

SECOND REGULAR SESSION

HOUSE BILL NO. 1514

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WIELAND.

5529L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 347, RSMo, by adding thereto six new sections relating to series limited liability companies.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 347, RSMo, is amended by adding thereto six new sections, to be known as sections 347.800, 347.803, 347.806, 347.809, 347.812, and 347.815, to read as follows:

347.800. 1. An operating agreement may establish or provide for the establishment of a designated series of transferable interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series shall contain the name of the limited liability company and be distinguishable from the name of any other series set forth in the articles of organization.

2. Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally, if all of the following apply:

(1) The operating agreement creates one or more series;

(2) Separate and distinct records are maintained for that series and separate and distinct records account for the assets associated with that series. The assets associated

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 with a series shall be accounted for separately from the other assets of the limited liability
17 company, including another series;

18 (3) The operating agreement provides for such limitation on liabilities;

19 (4) Notice of the establishment of the series and of the limitation on liabilities of the
20 series is set forth in the articles of organization of the limited liability company. The filing
21 of the articles of organization containing a notice of the limitation on liabilities of a series
22 in the office of the secretary of state constitutes notice of the limitation on liabilities of such
23 series.

24 3. A series meeting all of the conditions of subsection 2 of this section shall be
25 treated as a separate entity to the extent set forth in the articles of organization.

26 4. Notwithstanding section 347.057, or a contrary provision in an operating
27 agreement, a member or manager may agree to be obligated personally for any or all of the
28 debts, obligations, or liabilities of one or more series.

29 5. An operating agreement may provide for classes or groups of members or
30 managers associated with a series having such relative rights, powers, and duties as the
31 operating agreement may provide. The operating agreement may provide for the future
32 creation of additional classes or groups of members or managers associated with the series
33 having such relative rights, powers, and duties as may from time to time be established,
34 including rights, powers, and duties senior to existing classes and groups of members or
35 managers associated with the series. An operating agreement may provide for the taking
36 of an action, including the amendment of the operating agreement, without the vote or
37 approval of any member or manager or class or group of members or managers, including
38 all action to create under the provisions of the operating agreement a class or group of the
39 series of membership interests that was not previously outstanding. An operating
40 agreement may provide that any member or class or group of members associated with a
41 series does not have voting rights.

42 6. An operating agreement may grant to all or certain identified members or
43 managers or a specified class or group of the members or managers associated with a series
44 the right to vote on any matter separately or with all or any class or group of the members
45 or managers associated with the series. Voting by members or managers associated with
46 a series may be on a per capita, number, financial interest, class, group, or other basis.

47 7. Except to the extent modified by sections 347.800 to 347.815, the provisions of
48 this chapter which are generally applicable to a limited liability company, and its
49 managers, members, and transferees, shall be applicable to each series with respect to the
50 operations of such series.

2 **347.803. 1. A series is member-managed unless the operating agreement does any**
3 **of the following:**

4 **(1) Expressly provides any of the following:**

5 **(a) The series is or will be manager-managed;**

6 **(b) The series is or will be managed by managers;**

7 **(c) Management of the series is or will be vested in managers;**

8 **(2) Includes words of similar import.**

9 **2. In a member-managed series, unless modified under subsections 5 and 6 of**
10 **section 347.800, all of the following rules apply:**

11 **(1) The management and conduct of the series are vested in the members of the**
12 **series;**

13 **(2) Each series member has equal rights in the management and conduct of the**
14 **series' activities;**

15 **(3) A difference arising among series members as to a matter in the ordinary course**
16 **of the activities of the series may be decided by a majority of the series members;**

17 **(4) An act outside the ordinary course of the activities of the series may be**
18 **undertaken only with the consent of all members of the series;**

19 **(5) The operating agreement may be amended only with the consent of all members**
20 **of the series.**

21 **3. In a manager-managed series, all of the following rules apply:**

22 **(1) Except as otherwise expressly provided in this chapter, any matter relating to**
23 **the activities of the series is decided exclusively by the managers of the series;**

24 **(2) Each series manager has equal rights in the management and conduct of the**
25 **activities of the series;**

26 **(3) A difference arising among managers of a series as to a matter in the ordinary**
27 **course of the activities of the series may be decided by a majority of the managers of the**
28 **series;**

29 **(4) Unless modified under subsections 5 and 6 of section 347.800, the consent of all**
30 **members of the series is required to do any of the following:**

31 **(a) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the**
32 **series' property, with or without the goodwill, outside the ordinary course of the series'**
33 **activities;**

34 **(b) Approve a merger, conversion, or domestication under this chapter;**

35 **(c) Undertake any other act outside the ordinary course of the series' activities;**

(d) Amend the operating agreement as it pertains to the series;

36 **(5) A manager of the series may be chosen at any time by the consent of a majority**
37 **of the members of the series and remains a manager of the series until a successor has been**
38 **chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the**
39 **case of a series manager that is not an individual, terminates. A series manager may be**
40 **removed at any time by the consent of a majority of the members without notice or cause;**

41 **(6) A person need not be a series member to be a manager of a series, but the**
42 **dissociation of a series member that is also a series manager removes the person as a**
43 **manager of the series. If a person that is both a series manager and a series member ceases**
44 **to be a manager of the series, that cessation does not by itself dissociate the person as a**
45 **member of the series;**

46 **(7) A person's ceasing to be a series manager does not discharge any debt,**
47 **obligation, or other liability to the series or members of the series which the person**
48 **incurred while a manager of the series.**

49 **4. An action requiring the consent of members of a series under this chapter may**
50 **be taken without a meeting, and a member of a series may appoint a proxy or other agent**
51 **to consent or otherwise act for the series member by signing an appointing record,**
52 **personally or by the series member's agent.**

53 **5. The dissolution of a series shall not affect the applicability of this section.**
54 **However, a person that wrongfully causes dissolution of the series loses the right to**
55 **participate in management as a series member and a series manager.**

56 **6. This chapter shall not entitle a series member of a series to remuneration for**
57 **services performed for a member-managed series, except for reasonable compensation for**
58 **services rendered in winding up the activities of the series.**

347.806. 1. Any distribution made by a series before its dissolution and winding
2 **up shall be in equal shares among the series members and dissociated series members,**
3 **except to the extent necessary to comply with any transfer effective under section 347.063**
4 **and any charging order in effect under section 347.119.**

5 **2. A person has a right to a distribution before the dissolution and winding up of**
6 **a series only if the series decides to make an interim distribution. A person's dissociation**
7 **does not entitle the person to a distribution.**

8 **3. A person shall not have a right to demand or receive a distribution from a series**
9 **in any form other than money. Except as otherwise provided in this chapter, a series may**
10 **distribute an asset in kind if each part of the asset is fungible with each other part and each**
11 **person receives a percentage of the asset equal in value to the person's share of**
12 **distributions.**

13 **4. If a series member or transferee becomes entitled to receive a distribution, the**
14 **series member or transferee has the status of, and is entitled to all remedies available to,**
15 **a creditor of the series with respect to the distribution.**

16 **5. (1) A series shall not make a distribution if after the distribution any of the**
17 **following occurs:**

18 **(a) The series would not be able to pay its debts as they become due in the ordinary**
19 **course of the series' activities;**

20 **(b) The series' total assets would be less than the sum of its total liabilities plus the**
21 **amount that would be needed, if the series were to be dissolved, wound up, and terminated**
22 **at the time of the distribution, to satisfy the preferential rights upon dissolution, winding**
23 **up, and termination of members whose preferential rights are superior to those of persons**
24 **receiving the distribution.**

25 **(2) As used in subdivision (1) of this subsection, "distribution" shall not include**
26 **amounts constituting reasonable compensation for present or past services or reasonable**
27 **payments made in the ordinary course of business under a bona fide retirement plan or**
28 **other benefits program.**

29 **6. A series may base a determination that a distribution is not prohibited under**
30 **subsection 1 of this section on financial statements prepared on the basis of accounting**
31 **practices and principles that are reasonable in the circumstances or on a fair valuation or**
32 **other method that is reasonable under the circumstances.**

33 **7. Except as otherwise provided in subsection 9 of this section, the effect of a**
34 **distribution under subsection 1 of this section is measured as follows:**

35 **(1) In the case of a distribution by purchase, redemption, or other acquisition of a**
36 **transferable interest in the series, as of the date money or other property is transferred or**
37 **debt incurred by the series;**

38 **(2) In all other cases, as of the date when one of the following occurs:**

39 **(a) The distribution is authorized, if the payment occurs within one hundred twenty**
40 **days after that date;**

41 **(b) The payment is made, if the payment occurs more than one hundred twenty**
42 **days after the distribution is authorized.**

43 **8. A series' indebtedness to a series member incurred by reason of a distribution**
44 **made in accordance with this section is at parity with the series' indebtedness to its general,**
45 **unsecured creditors.**

46 **9. A series' indebtedness, including indebtedness issued in connection with or as**
47 **part of a distribution, is not a liability for purposes of subsection 5 of this section if the**
48 **terms of the indebtedness provide that payment of principal and interest are made only to**

49 the extent that a distribution could be made to members of the series under this section.
50 If such indebtedness is issued as a distribution, each payment of principal or interest on
51 the indebtedness is treated as a distribution, the effect of which is measured on the date the
52 payment is made.

53 **10. (1) Except as otherwise provided in subdivision (2) of this subsection, if a**
54 **member of a member-managed series or manager of a manager-managed series consents**
55 **to a distribution made in violation of this section and in consenting to the distribution fails**
56 **to comply with section 347.088, the member or manager is personally liable to the series**
57 **for the amount of the distribution that exceeds the amount that could have been distributed**
58 **without the violation of this section.**

59 **(2) To the extent the operating agreement of a member-managed series expressly**
60 **relieves a series member of the authority and responsibility to consent to distributions and**
61 **imposes that authority and responsibility on one or more other members of the series, the**
62 **liability stated in subdivision (1) of this subsection applies to the other members of the**
63 **series and not the member of the series that the operating agreement relieves of authority**
64 **and responsibility.**

65 **11. A person that receives a distribution knowing that the distribution to that**
66 **person was made in violation of this section is personally liable to the limited liability**
67 **company but only to the extent that the distribution received by the person exceeded the**
68 **amount that could have been properly paid under this section.**

69 **12. A person against which an action is commenced because the person is liable**
70 **under subsection 10 of this section may do any of the following:**

71 **(1) Implead any other person that is subject to liability under subsection 10 of this**
72 **section and seek to compel contribution from the person;**

73 **(2) Implead any person that received a distribution in violation of subsection 11 of**
74 **this section and seek to compel contribution from the person in the amount the person**
75 **received in violation of subsection 11 of this section.**

76 **13. An action under this section is barred if not commenced within two years after**
77 **the distribution.**

347.809. Unless otherwise provided in the operating agreement, a member shall
2 **cease to be associated with a series and to have the power to exercise any rights or powers**
3 **of a member with respect to such series upon the assignment of all of the member's**
4 **transferable interest with respect to such series. Except as otherwise provided in an**
5 **operating agreement, an event under this chapter or identified in an operating agreement**
6 **that causes a member to cease to be associated with a series, by itself, shall not cause such**

7 member to cease to be associated with any other series or terminate the continued
8 membership of a member in the limited liability company.

347.812. 1. Except to the extent otherwise provided in the operating agreement, a
2 series may be terminated and its affairs wound up without causing the dissolution of the
3 limited liability company. The termination of a series established under subsection 1 of
4 section 347.800 shall not affect the limitation on a liability of such series provided by
5 subsection 2 of section 347.800. A series is not terminated and its affairs shall continue
6 despite the dissolution of the limited liability company under this chapter but the series
7 shall be terminated and its affairs shall be wound up upon the first to occur of any of the
8 events described in subsection 1 of section 347.137 as applied to the series.

9 2. Notwithstanding any provision of this chapter, unless otherwise provided in the
10 operating agreement, any of the following persons may wind up the affairs of a series:

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

13 (2) If there is no manager of a series, the members associated with the series or a
14 person approved by the members associated with the series;

15 (3) If there is more than one class or group of members associated with the series,
16 then by each class or group of members associated with the series, in either case, by
17 members who own more than fifty percent of the transferable interests of the series owned
18 by all of the members associated with the series or by the members of each class or group
19 associated with the series.

20 3. The persons winding up the affairs of a series, in the name of the series and for
21 and on behalf of the series, may take all actions with respect to the series as are permitted
22 under this chapter for a limited liability company. The persons winding up the affairs of
23 a series shall provide for the claims and obligations of the series as provided in section
24 347.139 for a limited liability company and distribute the assets of the series as provided
25 in section 347.139 for a limited liability company. An action taken under this subsection
26 shall not affect the liability of a member and shall not impose liability on a liquidating
27 trustee.

347.815. A foreign limited liability company that is authorized to do business in this
2 state under this chapter which is governed by an operating agreement that establishes or
3 provides for the establishment of designated series of transferable interests having separate
4 rights, powers, or duties with respect to specified property or obligations of the foreign
5 limited liability company, or profits and losses associated with the specified property or
6 obligations, shall indicate that fact on the application for a certificate of existence as a
7 foreign limited liability company. In addition, the foreign limited liability company shall

8 **state on the application whether the debts, liabilities, and obligations incurred, contracted**
9 **for, or otherwise existing with respect to a particular series, if any, are enforceable against**
10 **the assets of such series only, and not against the assets of the foreign limited liability**
11 **company generally.**

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