

SHORT TITLE: Limited liability companies; changing certain consent requirements; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 950

By: Hendrick

AS INTRODUCED

An Act relating to limited liability companies;

amending Section 21, Chapter 148, O.S.L. 1992, as amended by Section 12, Chapter 366, O.S.L. 1993, Section 34, Chapter 148, O.S.L. 1992, as amended by Section 17, Chapter 366, O.S.L. 1993, Section 36, Chapter 148, O.S.L. 1992, as amended by Section 19, Chapter 366, O.S.L. 1993, Section 37, Chapter 148, O.S.L. 1992, as amended by Section 20, Chapter 366, O.S.L. 1993, and Section 38, Chapter 148, O.S.L. 1992, as amended by Section 21, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Sections 2020, 2033, 2035, 2036 and 2037), which relate to the Oklahoma Limited Liability Company Act; adding statutory reference; deleting provision for majority vote for approval of dissolution or winding up; deleting provisions relating to articles of organization; deleting condition upon which member ceases to be a member; clarifying conditions under which certain assignees may become members; clarifying language; correcting statutory citation; changing certain consent requirement for removal of certain member; limiting certain members ability to withdraw; changing time period for winding up of limited liability company after dissolution; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 21, Chapter 148, O.S.L. 1992, as amended by Section 12, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2020), is amended to read as follows:

Section 2020. A. Unless otherwise provided in the articles of organization or operating agreement, the members of a limited liability company shall vote in proportion to their respective capital interests. Unless the context otherwise requires, references in this act, Section 2000 et seq. of this title, to a vote or the consent of the members shall mean a vote or consent of the members holding a majority of the capital interests. The vote or consent may be evidenced in the minutes of a meeting of the members or by a written consent in lieu of a meeting.

B. Except as required in this act, and unless otherwise provided in the articles of organization or operating agreement, a majority vote of the members shall be required to approve the following matters:

~~1. The dissolution and winding up of the limited liability company;~~

~~2.~~ The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company;

~~3.~~ 2. Merger of the limited liability company with another domestic limited liability company or other business entity; and

~~4.~~ 3. An amendment to the articles of organization or operating agreement.

C. The articles of organization or operating agreement may alter the above voting rights and provide for any other voting rights of members.

SECTION 2. AMENDATORY Section 34, Chapter 148, O.S.L. 1992, as amended by Section 17, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2033), is amended to read as follows:

Section 2033. A. Unless otherwise provided in ~~the articles of organization or~~ an operating agreement:

1. A membership interest is assignable in whole or in part;

2. An assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights or powers of a member;

3. An assignment entitles the assignee to receive ~~such~~ any distribution or distributions to which the assignor was entitled to the extent assigned;

4. ~~Until~~ Unless the assignee of an interest in a limited liability company ~~interest~~ becomes a member by virtue of that interest, the assignor continues to be a member and to have the power to exercise any rights of a member, subject to the ~~members'~~ right of other members to remove the assignor pursuant to Section 2036 of this title, ~~the~~ The removal of an assignor shall not, by itself, cause the assignee to become a member;

5. Until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

6. The assignor of a membership interest is not released from ~~his~~ liability as a member solely as a result of the assignment.

B. The ~~articles of organization or an~~ operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and also may provide for the assignment or transfer of any membership interest represented by such a

certificate and may make other provisions with respect to such certificates.

C. ~~A member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his membership interest.~~ Unless otherwise provided in the operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against any or all of the membership interest of a member is not an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.

SECTION 3. AMENDATORY Section 36, Chapter 148, O.S.L. 1992, as amended by Section 19, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2035), is amended to read as follows:

Section 2035. A. An assignee of an interest in a limited liability company may become a member if and to the extent that:

1. ~~The articles of organization or an~~ operating agreement provides; or
2. The members representing a majority of the capital interests which are not the subject of the assignment consent in writing.

B. An assignee who becomes a member, to the extent assigned, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the ~~articles of organization, any~~ operating agreement and this act. ~~However,~~ Section 2000 et seq. of this title; however, unless otherwise provided in writing in the ~~articles of organization, an~~ operating agreement or other written agreement, an assignee who becomes a member also is liable for any obligations of ~~his~~ the assignor to make contributions as provided in Section 2024 of this title, but shall not be liable for the obligations of ~~his~~ the assignor under Section 2031 of this title. ~~However;~~ however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time ~~he~~ the assignee

became a member and which could not be ascertained from a written operating agreement.

C. Regardless of whether an assignee of an interest becomes a member, the assignor is not released from ~~his~~ liability to the limited liability company under Sections 2024 ~~and~~, 2031, and 2033 of this title.

D. Except as otherwise provided in writing in the operating agreement, a member who assigns ~~his~~ the member's entire interest in the limited liability company ceases to be a member or to have the power to exercise any rights of a member when any assignee of ~~his~~ the interest becomes a member with respect to the assigned interest.

E. Subject to subsection F of this section, a person acquiring a limited liability company interest directly from the limited liability company may become a member in a limited liability company upon compliance with the operating agreement or, if the operating agreement does not so provide in writing, upon the written consent of the members.

F. The effective time of admission of a member to a limited liability company shall be the later of:

1. The date the limited liability company is formed; or
2. The time provided in the operating agreement, or if no such time is provided therein, then when the person's admission is reflected in the records of the limited liability company.

SECTION 4. AMENDATORY Section 37, Chapter 148, O.S.L. 1992, as amended by Section 20, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2036), is amended to read as follows:

Section 2036. A. A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

1. The member voluntarily withdraws ~~by voluntary act~~ from the limited liability company as provided in subsection C of this section;

2. The member ceases to be a member of the limited liability company as provided in Section ~~2034~~ 2035 of this title;

3. The member is removed as a member either:

- a. in accordance with the operating agreement, or
- b. except as provided in writing in the operating agreement, when the member assigns all of ~~his~~ the member's interest in the limited liability company, and removal is consented to by an affirmative vote of a majority in number of the members who have not assigned their interests representing a majority of the capital interests which are not the subject of the assignment;

4. Subject to a contrary written provision in the operating agreement, or with written consent of all other members:

- a. when the member:
  - (1) makes an assignment for the benefit of creditors,
  - (2) files a voluntary petition in bankruptcy,
  - (3) is adjudicated as bankrupt or insolvent,
  - (4) files a petition or answer seeking ~~for himself or herself~~ any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation,
  - (5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against ~~him~~ the member in any proceeding of this nature, or
  - (6) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of ~~his~~ the member's properties,

- b. after one hundred twenty (120) days from the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety (90) days after the appointment without ~~his~~ the member's consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of ~~his~~ the member's properties, the appointment is not vacated or stayed or within ninety (90) days after the expiration of any stay, the appointment is not vacated,
- c. when, in the case of a member who is an individual:
  - (1) ~~his~~ the member's death, or
  - (2) the entry of an order by a court of competent jurisdiction adjudicating ~~him~~ the member incompetent to manage ~~his~~ the member's person or ~~his~~ estate,
- d. when, in the case of a member who is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee,
- e. when, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company,
- f. when, in the case of a member that is a corporation, the filing of a certificate of its dissolution or the equivalent for the corporation or the revocation of its charter and the lapse of ninety (90) days after

notice to the corporation of revocation without a reinstatement of its charter, or

- g. when, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

B. The members may provide in writing in the operating agreement for other events the occurrence of which result in a person ceasing to be a member of the limited liability company.

C. Unless the operating agreement specifically ~~denies~~ permits in writing the power to withdraw voluntarily, a member may not withdraw at any time ~~by giving ninety (90) days' written notice to the other members or the notice required by the operating agreement.~~ Unless. If the operating agreement specifically provides in writing ~~a right~~ the power to withdraw voluntarily, ~~or~~ and if the withdrawal occurs as a result of otherwise wrongful conduct of the member, a member's voluntary withdrawal shall constitute a breach of the operating agreement and the limited liability company may recover from the withdrawing member damages, including the reasonable cost of replacing the services that the withdrawn member was obligated to perform. The limited liability company may offset its damages against the amount otherwise distributable to the member, in addition to pursuing any remedies provided for in the operating agreement or otherwise available under applicable law. The limited liability company shall not, however, be entitled to any equitable remedy that would prevent a member from exercising ~~his~~ the power to withdraw ~~unless if~~ such power was denied is permitted in the operating agreement.

D. If a member who is an individual dies or a court of competent jurisdiction adjudges ~~him~~ the member to be incompetent to manage ~~his~~ the member's person or ~~his~~ property, the member's executor, administrator, guardian, conservator, or other legal

representative ~~has~~ shall have all of the rights of an assignee of the member's interest.

SECTION 5. AMENDATORY Section 38, Chapter 148, O.S.L. 1992, as amended by Section 21, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1995, Section 2037), is amended to read as follows:

Section 2037. ~~A.~~ A limited liability company is dissolved and its affairs shall be wound up upon the earlier of:

1. The occurrence of the latest date on which the limited liability company is to dissolve set forth in the articles of organization;

~~2.~~ 2. The ~~time or the~~ occurrence of events specified in writing in the ~~articles of organization or~~ operating agreement;

~~2.~~ 3. The written consent of all of the members;

~~3.~~ ~~An~~ 4. The occurrence of an event of dissociation of a member, unless the limited liability company is continued either by the unanimous consent of the remaining members within ninety (90) days following the occurrence of any such event or as otherwise provided in writing in the operating agreement; or

~~4.~~ 5. Entry of a decree of judicial dissolution under Section 2038 of this title.

SECTION 6. This act shall become effective November 1, 1996.

45-2-1518

KSM