDITED SERVICE

The Ohio Secretary of State offers three levels of expedited service for filings. An expedited level 1 filing may be mailed, submitted in person, or filed online. Levels 2 and 3 may only be submitted in person at 22 North Fourth Street, Columbus, Ohio 43215 or filed online at OhioBusinessCentral.gov.

Levels of Service	Additional Fee	Turnaround Time
Expedited 1	\$100.00	2 Business Days
Expedited 2	\$200.00	1 Business Day
Expedited 3	\$300.00	4 Hours*

The expedited filing fee must be added to each filing submitted. If only some of your filings require expedited service, please submit a separate check for the expedited filings.

In the event of an expedited 3 filing containing an error, the customer will be notified. If a filing is re-submitted by 1:00 p.m., the filing will be processed by 5:00 p.m.

***Please note:** Expedited level 3 filings submitted after 1:00 p.m. will be available the next business day.



CONTACT BUSINESS SERVICES

Ohio Secretary of State
Business Services Division
22 North Fourth Street
Columbus, Ohio 43215
614.466.3910
877.767.3453
TTY: 877.644.6889

Walk-In Client Service Center

22 North Fourth Street
Columbus, Ohio 43215

Hours of Operation

Monday - Friday 8:00 a.m. - 5:00 p.m.
Open 24 hours at OhioSoS.gov.

Email: business@OhioSoS.gov
Website: OhioSoS.gov
File online: OhioBusinessCentral.gov

Multilingual services are available.

ADDITIONAL RESOURCES

This guide focuses on the forms and processes of the Secretary of State's office with respect to forming a for-profit entity in Ohio. However, there are other agencies that regulate and/or assist Ohio businesses. The Ohio Secretary of State's office hosts the Ohio Business Resource Connection located at OhioSoS.gov/BusinessResources. The Resource Connection is a directory of services for all Ohio businesses and includes specific services for woman, minority, disability, and military or veteran owned businesses.

Quick-Start for Your Business

Doing our part to ensure a prosperous economy

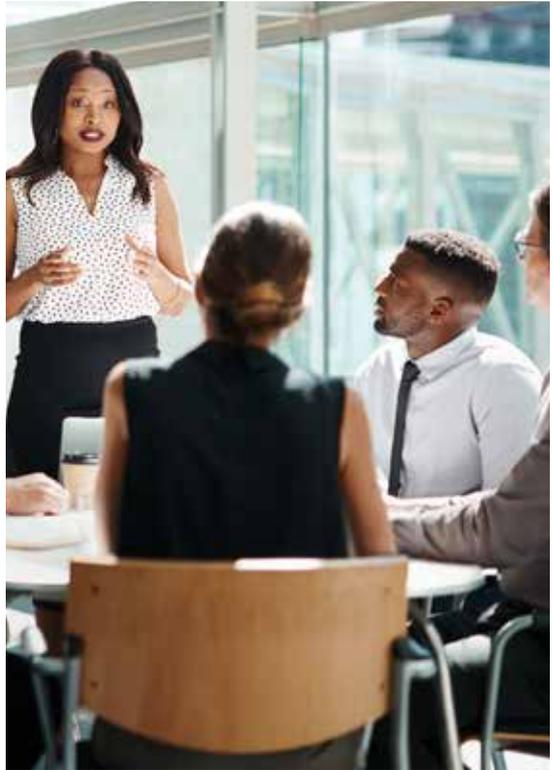


To help you start this journey, we've put together a checklist of 10 important things you may want to consider.

- Register with the Ohio Secretary of State.
- Obtain a federal Employer Identification Number (EIN).
- Open a bank account.
- Register with the Ohio Department of Taxation at [Tax.Ohio.gov](https://tax.ohio.gov).
- Report newly-hired and re-hired employees to the Ohio New Hire Reporting Center.
- Determine what may be required of your business by the Ohio Bureau of Workers' Compensation.
- Identify requirements of the Ohio Department of Job & Family Services.
- Obtain the proper licenses and permits.
- File an Annual Report of Unclaimed Funds.
- Discover growth opportunities for your new business.

For more information on starting a business or nonprofit

OhioSoS.gov



BUSINESS SERVICES

OhioSoS.gov | business@OhioSoS.gov

877.767.3453 | TTY 877.644.6889

22 North Fourth Street | Columbus, Ohio 43215

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1/11/21 | Ohio Adopts Modernized Limited Liability Company Act

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Russell R. Rosler

Scott A. Herkamp

On January 7, 2021, Ohio adopted a new statute governing limited liability companies (LLCs) in Ohio. LLCs are a very popular type of legal entity for business organizations. The new Ohio LLC act is in new Chapter 1706 of the Ohio Revised Code, replacing the current Ohio LLC act in Chapter 1705 of the Ohio Revised Code. The new LLC act will be effective January 1, 2022 for all Ohio LLCs and all non-Ohio LLCs conducting business in Ohio.

The new LLC act was a product of several years of work by the LLC Subcommittee of the Ohio State Bar Association's Corporation Law Committee, according to Russ Rosler, a Vorys partner and the current chair of the LLC Subcommittee. Rosler stated that the new LLC act is based in large part on the Prototype LLC Act developed by the LLCs, Partnerships and Unincorporated Entities Committee of the American Bar Association Section of Business Law. Ohio's current LLC act dates back to 1994, when limited liability companies were a new form of legal entity, and has been amended numerous times. When the LLC Subcommittee was charged with a comprehensive review of the current LLC act and making recommendations for improvements, they recommended a wholesale replacement of the current LLC act to more closely align Ohio's LLC laws with the prototype act, to leverage the best practices reflected in the prototype act.

Although the new LLC act is based on the prototype act, it largely retains the terminology used in Ohio's current LLC act, and there are other differences from the prototype act that retain some aspects of Ohio's current LLC act.

The new LLC act does include several important new or different concepts, some of which are highlighted below.

FORMATION OF "SERIES" LLCs

One major change relates to so-called "series" LLCs. The new LLC act now permits an LLC to establish, through its operating agreement, one or more separate **series** of assets and liabilities organized under the parent, or umbrella, LLC. Each series must have either (1) 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 and/or (2) a separate purpose or investment objective. Additionally, at least one member must be associated with each series. Notably, a series is permitted to carry on *any* activity, whether for- or non-profit.

Permitted in at least 15 other states, the series LLC structure can help an entity alleviate risk and limit exposure to liabilities with respect to certain assets. Liabilities with respect to a particular series are enforceable against the assets of that series *only*, and are not enforceable against the assets of the parent LLC or against any other series. Similarly, the liabilities of the parent LLC are generally not enforceable against any sub-series. However, in order to take advantage of this limitation, the assets of the LLC, and each series, must be kept separate (and separate records must be kept). In addition, the LLC's operating agreement must contain a statement to the effect of the limitations, and the LLC's articles of organization must contain a statement that the LLC may have one or more series of assets subject to these limitations.

As a practical matter, a series LLC structure is useful only in a very limited set of circumstances. However, the new LLC act not only permits Ohio LLCs to use the series

structure, but formalizes and clarifies Ohio's treatment of non-Ohio series LLCs conducting business in the State of Ohio, which represent significant improvements.

MANAGEMENT STRUCTURE AND AUTHORITY

Under the current LLC act, LLCs can be structured as either member-managed or manager-managed. Throughout the current LLC act, members' and managers' authority to take certain actions on behalf of the LLC is specifically delineated (generally subject to modification in an LLC's operating agreement).

By contrast, the new LLC act eliminates the explicit distinction between member-managed and manager-managed LLCs, and the authority of both members and managers to act under each type of structure. The new LLC act provides instead that a person's ability to act as an agent, and bind the LLC, can be authorized by either: (1) the operating agreement, (2) decisions of the members in accordance with the operating agreement; (3) a "statement of authority" filed with the Ohio Secretary of State; or (4) the new LLC act's "default" rules. This change provides relief from some of the organizational constraints (and, in some cases, ambiguity) of the current LLC act concerning the respective roles of members and managers, providing additional flexibility for the management of each LLC to be structured in the manner most appropriate for that LLC.

CANCELLATION FOR FAILURE TO MAINTAIN A STATUTORY AGENT

In contrast to the current LLC act, the new LLC act imposes statutory penalties on LLCs that fail to continuously maintain, or fail to update the name or address of, their statutory agent. The new LLC act directs the Secretary of State to cancel an Ohio LLC's articles, or a foreign LLC's Ohio registration, after providing the LLC with notice and a 30-day opportunity to cure. However, the new LLC act also provides a process for reinstatement upon the appointment of a new statutory agent, whereby a cancelled LLC can apply for reinstatement, on a form prescribed by the Secretary of State, in addition to paying a fee.

"DEFAULT" RULES VERSUS THE OPERATING AGREEMENT

Under the current LLC act, an LLC's operating agreement generally controls the entity's structure and operations. However, Section 1705.081 of the current LLC act provides a comprehensive listing of provisions that *cannot* be modified by an LLC's operating agreement. For example, an operating agreement cannot eliminate the obligation of good faith and fair dealing in a member's dealings with the LLC or other members, nor can the operating agreement restrict certain third-party rights afforded by law. Outside of these statutorily-prescribed prohibitions, the current LLC act's provisions serve as "default" rules, which an LLC is free to modify, through its operating agreement, to the extent it chooses.

The new LLC act adopts a similar approach, reflecting that while an LLC's operating agreement largely controls, certain provisions, listed in a new Section 1706.08, cannot be changed. However, the new LLC act goes a step further, eliminating extraneous language, such as "unless otherwise provided in the operating agreement" and similar phrasing, that is included in the current LLC act (which, in some cases, resulted in ambiguity when such override language was not included). This deletion throughout the new LLC act expressly clarifies that, to the extent that a certain provision is *not* included in Section 1706.08, an LLC is permitted to modify such provision through its operating agreement.

Lawyers and others who work with LLCs in Ohio will need to familiarize themselves with the new LLC act and consider how it may affect existing LLCs and newly formed LLCs. Because each LLC is governed by its own operating agreement, the new LLC act will affect different LLCs differently. Please contact one of the authors or your regular Vorys attorney for more information.

As Introduced

131st General Assembly

Regular Session

2015-2016

H. B. No. 581

Representatives Dever, Reineke

A BILL

To enact sections 1705.65, 1705.66, 1705.67, 1
1705.68, 1705.69, 1705.70, 1705.71, 1705.72, 2
1705.73, 1705.74, 1705.75, 1705.76, 1705.77, 3
1705.78, 1705.79, and 1705.80 of the Revised 4
Code to permit and regulate managers, members, 5
and interests of series limited liability 6
companies. 7

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 1705.65, 1705.66, 1705.67, 8
1705.68, 1705.69, 1705.70, 1705.71, 1705.72, 1705.73, 1705.74, 9
1705.75, 1705.76, 1705.77, 1705.78, 1705.79, and 1705.80 of the 10
Revised Code be enacted to read as follows: 11

Sec. 1705.65. (A) A limited liability company operating 12
agreement may establish or provide for the establishment of one 13
or more designated series of members, managers, or limited 14
liability company interests that meets both of the following 15
criteria: 16

(1) Has separate rights, powers, or duties with respect to 17
specified property or obligations of the limited liability 18
company or profits and losses associated with specified property 19

<u>or obligations;</u>	20
<u>(2) Has a separate business purpose or investment</u>	21
<u>objective.</u>	22
<u>(B) As used in sections 1705.66 to 1705.80 of the Revised</u>	23
<u>Code, "series" means a series designated in accordance with this</u>	24
<u>section.</u>	25
<u>Sec. 1705.66.</u> <u>(A) Notwithstanding any other provision of</u>	26
<u>the Revised Code, the debts, liabilities, obligations, and</u>	27
<u>expenses incurred, contracted for, or otherwise existing with</u>	28
<u>respect to a particular series shall be enforceable against the</u>	29
<u>assets of that series only, and shall not be enforceable against</u>	30
<u>the assets of the limited liability company generally or any</u>	31
<u>other series. Unless otherwise provided in the operating</u>	32
<u>agreement, none of the debts, liabilities, obligations, and</u>	33
<u>expenses incurred, contracted for, or otherwise existing with</u>	34
<u>respect to the limited liability company generally or any other</u>	35
<u>series shall be enforceable against the assets of a particular</u>	36
<u>series.</u>	37
<u>(B) Division (A) of this section applies only if the</u>	38
<u>following criteria are met:</u>	39
<u>(1) The records maintained for a particular series account</u>	40
<u>for the assets associated with that series separately from the</u>	41
<u>other assets of the company or any other series.</u>	42
<u>(2) The limited liability company operating agreement</u>	43
<u>permits the limitations enumerated in division (A) of this</u>	44
<u>section.</u>	45
<u>(3) The limited liability company articles of organization</u>	46
<u>contain notice of the limitations enumerated in division (A) of</u>	47
<u>this section.</u>	48

(C) Notice of the limitation on liabilities of a series 49
required by this section that is contained in the articles of 50
organization filed with the secretary of state satisfies the 51
requirements of division (B)(3) of this section, regardless of 52
whether either or both of the following are true: 53

(1) The limited liability company has established any 54
series when the notice is contained in the articles of 55
organization. 56

(2) The notice refers to a specific series of the limited 57
liability company. 58

Sec. 1705.67. A series established under sections 1705.65 59
to 1705.80 of the Revised Code has the power to do all of the 60
following in the series' own name: 61

Sue and be sued; 62

Contract; 63

Hold title to assets, including real, personal, and 64
intangible property; 65

Grant liens and security interests; 66

Engage in any lawful business, purpose, or activity, 67
including any for-profit or nonprofit purpose other than the 68
business of banking. 69

Sec. 1705.68. Notwithstanding any provision of this 70
chapter, a member or manager of a limited liability company may, 71
under an operating agreement or another agreement, agree to be 72
obligated personally for any or all of the debts, obligations, 73
and liabilities of one or more series of the limited liability 74
company. 75

<u>Sec. 1705.69. (A) A limited liability company operating</u>	76
<u>agreement may do all of the following:</u>	77
<u>(1) Establish classes or groups of one or more members or</u>	78
<u>managers associated with a series each of which has certain</u>	79
<u>express relative rights, powers, and duties, as permitted by the</u>	80
<u>operating agreement;</u>	81
<u>(2) Provide for the manner of establishing additional</u>	82
<u>classes or groups of one or more members or managers associated</u>	83
<u>with a series, each of which has certain express rights, powers,</u>	84
<u>and duties, including rights, powers, and duties senior to</u>	85
<u>existing classes and groups of members or managers associated</u>	86
<u>with the series;</u>	87
<u>(3) Provide for the taking of an action without the vote</u>	88
<u>or approval of any member or manager or class or group of</u>	89
<u>members or managers, including both of the following:</u>	90
<u>(a) The amendment of the operating agreement;</u>	91
<u>(b) The creation under the provisions of the operating</u>	92
<u>agreement of a class or group of the series of member interests</u>	93
<u>that was not previously outstanding.</u>	94
<u>(B) An operating agreement may specify all of the</u>	95
<u>following:</u>	96
<u>(1) That all or certain identified members or managers or</u>	97
<u>a specified class or group of the members or managers associated</u>	98
<u>with a series have the right to vote on any matter separately or</u>	99
<u>with all or any class or group of the members or managers</u>	100
<u>associated with the series;</u>	101
<u>(2) That any member or class or group of members</u>	102
<u>associated with a series shall have no voting rights;</u>	103

(3) That voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group, or any other basis. 104
105
106

Sec. 1705.70. (A) Unless otherwise provided in the articles of organization of a limited liability company, the governing authority of a series consists of the managers or members associated with the series. 107
108
109
110

(B) If the operating agreement provides for the management of a series, in whole or in part, by a manager or managers, all of the following are true: 111
112
113

(1) The management of the series shall be vested in the manager or managers in proportion to the then current percentage or other interest of the series held by the manager or managers and the decision of members owning a majority of the percentage or other interest in the profits of the series is controlling. 114
115
116
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118

(2) The manager or managers shall be chosen in the manner provided in the operating agreement and shall hold the offices and have the responsibilities set forth in the operating agreement. 119
120
121
122

(3) The manager or managers shall cease to hold that position in a series as provided in the operating agreement. 123
124

(C) An event that under this chapter or the operating agreement causes a manager to cease to be a manager with respect to a series shall not cause the manager to cease to be a manager of the limited liability company or any other series of that company. 125
126
127
128
129

Sec. 1705.71. Subject to sections 1705.73 and 1705.78 of the Revised Code, when a member associated with a series established under sections 1705.65 to 1705.80 of the Revised 130
131
132

Code is entitled to receive a distribution with respect to a series, 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. 133
134
135
136

Sec. 1705.72. A limited liability company operating agreement may establish a record date for allocations and distributions for a series. 137
138
139

Sec. 1705.73. (A) A limited liability company may make a distribution with respect to a series. 140
141

(B) A limited liability company shall not make a distribution with respect to a series to a member if, immediately after making the distribution, the total amount of the liabilities of the series, other than liabilities described by division (C) (1) of this section, exceeds the fair market value of the assets associated with the series. 142
143
144
145
146
147

(C) For purposes of division (B) of this section: 148

(1) The liabilities of a series do not include any of the following: 149
150

(a) A liability related to the member's membership interest; 151
152

(b) A liability for which the recourse of creditors is limited to specified property of the series. 153
154

(2) 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. 155
156
157
158
159

(D) A member who knowingly receives a distribution from a 160

series in violation of this section is liable to the series for 161
the amount of the distribution. 162

(E) This section does not affect the obligations of a 163
member to return a distribution to a series under a limited 164
liability company agreement or other state or federal law. 165

(F) For purposes of this section, "distribution" does not 166
include an amount constituting reasonable compensation for 167
present or past services or a reasonable payment made in the 168
ordinary course of business under a bona fide retirement plan or 169
other benefits program. 170

Sec. 1705.74. Unless otherwise provided in the limited 171
liability company operating agreement, a member shall cease to 172
be associated with a series upon the assignment of all of the 173
member's limited liability company interest in the series. 174

Except as otherwise specified in the operating agreement, 175
an event that under sections 1705.65 to 1705.80 of the Revised 176
Code or the operating agreement causes a member to cease to be a 177
member of a series shall not terminate the member's continued 178
membership with the limited liability company or cause the 179
member to cease to be associated with the series or terminate 180
the series, regardless of whether the member was the last 181
remaining member associated with the series. 182

Sec. 1705.75. Except as otherwise provided in a limited 183
liability company agreement, and subject to sections 1705.76, 184
1705.77, 1705.78, and 1705.79 of the Revised Code, a series and 185
its business and affairs may be terminated and wound up without 186
causing the dissolution of the limited liability company. 187

Sec. 1705.76. (A) A series terminates on the completion of 188
the winding up of the business and affairs of the series. 189

(B) The termination of a series does not affect the 190
limitation on liabilities of the series provided by section 191
1705.66 of the Revised Code. 192

Sec. 1705.77. A series shall be terminated and its affairs 193
wound up upon either of the following: 194

(A) If the dissolution of the limited liability company is 195
required by section 1705.43 of the Revised Code; 196

(B) Upon the earliest occurrence of any of the following: 197

(1) The time specified for winding up the series in the 198
limited liability company operating agreement; 199

(2) The occurrence of an event specified with respect to 200
the series in the operating agreement; 201

(3) Unless otherwise provided in the operating agreement, 202
either of the following: 203

(a) An affirmative vote of two-thirds of all the members 204
associated with the series who own at least two-thirds of the 205
profits in the series approving the winding up of the series; 206

(b) If there is more than one class or group of members 207
associated with the series, an affirmative vote of the members 208
in each class or group who own at least two-thirds of the 209
profits of that class or group. 210

(4) A determination by a court in accordance with section 211
1705.79 of the Revised Code. 212

Sec. 1705.78. (A) Except as otherwise provided in the 213
operating agreement, any of the following individuals or 214
entities can wind up the affairs of a series: 215

(1) A manager associated with the series who has not 216

wrongfully terminated the series; 217

(2) An affirmative majority vote by the members associated 218
with the series who own at least a majority of the profits of 219
the series or a person approved by the members associated with 220
the series, or, if there is more than one class or group of 221
members associated with the series, an affirmative majority vote 222
by each class or group of members who own at least a majority of 223
the profits of that class or group. 224

(B) Upon application of any member or manager associated 225
with the series or the member's personal representative or 226
assignee, the court of common pleas may wind up the affairs of 227
the company or may cause its affairs to be wound up by a 228
liquidating trustee appointed by the court. 229

(C) The persons winding up the affairs of a series may 230
take all actions permitted under section 1705.45 of the Revised 231
Code and shall provide for the claims and obligations of the 232
series and distribute the assets of the series as provided in 233
section 1705.46 of the Revised Code. 234

(D) Any action taken in accordance with this section shall 235
not affect the liability of members and shall not impose 236
liability on a liquidating trustee. 237

Sec. 1705.79. On application by or for a member associated 238
with a series, a court of common pleas may order the winding up 239
and termination of a series if the court determines that it is 240
not reasonably practicable to carry on the business of the 241
series in conformity with the limited liability company 242
operating agreement. 243

Sec. 1705.80. A foreign limited liability company that is 244
registering to do business in this state pursuant to section 245

<u>1705.53 of the Revised Code shall note both of the following in</u>	246
<u>its application for registration:</u>	247
<u>(A) Whether its operating agreement establishes or</u>	248
<u>provides for the establishment of one or more designated series</u>	249
<u>of members, managers, or limited liability company interests;</u>	250
<u>(B) Whether any debts, liabilities, and obligations</u>	251
<u>incurred, contracted for, or otherwise existing with respect to</u>	252
<u>a particular series shall be enforceable against the assets of</u>	253
<u>that series only and not against the assets of the limited</u>	254
<u>liability company generally or any other series, and whether any</u>	255
<u>of the debts, liabilities, obligations, and expenses incurred,</u>	256
<u>contracted for, or otherwise existing with respect to the</u>	257
<u>limited liability company generally or any other series shall be</u>	258
<u>enforceable against the assets of a particular series.</u>	259



Ohio Legislative Service Commission

Bill Analysis

Erika Padgett

H.B. 581

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.



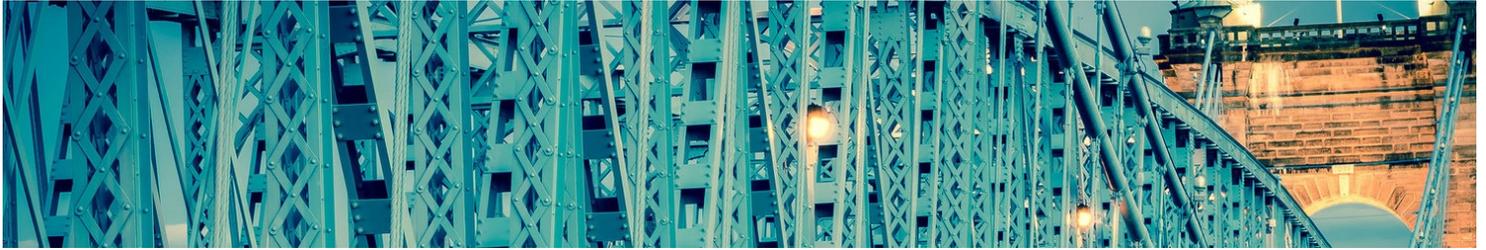
2. This provision is likely referring to an LLC operating agreement. "Agreement" alone could possibly be interpreted more broadly than "operating agreement."

HISTORY

ACTION	DATE
Introduced	06-06-16

H0581-I-131.docx/emr





Bylined Articles & Alerts

Ohio Rewrites the Law on Limited Liability Companies

Michael J. Moeddel

01.11.2021

On January 8, 2021, Ohio Governor Mike DeWine signed Senate Bill 276 into law effecting a restatement of the Ohio Limited Liability Company Act as Chapter 1706 of the Ohio Revised Code. The Act is the result of years of work by the Ohio State Bar Association's Corporation Law Committee. The original Ohio Limited Liability Act was enacted in 1994. Since that time the utility and prominence of the limited liability company as a business entity has developed significantly. Although changes have been made over the years to the Ohio LLC Act in an effort to improve clarity and to keep it current, Ohio is one of the few states whose original limited liability company act has not seen a comprehensive revision.

The new Ohio LLC Act is intended to be one of the most modern limited liability company acts in the country. The new LLC Act is based on the Revised Prototype Limited Liability Company Act published by the American Bar Association's Committee of LLCs, Partnerships and Unincorporated Entities (the "Prototype Act"), modified to take into consideration certain familiar aspects of the current Ohio LLC Act. Some of the highlights of the new LLC Act include the following:

Retaining Ohio Terminology. Most modern limited liability company acts, including the Prototype Act, use the terminology certificate of formation, limited liability company agreement, limited liability company interests, registered office and registered agent. Chapter 1706 retains the terminology used in the Ohio LLC Act to reduce confusion by businesses and practitioners familiar with the current terminology, considering that many existing limited liability companies may continue with their current operating agreement and other organizational documents in effect.

Series Limited Liability Companies. Chapter 1706 now permits Ohio series limited liability companies. The series limited liability companies establish, by way of its operating agreement, one or more designated series of assets and liabilities with which certain subjects of members might be associated. The series provisions are based on those provided in the Prototype Act. Series provisions are primarily contained at Section 1706.76, et. seq.

Elimination of Manager-Managed and Member-Managed Dichotomy and Statutory Default Authority.

Consistent with the Prototype Act, SB 276 eliminates the member-managed and manager-managed bifurcation of management structures and the statutorily conferred actual and apparent authority of members and managers in those paradigms. This structure also departs from the strictly bifurcated organization contemplated by the current Ohio LLC Act. This approach is more consistent with the flexibility legal practitioners and the public have applied to structuring the governance and operation of limited liability companies which structures include managers, officers, boards of directors, managing members, etc.

Fiduciary Duties or Standards of Conduct. Consistent with the current Ohio LLC Act and certain other Ohio business entity statutes, Sections 1706.31 and 1706.311 provides for statutory default fiduciary duties for members and managers. This is a significant departure from the Prototype Act which does not provide for statutory default fiduciary duties, relying on the premise that common law provides an adequate basis for applying the obligations associated with members and agents of a limited liability company.

Consolidation of Provisions on Limited Liability Company Agreement Override. Consistent with the current Ohio LLC Act (Section 1705.081), Chapter 1706 places in one section (Section 1706.08) the various provisions that are not permitted to be modified by the operating agreement. This centralization allows for the elimination of the phrase “unless otherwise provided in the limited liability

company agreement” or similar phrases throughout the Revised Ohio LLC Act and the ambiguity that results in the absence of express override language. Therefore, all provisions within Chapter 1706 are “default” provisions that may be modified by the operating agreement unless modifications are prohibited under Section 1706.08.

Practitioners and business owners will have nearly a year to adjust to the new regime as Chapter 1706 will apply to all limited liabilities companies effective January 1, 2022.

The Ohio State Bar Association Corporation Law Committee has indicated its intention to provide educational materials regarding the new statute, including form operating agreements to aid practitioners in their adaption to the new statute.

For more information please contact [Mike Moeddel](#) or a member of [KMK's Business Representation & Transactions Group](#).

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