

WORKING DRAFT

HOUSE BILL NO. _____

Limited liability companies.

Sponsored by: Joint Corporations, Elections and Political
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to limited liability companies; providing
2 for series limited liability companies as specified;
3 providing for governing law; providing definitions;
4 providing for electronic signatures; providing duration for
5 limited liability companies; providing requirements for
6 operating agreements; providing for mail delivery of
7 articles of organization; limiting liability of limited
8 liability companies to creditors obtaining an interest from
9 members; providing for annual fees; and providing for an
10 effective date.

11

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

13

14 **Section 1.** W.S. 17-15-148 and 17-15-149 are created

15 to read:

1

2 **17-15-148. Governing law.**

3

4 (a) With respect to any limited liability company
5 organized under the laws of Wyoming, the laws of Wyoming
6 shall govern its organization, internal affairs and the
7 liability of its members, managers and transferees.

8

9 (b) The laws of the state, territory, possession or
10 other jurisdiction or country under which a foreign limited
11 liability company is organized shall govern its
12 organization, internal affairs and the liability of its
13 members, managers and transferees.

14

15 **17-15-149. Series of members, managers or limited**
16 **liability company interests.**

17

18 (a) A series limited liability company is a limited
19 liability company whose articles of organization contain a
20 statement that the company is a series limited liability
21 company. The articles of organization shall include the
22 name of each series in the limited liability company and
23 the name and address of the manager or the managing member
24 or members of each series in the limited liability company.

1

2 (b) A limited liability company formed under Wyoming
3 law may convert to a series limited liability company by
4 amending its articles of organization to include a
5 statement required by subsection (a) of this section.

6

7 (c) The operating agreement of a limited liability
8 company may establish or provide for the establishment of
9 one (1) or more designated series of members, managers, or
10 limited liability company interests having separate rights,
11 powers or duties with respect to specified property or
12 obligations of the limited liability company or profits and
13 losses associated with specified property or obligations
14 and any such series may have a separate business purpose or
15 investment objective.

16

17 (d) With respect to debts, liabilities, obligations
18 and expenses incurred by a limited liability company or its
19 series:

20

21 (i) Notwithstanding anything to the contrary set
22 forth in this chapter or other applicable law, the debts,
23 liabilities, obligations and expenses incurred, contracted
24 for or otherwise existing with respect to a particular

1 series shall be enforceable against the assets of that
2 series only, and not against the assets of the limited
3 liability company generally or any other series thereof if:

4

5 (A) The operating agreement establishes or
6 provides for the establishment of one (1) or more series;

7

8 (B) Separate and distinct records are
9 maintained for each series and the assets associated with
10 each series are held in separate and distinct records,
11 directly or indirectly, including through a nominee or
12 otherwise and accounted for in separate and distinct
13 records separately from the other assets of the limited
14 liability company, or any other series thereof;

15

16 (C) The operating agreement of the limited
17 liability company provides for series limited liability
18 companies; and

19

20 (D) Notice of the limitation on liabilities
21 of a series as provided in this subsection is set forth in
22 the articles of organization of the limited liability
23 company.

24

1 (ii) Unless otherwise provided in the operating
2 agreement, none of the debts, liabilities, obligations and
3 expenses incurred, contracted for or otherwise existing
4 with respect to the limited liability company generally or
5 any other series thereof shall be enforceable against the
6 assets of the new series;

7

8 (iii) Notice in the articles of organization of
9 the limitation on liabilities of a series as provided in
10 paragraph (i) of this subsection shall be sufficient for
11 all purposes of this subsection, whether or not the limited
12 liability company has established any series when the
13 notice is included in the articles of organization. There
14 shall be no requirement that any specific series of the
15 limited liability company be referenced in the notice. The
16 fact that the articles of organization that contain the
17 foregoing notice of the limitation on liabilities of a
18 series is on file in the office of the secretary of state
19 shall constitute notice of the limitation on liabilities of
20 a series.

21

22 (e) Notwithstanding W.S. 17-15-113, under the
23 operating agreement or under another agreement, a member or
24 manager may agree to be obligated personally for any or all

1 of the debts, obligations and liabilities of one (1) or
2 more series.

3

4 (f) The operating agreement of the limited liability
5 company may provide for classes or groups of members or
6 managers associated with a series having the relative
7 rights, powers and duties that the operating agreement may
8 provide. The operating agreement may provide for the
9 future creation of additional classes or groups of members
10 or managers associated with the series having the relative
11 rights, powers and duties as may from time to time be
12 established, including rights, powers and duties senior to
13 existing classes and groups of members or managers
14 associated with the series. The operating agreement may
15 provide for the taking of an action, including the
16 amendment of the limited liability company operating
17 agreement, without the vote or approval of any member or
18 manager or class or group of members or managers, including
19 an action to create under the provisions of the operating
20 agreement a class or group of the series of limited
21 liability company interests that was not previously
22 outstanding. The operating agreement may provide that any
23 member or class or group of members associated with a
24 series shall have no voting rights.

1

2 (g) The operating agreement of the limited liability
3 company may grant to all or certain identified members or
4 managers or a specified class or group of the members or
5 managers associated with a series the right to vote
6 separately or with all or any class or group of the members
7 or managers associated with the series on any matter.
8 Voting by members or managers associated with a series may
9 be on a per capita, number, financial interest, class,
10 group or any other basis.

11

12 (h) Unless otherwise provided in an operating
13 agreement, the management of a series shall be vested in
14 the members associated with that series in proportion to
15 their contribution to capital of the series, as adjusted
16 from time to time to properly reflect any additional
17 contributions or withdrawals by the members of the series.
18 However, if provision is made in the operating agreement,
19 management of the series may be vested in a manager who
20 shall be elected by the members of the series in the manner
21 prescribed by the operating agreement. If the operating
22 agreement provides for the management of the series by a
23 manager, unless the operating agreement expressly dispenses

1 with or substitutes for the requirement of annual
2 elections, the manager shall be elected annually by the
3 members in a manner provided in the operating agreement.
4 The manager or persons appointed by the manager shall also
5 hold the offices and have the responsibilities accorded to
6 them by the members and set out in the operating agreement.
7 A manager shall cease to be a manager with respect to a
8 series as provided in the operating agreement. Except as
9 otherwise provided in the operating agreement, any event
10 under this chapter or in the operating agreement that
11 causes a manager to cease to be a manager with respect to a
12 series shall not, in itself, cause such manager to cease to
13 be a manager of the limited liability company or with
14 respect to any other series thereof.

15

16 (j) Unless otherwise provided in the operating
17 agreement, a member shall cease to be associated with a
18 series and to have the power to exercise any rights or
19 powers of a member with respect to that series upon the
20 assignment of all of the member's limited liability company
21 interest with respect to that series. Except as otherwise
22 provided in an operating agreement, any event under this
23 chapter or an operating agreement that causes a member to
24 cease to be associated with a series, shall not, in itself,

1 cause such member to cease to be associated with any other
2 series or terminate the continued membership of a member in
3 the limited liability company or cause the termination of
4 the series, regardless of whether the member was the last
5 remaining member associated with the series.

6
7 (k) Subject to W.S. 17-15-123 through 17-15-129,
8 except to the extent otherwise provided in the operating
9 agreement, a series may be terminated and its affairs wound
10 up without causing the dissolution of the limited liability
11 company. The termination of a series established in
12 accordance with subsection (b) of this section shall not
13 affect the limitation on liabilities of the series provided
14 by subsection (c) of this section. A series shall be
15 terminated and its affairs shall be wound up upon the
16 occurrence of the same events as provided in this chapter
17 for the dissolution of a limited liability company. A
18 series shall also be terminated and its affairs shall be
19 wound up upon the dissolution of the limited liability
20 company pursuant to W.S. 17-15-123 through 17-15-129.

21
22 (m) A foreign limited liability company that applies
23 for a certificate of authority to transact business in this
24 state pursuant to W.S. 17-16-1533 which is governed by an

1 operating agreement that establishes or provides for the
2 establishment of designated series of members, managers or
3 limited liability company interests having separate rights,
4 powers or duties with respect to specified property or
5 obligations of the foreign limited liability company, or
6 profits and losses associated with specified property or
7 obligations, shall indicate that fact on the application
8 for a certificate of authority. In addition, the foreign
9 limited liability company shall state on the application
10 whether the debts, liabilities and obligations incurred,
11 contracted for or otherwise existing with respect to a
12 particular series, if any, shall be enforceable against the
13 assets of that series only, and not against the assets of
14 the foreign limited liability company generally or any
15 other series thereof, and, unless otherwise provided in the
16 operating agreement, none of the debts, liabilities,
17 obligations and expenses incurred, contracted for or
18 otherwise existing with respect to the foreign limited
19 liability company generally or any other series thereof
20 shall be enforceable against the assets of the series.

21

22 (n) Except to the extent modified in this section,
23 the provisions of this chapter which are generally
24 applicable to limited liability companies, their managers,

1 members and transferees shall be applicable to each
2 particular series with respect to the operation of that
3 series.

4
5 **Section 2.** W.S. 17-15-102(a) by creating new
6 paragraphs (vi) through (ix) and renumbering (vi) as (x),
7 17-15-106, 17-15-107(a)(ii), (c) and by creating new
8 subsections (d) through (f), 17-15-110(a)(ii),
9 17-15-114(b), 17-15-122, 17-15-132(a)(vi) and 17-15-145 are
10 amended to read:

11

12 **17-15-102. Definitions.**

13

14 (a) As used in this act:

15

16 (vii) "Delivery", unless otherwise specified,
17 means delivery by hand, mail, facsimile or electronic
18 transfer;

19

20 (viii) "Operating agreement" means any written
21 agreement, whether referred to as a limited liability
22 company agreement, operating agreement or otherwise, of the
23 member or members of a limited liability company as to

1 affairs of a limited liability company and the conduct of
2 its business;

3
4 (ix) "Transferee" and "assignee" means any
5 person or entity who obtains an interest in units of a
6 limited liability company but is not a member of the
7 limited liability company.

8
9 ~~(vi)~~ (x) "This act" means W.S. 17-15-101 through
10 ~~17-15-144~~ 17-15-149;

11
12
13 **17-15-106. Formation.**

14
15 Any person may form a limited liability company which shall
16 have two (2) or more members by manually or electronically
17 signing and delivering one (1) original and one (1) exact
18 or conformed copy of the articles of organization to the
19 secretary of state for filing. The person forming the
20 company need not be a member of the limited liability
21 company.

22
23 **17-15-107. Articles of organization.**

24

1 (a) The articles of organization shall set forth:

2

3 (ii) The period of its duration, which may be
4 perpetual if so provided in the articles of organization.

5 The period of duration shall be thirty (30) years from the
6 date of filing with the secretary of state if no period of
7 duration is specifically set forth in the articles of
8 organization;

9

10 (iv) The name and address of its registered
11 agent in the state, and for all limited liability companies
12 created after July 1, 2007, the name and address of the
13 manager or managing member or members;

14

15 (c) The articles of organization shall include or be
16 accompanied by a written consent to appointment manually or
17 electronically signed by the registered agent.

18

19 (d) A limited liability company is not required to
20 execute an operating agreement, however the company is
21 bound by an operating agreement whether or not the limited
22 liability company has executed the agreement if the
23 individual members have executed the agreement.

24

1 (e) A transferee or assignee of a member's interest
2 in the limited liability company is bound by all of the
3 terms of the operating agreement whether or not the
4 transferee or assignee executes the operating agreement.

5
6 **17-15-110. Registered office and registered agent to**
7 **be maintained.**

8
9 (a) Each limited liability company shall have and
10 continuously maintain in this state:

11
12 (ii) A registered agent, which agent may be
13 either an individual resident in this state whose business
14 office is identical with such registered office, a domestic
15 limited liability company or a domestic corporation, or a
16 foreign corporation or foreign limited liability company
17 authorized to transact business in this state, having a
18 business office identical with such registered office.

19
20 **17-15-114. Service of process.**

21
22 (b) Whenever a limited liability company shall fail
23 to appoint or maintain a registered agent in this state, or
24 whenever its registered agent cannot with reasonable

1 diligence be found at the registered office, then the
2 secretary of state shall be an agent of the company upon
3 whom any process, notice or demand may be served. Service
4 on the secretary of state of any process, notice or demand
5 shall be made by registered mail or in person, by
6 delivering to and leaving with him, or with any clerk of
7 his office, duplicate copies of such process, notice or
8 demand. In the event any such process, notice or demand is
9 served on the secretary of state, he shall immediately
10 cause one (1) of the copies thereof to be forwarded by
11 registered mail addressed to the limited liability company
12 at its principal mailing address as defined and prescribed
13 by the secretary of state. Any service so had on the
14 secretary of state shall be returnable in not less than
15 thirty (30) days.

16

17 **17-15-122. Interest in company; transferability of**
18 **interest.**

19

20 The interest of all members in a limited liability company
21 constitutes the personal estate of the member, and may be
22 transferred or assigned as provided in the operating
23 agreement. However, if all of the other members of the
24 limited liability company other than the member proposing

1 to dispose of his or its interest do not approve of the
2 proposed transfer or assignment by unanimous written
3 consent, the transferee of the member's interest shall have
4 no right to participate in the management of the business
5 and affairs of the limited liability company or to become a
6 member. A creditor who becomes a transferee by virtue of
7 receiving a charging order pursuant to W.S. 17-15-145 shall
8 have no right to participate in the management of the
9 business or affairs of the limited liability company or to
10 become a member. The transferee shall only be entitled to
11 receive the share of profits or other compensation by way
12 of income and the return of contributions, to which that
13 member would otherwise be entitled.

14

15 **17-15-132. Fees; annual tax.**

16

17 (a) The secretary of state shall charge and collect
18 fees from limited liability companies and foreign limited
19 liability companies for:

20

21 (vi) An annual fee ~~provided by W.S.~~
22 ~~17-16-1630(a) as if the company were a corporation~~ of fifty
23 dollars (\$50.00), due and payable on or before the first
24 day of the month of registration from every limited

1 liability company organized under the laws of this state
2 and from every foreign limited liability company which
3 obtains the right to transact business in this state;

4

5 **17-15-145. Rights of creditor.**

6

7 On application to a court of competent jurisdiction by a
8 judgment creditor of a member of a limited liability
9 company or a member's transferee, the court may charge the
10 member's distributional interest in the limited liability
11 company with payment of the unsatisfied amount of the
12 judgment with interest. To the extent so charged, the
13 judgment creditor has only the rights of a transferee of
14 the member's interest as provided in W.S. 17-15-122. The
15 charging order is the exclusive remedy by which a judgment
16 creditor of the member or transferee may satisfy a judgment
17 against the member's interest in a limited liability
18 company. A creditor of a member or of a member's
19 transferee shall not have any right to place a lien on the
20 property of the limited liability company or to obtain
21 possession of or otherwise exercise any other legal or
22 equitable remedies with respect to the property of the
23 limited liability company. This section does not deprive

1 any member of a limited liability company of the benefit of
2 any exemption laws applicable to the member's interest.

3

4 ***** Staff note: This would limit the ability of**
5 **a creditor to satisfy a claim to the instance**
6 **where a LLC decides to make a distribution. If**
7 **the LLC does not decide to make a distribution,**
8 **the creditor is limited to holding onto the**
9 **member's interest perpetually. *****

10

11 **Section 2.** This act is effective July 1, 2007.

12

13

(END)

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