

Senate Bill 21

Sponsored by Senator BOQUIST (at the request of DAPCPA) (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Permits limited liability companies in operating agreement to establish or provide for establishing one or more designated series of members, managers, transferable interests or assets. Specifies requirements that govern series in absence of provisions in operating agreement.

A BILL FOR AN ACT

1
2 Relating to limited liability company series.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 63.**

5 **SECTION 2. (1) An operating agreement may establish or provide for establishing one or**
6 **more designated series of members, managers, transferable interests or assets. To the ex-**
7 **tent that an operating agreement does not provide for a matter related to establishing a**
8 **series, this section governs the matter.**

9 **(2) Subject to subsection (3) of this section, if an operating agreement establishes or**
10 **provides for establishing a particular series:**

11 **(a) The debts, obligations and other liabilities of the particular series, whether arising in**
12 **contract, tort or otherwise, are enforceable only against the assets of the series and not**
13 **against:**

14 **(A) The assets of the limited liability company or the assets of a different series; or**

15 **(B) A member of the limited liability company.**

16 **(b) The debts, obligations and other liabilities of the limited liability company or of a**
17 **different series, whether arising in contract, tort or otherwise, are enforceable only against**
18 **the assets of the limited liability company or the other series.**

19 **(3) The limitations on liability specified in subsection (2) of this section apply only if all**
20 **of the following conditions are true:**

21 **(a) The series maintains records that account for the assets of the series separately from**
22 **records that account for the limited liability company's assets or the assets of a different**
23 **series. For the purposes of this paragraph, records separately account for the assets of a**
24 **series if the records reasonably identify the assets of the series, including by a specific list-**
25 **ing, a category, a type, a quantity, a formula for computing or allocating the assets, such**
26 **as a percentage or share, or by another method that allows an objective identification of the**
27 **assets and the ownership of the assets;**

28 **(b) The operating agreement specifically provides for the limitations on liability; and**

29 **(c) The articles of organization include a notice of the limitations on liability, even if the**
30 **notice does not refer to a particular series.**

31 **(4) This section does not, and an operating agreement or articles of organization may**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **not, restrict:**

2 (a) A series, or a limited liability company on behalf of a series, from agreeing in the
3 operating agreement or otherwise that the limited liability company's debts, obligations or
4 other liabilities generally, or the debts, obligations or other liabilities of another series, are
5 enforceable against the assets of the series;

6 (b) A limited liability company from agreeing in the operating agreement or otherwise
7 that the debts, obligations or other liabilities of a series are enforceable against the assets
8 of the limited liability company generally; or

9 (c) Notwithstanding ORS 63.165, a member or manager from agreeing in the operating
10 agreement or otherwise to be personally liable for any or all of the debts, obligations or other
11 liabilities of a series.

12 (5) A series established under this section has the power and capacity to enter into con-
13 tracts, hold title to real, personal and intangible property and other assets, grant liens and
14 security interests and sue or be sued in the series' own name. In addition to having the
15 powers and capacities set forth in this subsection, a series may:

16 (a) Have separate rights, powers or duties with respect to specified property or obli-
17 gations of the limited liability company or profits and losses associated with specified prop-
18 erty or obligations;

19 (b) Have any lawful purpose, for profit or not for profit, unless the purpose is acting as
20 a financial institution, as defined in ORS 706.008, or an insurer, as defined in ORS 731.106;
21 or

22 (c) Hold assets directly or indirectly, including in the name of the series or of the limited
23 liability company.

24 (6) An operating agreement that establishes or provides for establishing a series may:

25 (a) Provide for classes or groups of members or managers of the series that have the
26 relative rights, powers or duties that the operating agreement specifies;

27 (b) Provide for and specify future creation of additional classes or groups of members or
28 managers of the series that have the relative rights, powers or duties that may be estab-
29 lished for the classes or groups, including rights, powers and duties that are senior to the
30 rights, powers and duties of existing classes and groups of the series;

31 (c) Provide for taking an action, including amending the operating agreement, without
32 the vote or approval of any member or manager or any class or group of members or man-
33 agers of the series;

34 (d) Provide that a member, or a class or group of members, does not have voting rights;
35 or

36 (e) Grant to all members or managers, to certain identified members or managers, or to
37 a class or group of members or managers the right to vote on any matter separately or with
38 all or any class or group of members or managers of the series on a per capita basis, on the
39 basis of numbers, financial interests, class or group or on another basis.

40 (7) The management of a series must be vested:

41 (a) In the members of the series, as provided in ORS 63.130. A member ceases to be a
42 member of a series upon the divestment of all of the member's transferable interests in the
43 series. A person's cessation of membership in a particular series does not alone cause the
44 cessation of the person's membership in the limited liability company or in a different series
45 and does not cause the series to terminate even if the person was the last remaining member

1 of the series.

2 (b) In one or more managers, if the operating agreement provides for a manager to
3 manage the series. A manager must be chosen as provided in the operating agreement and
4 holds the offices and has the powers specified in the operating agreement. A manager ceases
5 to be a manager of a series as provided in the operating agreement and under ORS 63.130.
6 A person's cessation of the person's role as a manager of a particular series does not alone
7 cause the cessation of the person's role as a manager of the limited liability company or of
8 a different series.

9 (8) Notwithstanding ORS 63.195 and subject to subsections (9) and (11)(a) of this section,
10 if a member of a series becomes entitled to receive a distribution, the member has the status
11 of a creditor of the series and has all of the remedies available to a creditor with respect to
12 the distribution. An operating agreement may provide for establishing a record date for al-
13 locations and distributions associated with a series.

14 (9)(a) Notwithstanding ORS 63.229, a limited liability company may make a distribution
15 with respect to a series established under this section unless the total assets of the series
16 after the distribution would be less than the sum of the liabilities of the series plus the
17 amount that would be needed to satisfy the preferential rights of members with preferential
18 rights that, at the time of the winding up and termination, are superior to the rights of
19 persons that receive the distribution, if the series was dissolved, wound up and terminated
20 at the time of the distribution.

21 (b) A member that receives a distribution knowing that the distribution violates this
22 subsection is personally liable to the series for the amount of the distribution.

23 (c) This subsection does not affect a member's obligation or liability under an agreement
24 or under other applicable law for the amount of a distribution, except that an action under
25 this subsection must be brought within two years after the date of the distribution.

26 (d) For purposes of this subsection, a distribution does not include an amount that con-
27 stitutes reasonable compensation for a member's past or present services or reasonable
28 payments the member receives in the ordinary course of business under a bona fide retire-
29 ment plan or other benefits program.

30 (10)(a) Subject to ORS 63.637, a series established under this section may be terminated
31 and the affairs of the series wound up without causing the dissolution of the limited liability
32 company. Terminating the series does not affect the limitations of liability of the series, as
33 described in subsection (2) of this section.

34 (b) A series is terminated and the affairs of the series wound up if:

35 (A) The limited liability company dissolves;

36 (B) The operating agreement specifies an event that causes the series to terminate and
37 the event occurs;

38 (C) Members that own more than two-thirds of the interests in the profits of the series
39 vote or consent to the termination; or

40 (D) A court upon the application of a member or manager of the series orders the ter-
41 mination of the series on the ground that carrying on the purposes of the series in con-
42 formity with the operating agreement is not reasonably practicable.

43 (11)(a) A person that winds up the affairs of a series may take all actions authorized
44 under ORS 63.637 with respect to the series in the name of the limited liability company and
45 on behalf of the company and the series. The person shall provide for the claims and obli-

1 gations of the series and distribute the assets of the series as provided in ORS 63.625. An
2 action that a person takes in accordance with this subsection does not affect the liabilities
3 of members and does not impose liability on a liquidating trustee or receiver appointed to
4 wind up the affairs of the series.

5 (b) Notwithstanding ORS 63.637 (3), the following persons may wind up the affairs of a
6 series under this subsection:

7 (A) A manager of the series that has not wrongfully terminated the series;

8 (B) The members of the series or a person the members approve, if the series does not
9 have a manager that qualifies under subparagraph (A) of this paragraph;

10 (C) The members that own more than 50 percent of the interests in the profits of the
11 series; or

12 (D) A court or a liquidating trustee or receiver the court appoints upon an application
13 from a member or manager of the series or a personal representative or assignee of the
14 member or manager, for good cause shown.

15 (12) A foreign limited liability company that transacts business in this state and has an
16 operating agreement that establishes or provides for establishing one or more designated
17 series of members, managers, transferable interests or assets shall include in the foreign
18 limited liability company's application for authority to transact business in this state:

19 (a) A statement that the foreign limited liability company's operating agreement estab-
20 lishes or provides for establishing of series that have separate rights, powers or duties with
21 respect to specified property or obligations of the foreign limited liability company or to
22 profits or losses associated with specified property or obligations;

23 (b) A statement as to whether any of the debts, obligations or other liabilities of any
24 particular series, whether arising in contract, tort or otherwise, are enforceable solely
25 against the assets of the particular series and not against the assets of the foreign limited
26 liability company or a different series; and

27 (c) Whether any of the debts, obligations or other liabilities of the foreign limited liability
28 company generally or of another series are enforceable against the assets of a particular
29 series.

30 (13) The Secretary of State may adopt rules to implement the provisions of this section.

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