

As Introduced

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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
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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
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(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
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(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
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(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
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(3) The manager or managers shall cease to hold that position in a series as provided in the operating agreement. 123
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(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
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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
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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
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Sec. 1705.72. A limited liability company operating agreement may establish a record date for allocations and distributions for a series. 137
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Sec. 1705.73. (A) A limited liability company may make a distribution with respect to a series. 140
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(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
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(C) For purposes of division (B) of this section: 148

(1) The liabilities of a series do not include any of the following: 149
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(a) A liability related to the member's membership interest; 151
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(b) A liability for which the recourse of creditors is limited to specified property of the series. 153
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(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
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(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