



**Am. Sub. H.B. 312**  
123rd General Assembly  
(As Passed by the General Assembly)

**Reps. Salerno, Buchy, Tiberi, Core, Perz, O'Brien, Olman, DePiero, Amstutz, Willamowski**

**Sen. Cupp**

**Effective date: \***

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**ACT SUMMARY**

- Eliminates the requirement that the articles of organization of a limited liability company filed with the Secretary of State specify an address to which interested persons may direct inquiries for copies of any operating agreement and any bylaws of the company and the requirement that the articles of organization must be amended if that address is changed.
- Eliminates a withdrawing member's right, within a reasonable time after withdrawal from membership in a limited liability company, to receive the fair value of the member's membership interest, and instead provides that the withdrawing member must be treated as an assignee of all of the member's membership interest.
- Specifies that the withdrawal of a member of a limited liability company does not cause the dissolution of the company, unless otherwise provided in the operating agreement, and specifies conditions of the application of this provision to limited liability companies formed before the act's effective date.
- Declares an emergency but delays the effective date of the act until the later of December 1, 1999, or the date when the act becomes effective under the emergency clause.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

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## CONTENT AND OPERATION

### Formation of a limited liability company; articles of organization

#### Limited Liability Company Law

Under the Limited Liability Company (LLC) Law, Chapter 1705. of the Revised Code, a limited liability company may be formed for any purpose or purposes for which individuals lawfully may associate themselves, *except* that, if the Revised Code contains special provisions for the formation of any designated type of corporation other than a professional association, a limited liability company cannot be formed for the purpose or purposes for which that type of corporation may be formed (sec. 1705.02--not in the act). The LLC Law provides that one or more persons, without regard to residence, domicile, or state of organization, may form a limited liability company (see **COMMENT 1**). A limited liability company is formed when one or more persons or their authorized representatives sign and file articles of organization with the Secretary of State. These articles of organization must provide (1) the company's name, (2) the duration of existence of the company, which may be perpetual (if the articles of organization or operating agreement do not specify the period of duration, the duration is perpetual), (3) under former law, *the address to which interested persons may direct inquiries for copies of any operating agreement and any bylaws of the company*, and (4) any other provisions that are either (a) set forth in the operating agreement, or (b) provide for regulation of the affairs of the company that the members elect to set forth in the articles of organization and are not inconsistent with applicable law. (Sec. 1705.04(A) and (B).)

Under the LLC Law, the articles of organization of a limited liability company may be amended at any time and for any proper purpose by filing a certificate of amendment with the Secretary of State. However, a certificate of amendment amending the articles of organization *must* be filed within 30 days after the occurrence of any of the following: (a) the name of the limited liability company is changed, (b) the period of the limited liability company's duration is changed, (c) under former law, *the address to which persons may direct requests for copies of any operating agreements or bylaws of the limited liability company is changed*, or (d) any other information that is set forth in the articles of organization is changed. (Sec. 1705.08(A).)

#### Operation of the act

The act eliminates the requirement in prior law that, in order to form a limited liability company, the articles of organization was required to set forth the address to which interested persons may direct requests for copies of any operating

agreement and any bylaws of the company (sec. 1705.04(A)(3)). (See **COMMENT 2.**)

The act also eliminates the prior law's requirement that a certificate of amendment amending the articles of organization was required to be filed within 30 days after the address to which persons may direct requests for copies of any operating agreements or bylaws of the limited liability company is changed (sec. 1705.08(A)(3)).

### **Distribution rights of a withdrawing member**

#### **Prior law**

The LLC Law provides that upon withdrawal, a member of a limited liability company is entitled to receive any distribution that the member is entitled to pursuant to the operating agreement. Under the prior LLC Law, except as otherwise provided in the operating agreement, the member also was entitled to receive, within a reasonable time after withdrawal, the fair value of the member's membership interest as of the withdrawal date based upon the member's right to share in distributions of the limited liability company. (Sec. 1705.12.) (See **COMMENT 3.**)

#### **Operation of the act**

The act eliminates the withdrawing member's right, within a reasonable time after withdrawal, to receive the fair value of the member's membership interest as of the withdrawal date based upon the member's right to share in distributions of the limited liability company. Instead, the act provides that the withdrawing member must be treated as an assignee of all of the member's membership interest as of the date of withdrawal. (Sec. 1705.12.) (See **COMMENT 4.**)

### **Dissolution upon withdrawal of a member**

#### **Continuing law**

The prior LLC Law provided that a limited liability company is dissolved upon the occurrence of a number of events. These events were: (1) the expiration of the period fixed by the operating agreement or articles of organization for the duration of the company, (2) one or more events specified in writing in the operating agreement as causing the dissolution of the company, (3) the unanimous written agreement of all members to dissolve the company, (4) *the withdrawal of a member, unless all the remaining members agree to continue the company or the right to continue upon withdrawal of a member is specified in writing in the*

*operating agreement*, or (5) upon entry of a decree of judicial dissolution. (Sec. 1705.43(A).)

### **Operation of the act**

The act establishes an exception to the dissolution of a limited liability company by the withdrawal of a member as described above in (4). Under the act, the withdrawal of a member of a limited liability company does not cause the dissolution of the company, except as provided in the operating agreement, if the company was formed on or after the act's effective date, or if it was formed prior to the act's effective date and the articles or operating agreement are amended to specifically state that this provision of the act applies to the company. (Sec. 1705.43(A)(4) and (C).)

### **Emergency clause and effective date**

The act declares an emergency and states that it is crucial that the act be enacted into law at the earliest possible time to enable incorporating and corporate entities to utilize the changes created by the act prior to the end of 1999 (Section 4). The act delays its effective date until the later of December 1, 1999, or the earliest time permitted by law which is the date when the act becomes effective under the emergency clause (Section 3).

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## **COMMENT**

1. For purposes of the LLC Law, sec. 1705.01 (not in the act) defines the following terms, among others:

(a) "Member" means a person whose name appears on the records of the limited liability company as the owner of a membership interest in that company.

(b) "Membership interest" means a member's share of the profits and losses of a limited liability company and the right to receive distributions from that company.

(c) "Contribution" means any cash, property, services rendered, promissory note, or other binding obligation to contribute cash or property or to perform services that a member contributes to a limited liability company in the capacity as a member.

(d) "Operating agreement" means all of the valid written or oral agreements of the members or, in the case of a limited liability company consisting of one member, a written declaration of that member, as to the affairs of a limited liability company and the conduct of its business.

(e) "Person" means any natural person; partnership, limited partnership, trust, estate, association, limited liability company, or corporation; any custodian, nominee, trustee, executor, administrator, or other fiduciary; or any other individual or entity in its own or any representative capacity.

(f) "Entity" means any of the following:

(i) A for profit corporation existing under the laws of Ohio or any other state;

(ii) Any of the following organizations existing under the laws of Ohio, the United States, or any other state: a business trust or association; a real estate investment trust; a common law trust; an unincorporated business or for profit organization, including a general or limited partnership; or a limited liability company.

2. Under sec. 1705.28--not in the act, a limited liability company must keep at its principal office, the location of which need not be in Ohio, copies of company documents and writings, including a copy of any written operating agreement and all amendments to that agreement. But the list of documents or writings copies of which are currently required to be kept at the company's principal office does *not* specifically include the *bylaws* of the company.

3. The LLC Law specifies the events the occurrence of which causes a member of a limited liability company to cease being such a member. These *events of withdrawal* include, among others: (a) the resignation or withdrawal as a member in accordance with the operating agreement or with the law, (b) the removal or expulsion as a member in accordance with the operating agreement, (c) unless otherwise provided in writing in the operating agreement, when a member makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or insolvent, or files a petition, answer, or other pleading in any of specified types of relief proceedings, (d) unless otherwise provided in writing in the operating agreement, the death or an adjudication as incompetent of a member who is an individual, (e) unless otherwise provided in writing in the operating agreement: the trust of which a member is a trustee terminates, the dissolution and commencement of winding up of a member that is a partnership, the dissolution and commencement of winding up of a member that is a separate limited liability company, the filing of a certificate of dissolution or revoking of a charter without reinstatement within 90 days of a member that is a corporation, or the distribution of the estate's membership interest if the member is an estate. (Sec. 1705.15--not in the act.)

4. Under the LLC Law, an assignment of a membership interest does not entitle the assignee to become or to exercise any rights of a member. An

assignment entitles the assignee to receive, to the extent assigned, "the distributions of cash and other property and the allocations of profits, losses, income, gains, deductions, credits, or similar items to which the assignee's assignor would have been entitled." Unless otherwise provided in an operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee does not have liability as a member solely because of the assignment. (Sec. 1705.18--not in the act.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-27-99	p. 478
Reported, H. Civil & Commercial Law	06-24-99	p. 963 (incorrect bill number in Journal)
Passed House (96-0)	06-28-99	pp. 1065-1066
Reported, S. Judiciary	11-10-99	p. 1165
Passed Senate (33-0)	11-10-99	pp. 1171-1172
House concurred in Senate amendments (78-3)	11-10-99	pp. 1358-1360

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