

SHORT TITLE: Business organizations; limited liability companies;
effective date.

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

SENATE BILL NO. 432

By: Hendrick

AS INTRODUCED

An Act relating to limited liability companies;

amending Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993, Section 5, Chapter 148, O.S.L. 1992, Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993, Section 27, Chapter 148, O.S.L. 1992, Section 34, Chapter 148, O.S.L. 1992, as last amended by Section 24, Chapter 226, O.S.L. 1996, Section 37, Chapter 148, O.S.L. 1992, as last amended by Section 26, Chapter 226, O.S.L. 1996, and Section 38, Chapter 148, O.S.L. 1992, as last amended by Section 27, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, Sections 2001, 2004, 2005, 2026, 2033, 2036 and 2037), which relate to limited liability companies; modifying definitions; reducing number of persons who may form a limited liability company; modifying contents of articles of organization; authorizing perpetual existence; modifying time for certain distributions and deleting requirement of unanimous agreement for other times; making membership interest nontransferable except by assignment; clarifying effect of and procedure for removal of member; deleting specified events when a person ceases to be a member; clarifying language; authorizing certain provisions in operating agreements for

expulsion of a member; repealing Section 28, Chapter 148, O.S.L. 1992, as amended by Section 15, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2027), which relates to withdrawal of members; and providing an effective date.

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

SECTION 1. AMENDATORY Section 2, Chapter 148, O.S.L. 1992, as amended by Section 2, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2001), is amended to read as follows:

Section 2001. As used in this act, unless the context otherwise requires:

1. "Articles of organization" means documents filed under Section ~~20~~ 2019 of this ~~act~~ title for the purpose of forming a limited liability company;

2. "Bankrupt" means bankrupt under the United States Bankruptcy Code, as amended, or insolvent under any state insolvency act;

3. "Business" means any trade, occupation, profession or other activity regardless of whether engaged in for gain, profit or livelihood;

4. "Capital contribution" means anything of value that a person contributes to the limited liability company as a prerequisite for, or in connection with, membership, including cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services;

5. "Capital interest" means the fair market value as of the date contributed of a member's capital contribution as adjusted for any additional capital contributions or withdrawals;

6. "Corporation" means a corporation formed under the laws of this state or a foreign corporation as defined in this section;

~~7. "Event of dissociation" means an event that causes a person to cease to be a member, as provided in Section 2036 of this title;~~

~~8. "Court" includes every court and judge having jurisdiction in the case;~~

~~9.~~ 8. "Foreign corporation" means a corporation formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

~~10.~~ 9. "Foreign limited liability company" means an entity that is:

- a. an unincorporated association,
- b. organized under the laws of a state other than the laws of this state or organized under the laws of any foreign country,
- c. organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and
- d. not required to be registered or organized under any statute of this state other than this act;

~~11.~~ 10. "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state, or under the laws of the District of Columbia or any foreign country;

~~12.~~ 11. "Limited liability company" or "domestic limited liability company" means an entity that is an unincorporated association or proprietorship having ~~two~~ one or more members that is organized and existing under the laws of this state;

~~13.~~ 12. "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership as defined in this section;

~~14.~~ 13. "Manager" or "managers" means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement;

~~15.~~ 14. "Member" means a person with an ownership interest in a limited liability company, with the rights and obligations specified under this act;

~~16.~~ 15. "Membership interest" or "interest" means a member's rights in the limited liability company, collectively, including the member's share of the profits and losses of the limited liability company, the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management;

~~17.~~ 16. "Operating agreement" means any agreement of the members as to the affairs of a limited liability company and the conduct of its business;

~~18.~~ 17. "Person" means an individual, a general partnership, a limited partnership, a limited liability company, a trust, an estate, an association, a corporation or any other legal or commercial entity; and

~~19.~~ 18. "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 2. AMENDATORY Section 5, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2004), is amended to read as follows:

Section 2004. A. ~~Two~~ One or more persons may form a limited liability company upon the filing of executed articles of organization with the Office of the Secretary of State.

B. 1. When the Office of the Secretary of State files the articles of organization, the proposed organization becomes a

limited liability company under the name and subject to the purposes, conditions, and provisions stated in the articles.

2. Filing of the articles by the Office of the Secretary of State is conclusive evidence of the formation of the limited liability company.

SECTION 3. AMENDATORY Section 6, Chapter 148, O.S.L. 1992, as amended by Section 3, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2005), is amended to read as follows:

Section 2005. A. The articles of organization shall set forth:

1. The name of the limited liability company;
2. ~~The latest date on which~~ term of the existence of the limited liability company ~~is to dissolve~~ which may be perpetual; and
3. The street address of its principal place of business in this state and the name and address of its resident agent in this state.

B. It is not necessary to set out in the articles of organization any of the powers enumerated in this act.

SECTION 4. AMENDATORY Section 27, Chapter 148, O.S.L. 1992 (18 O.S. Supp. 1996, Section 2026), is amended to read as follows:

Section 2026. Except as otherwise provided in this act, a member is entitled to receive distributions from a limited liability company ~~before the withdrawal of the member from the limited liability company and~~ before the dissolution and winding up of the limited liability company to the extent and at the times upon which the members ~~unanimously~~ agree or as provided in the operating agreement.

SECTION 5. AMENDATORY Section 34, Chapter 148, O.S.L. 1992, as last amended by Section 24, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, Section 2033), is amended to read as follows:

Section 2033. A. Unless otherwise provided in an operating agreement:

1. A membership interest is ~~assignable~~ not transferable;
provided, however, that a member may assign a membership interest 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 any
distribution or distributions to which the assignor was entitled to
the extent assigned;

4. Unless the assignee of an interest in a limited liability
company 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 right of other members to remove~~
~~the assignor pursuant to Section 2036 of this title~~ unless the
assignor is removed as a member either in accordance with the
operating agreement or, after having assigned all of the membership
interest, by an affirmative vote of the members who have not
assigned their interests. 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
liability as a member solely as a result of the assignment.

B. The 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. 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 6. AMENDATORY Section 37, Chapter 148, O.S.L. 1992, as last amended by Section 26, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, 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 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 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 the member's interest in the limited liability company, and removal is consented to by members 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 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 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 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 the member's consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of 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) the member's death, or~~

~~(2) the entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or 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 permits in writing the power to withdraw voluntarily, a member may not withdraw at any time. If the operating agreement specifically provides in writing the power to withdraw voluntarily and if, but 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 the power to withdraw if such power is permitted in the operating agreement.

~~D.~~ B. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, the member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee of the member's interest.

C. The operating agreement may provide for the expulsion of a member, with or without cause, which shall include reasonable provision for the distributable interest.

SECTION 7. AMENDATORY Section 38, Chapter 148, O.S.L. 1992, as last amended by Section 27, Chapter 226, O.S.L. 1996 (18 O.S. Supp. 1996, Section 2037), is amended to read as follows:

Section 2037. 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. The occurrence of events specified in writing in the operating agreement;

3. The written consent of all of the members; or

~~4. The occurrence of an event of dissociation of a member, unless the limited liability company is continued either by the 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~~

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

SECTION 8. REPEALER Section 28, Chapter 148, O.S.L. 1992, as amended by Section 15, Chapter 366, O.S.L. 1993 (18 O.S. Supp. 1996, Section 2027), is hereby repealed.

SECTION 9. This act shall become effective November 1, 1997.

46-1-0895

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