



2020 South Dakota Legislature

House Bill 1179

Introduced by: **Representative Hansen**

1 **An Act to authorize series limited liability companies.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1.** That a NEW SECTION be added:

4 **47-34A-701. Series of members, managers, or limited liability company**
5 **interests permitted.**

6 An operating agreement may establish or provide for the establishment of a series
7 of members, managers, or limited liability company interests having separate rights,
8 powers, or duties with respect to specified property or obligations of the limited liability
9 company or profits and losses associated with specified property or obligations. To the
10 extent provided in the operating agreement, any such series may have a separate
11 business purpose or investment objective.

12 **Section 2.** That a NEW SECTION be added:

13 **47-34A-702. Liability of series for debts of limited liability company or other**
14 **series.**

15 (a) Notwithstanding any other provisions of law to the contrary, the debts,
16 liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a
17 particular series shall be enforceable against the assets of such series only, and not against
18 the assets of the limited liability company generally or any other series thereof, if all of
19 the following apply:

- 20 (1) The operating agreement creates one or more series;
21 (2) Separate and distinct records are maintained for or on behalf of any such series;
22 (3) The assets associated with any such series, whether held directly or indirectly,
23 including through a nominee or otherwise, are accounted for separately from the
24 other assets of the limited liability company or of any other series;

1 (4) The operating agreement provides for the limitations on liabilities of a series
2 described in this subsection;

3 (5) Notice of the limitation on liabilities of a series described in this subsection is
4 included in the limited liability company's articles of organization; and

5 (6) A certificate of designation has been issued for each series that is to have limited
6 liability under this section.

7 (b) A particular series shall be deemed to have possession, custody, and control only
8 of the books, records, information, and documentation related to such series and not of the
9 books, records, information, and documentation related to the limited liability company as a
10 whole or any other series thereof.

11 (c) With respect to a particular series, unless otherwise provided in the operating
12 agreement, none of the debts, liabilities, obligations, and expenses incurred, contracted for
13 or otherwise existing with respect to a limited liability company generally, or any other series
14 thereof, are enforceable against the assets of such series, subject to the provisions of
15 subsection (a).

16 (d) Compliance with subdivisions (a)(5) and (a)(6) of this section shall constitute
17 notice of such limitation of liability of a series.

18 (e) A series with limited liability shall be treated as a separate entity to the extent set
19 forth in the articles of organization. Each series with limited liability may, in its own name,
20 contract, hold title to assets, including real and personal property, whether tangible or
21 intangible, grant security interests, sue and be sued, and otherwise conduct business and
22 exercise the powers of a limited liability company under this chapter. The limited liability
23 company and any of its series may elect to consolidate its operations as a single taxpayer to
24 the extent permitted under applicable law, elect to work cooperatively, elect to contract
25 jointly, or elect to be treated as a single business for the purposes of qualification or
26 authorization to do business in this or any other state. Such elections do not affect the
27 limitation of liability set forth in this section except to the extent that the series have
28 specifically accepted joint liability by contract.

29 **Section 3.** That a NEW SECTION be added:

30 **47-34A-703. Name of series.**

31 Except in the case of a foreign limited liability company that has adopted a name
32 that is not the name under which it is registered in its jurisdiction of organization, as
33 permitted under § 47-34A-1005, the name of the series with limited liability is required to
34 contain the entire name of the limited liability company and be distinguishable from the

1 names of the other series set forth in the articles of organization. In the case of a foreign
2 limited liability company that has adopted a name that is not the name under which it is
3 registered in its jurisdiction of organization, as permitted under § 47-34A-1005, the name
4 of the series with limited liability must contain the entire name under which the foreign
5 limited liability company has been admitted to transact business in this state.

6 **Section 4.** That a NEW SECTION be added:

7 **47-34A-704. Formation of series—Amendment to certificate of designation—**
8 **Dissolution of series—Registered agent and office.**

9 (a)

10 (1) Upon issuance by the secretary of state of a certificate of designation setting forth
11 the name of the series with limited liability, in compliance with § 47-34A-203 or
12 amendments under § 47-34A-204, the series' existence shall begin;

13 (2) Each certificate of designation issued by the secretary of state shall be conclusive
14 evidence that all required conditions have been met and that the series has been
15 or shall be legally organized and formed under this section and is notice for all
16 purposes of all other facts required to be set forth therein as of the filing date on
17 the certificate;

18 (3) The name of a series with limited liability under this section may be changed by
19 filing an application for a new certificate of designation with the secretary of state
20 pursuant to § 47-34A-204, identifying the series whose name is being changed and
21 the new name of such series. If the managers of a series are not the same as the
22 managers of the limited liability company, the names of the managers of a
23 manager-managed series may be changed by filing an application for a new
24 certificate of designation with the secretary of state;

25 (4) A series with limited liability under this section may be dissolved (i) upon the
26 occurrence of any of the events referenced in § 47-34A-801 with respect to the
27 series or (ii) by the dissolution of the limited liability company as provided in § 47-
28 34A-801. Except to the extent otherwise provided in the operating agreement, a
29 series may be dissolved and its affairs wound up without causing the dissolution of
30 the limited liability company or any other series. The dissolution of a series
31 established in accordance with § 47-34A-702 does not affect the limitation on
32 liabilities of such series provided by § 47-34A-702. A series will be terminated (i)
33 upon the dissolution and winding up of the limited liability company and the filing
34 of articles of termination pursuant to § 47-34A-805, or (ii) upon the dissolution

1 and winding up of the series and filing of an application for a certificate of
2 designation identifying the series being terminated;

3 (5) Articles of organization, articles of amendment, articles of termination, or
4 applications for certificates of designation described under this subsection may be
5 executed by the limited liability company or any manager, person, or entity
6 designated in the operating agreement for the limited liability company.

7 (b) If different from the limited liability company, the application for the certificate
8 of designation shall list the names of the managers if the series is manager-managed.

9 (c) A series of a limited liability company shall be deemed to be in good standing
10 as long as the limited liability company is in good standing. A series of a limited liability
11 company is administratively dissolved when the limited liability company is
12 administratively dissolved, and the series will be reinstated if the limited liability company
13 is reinstated.

14 (d) The registered agent and registered office for the limited liability company
15 appointed under chapter 59-11 shall serve as the agent and office for service of process
16 for each series in this state.

17 **Section 5.** That a NEW SECTION be added:

18 **47-34A-705. Rights, powers, and duties relating to series governed by**
19 **operating agreement.**

20 (a) An operating agreement may provide for classes or groups of members or
21 managers associated with a series having such relative rights, powers, and duties as an
22 operating agreement may provide and may make provision for the future creation of
23 additional classes or groups of members or managers associated with the series having
24 such relative rights, powers, and duties as may be established, including rights, powers,
25 and duties senior and subordinate to or different from existing classes and groups of
26 members or managers associated with the series.

27 (b) A series may be managed either by the member or members associated with
28 the series or by the manager or managers chosen by the members of such series, as
29 provided in the operating agreement. Unless otherwise provided in an operating
30 agreement, the management of a series shall be vested in the members associated with
31 such series.

32 (c) An operating agreement may grant to all or certain identified members or
33 managers, or to a specified class or group of the members or managers associated with a
34 series, the right to vote separately or with all or any class or group of the members or

1 managers associated with the series, on any matter. An operating agreement may provide
2 that any member or class or group of members associated with a series shall have no
3 voting rights or ability to otherwise participate in the management or governance of such
4 series, but any such member or class or group of members are owners of the series.

5 (d) Except as modified in this section, the provisions of this chapter that are
6 generally applicable to limited liability companies and their managers, members, and
7 transferees shall be applicable to each particular series with respect to the operation of
8 such series. Except as otherwise provided in an operating agreement, a manager of a
9 manager-managed series owes the duties referenced in § 47-34A-409 only to the series
10 for which the manager serves as a manager. A manager of a manager-managed series
11 does not owe any duty (i) to any series for which the manager does not serve as a
12 manager, (ii) to the members of another series for which the manager does not serve as
13 a manager, in their capacity as members of another series, (iii) to the limited liability
14 company, or (iv) to the members of the limited liability company, in their capacity as
15 members of the limited liability company. Except as otherwise provided in an operating
16 agreement, a member of a member-managed series owes the duties referenced in § 47-
17 34A-409 only to the series of which the member is a member. A member of a member-
18 managed series does not owe any duty (i) to any series of which the member is not a
19 member, (ii) to the members of another series of which the member is not a member, in
20 their capacity as members of another series, (iii) to the limited liability company, or (iv)
21 to the members of the limited liability company, in their capacity as members of the limited
22 liability company.

23 (e) Except as otherwise provided in an operating agreement, any event specified
24 in this chapter or in an operating agreement that causes a manager to cease to be a
25 manager with respect to a series does not, in itself, cause such manager to cease to be a
26 manager of the limited liability company or with respect to any other series thereof.

27 (f) Except as otherwise provided in an operating agreement, any event specified in
28 this chapter or in an operating agreement that causes a member to cease to be associated
29 with a series does not, in itself, cause such member to cease to be associated with any
30 other series, terminate the continued membership of a member in the limited liability
31 company, or cause the termination of the series, regardless of whether such member was
32 the last remaining member associated with such series.

33 (g) An operating agreement may impose restrictions, duties, and obligations on
34 members of the limited liability company or any series thereof as a matter of internal
35 governance, including, without limitation, those with regard to:

- 1 (1) Choice of law, forum selection, or consent to personal jurisdiction;
- 2 (2) Capital contributions;
- 3 (3) Restrictions on, or terms and conditions of, the transfer of membership interests;
- 4 (4) Restrictive covenants, including noncompetition, nonsolicitation, and
- 5 confidentiality provisions;
- 6 (5) Fiduciary duties; and
- 7 (6) Restrictions, duties, or obligations to or for the benefit of the limited liability
- 8 company, other series thereof, or their affiliates.

9 **Section 6.** That a NEW SECTION be added:

10 **47-34A-706. Activities of series in foreign jurisdiction-- Registration of**
11 **series authorized in foreign jurisdiction.**

12 (a) If a limited liability company with the ability to establish series does not register
13 to do business in a foreign jurisdiction for itself and its series, a series of a limited liability
14 company may itself register to do business as a limited liability company in the foreign
15 jurisdiction in accordance with the laws of the foreign jurisdiction.

16 (b) If a foreign limited liability company, as permitted in the jurisdiction of its
17 organization, has established a series having separate rights, powers, or duties and has
18 limited the liabilities of such series so that the debts, liabilities, and obligations incurred,
19 contracted for, or otherwise existing with respect to a particular series are enforceable
20 against the assets of such series only, and not against the assets of the limited liability
21 company generally or any other series thereof, or so that the debts, liabilities, obligations,
22 and expenses incurred, contracted for, or otherwise existing with respect to the limited
23 liability company generally or any other series thereof are not enforceable against the
24 assets of such series, then the limited liability company, on behalf of itself or any of its
25 series, or any of its series on its own behalf may register to do business in this state in
26 accordance with this chapter. The limitation of liability shall also be stated on the
27 application for registration. In addition to the requirements of § 47-34A-1002, the
28 registration application filed shall identify each series being registered to do business in
29 the state by the limited liability company. Unless otherwise provided in the operating
30 agreement, the debts, liabilities, and obligations incurred, contracted for, or otherwise
31 existing with respect to a particular series of such a foreign limited liability company shall
32 be enforceable against the assets of such series only and not against the assets of the
33 foreign limited liability company generally or any other series thereof, and none of the
34 debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing

1 with respect to such a foreign limited liability company generally or any other series
2 thereof shall be enforceable against the assets of such series. Any series registering to do
3 business in this state on its own behalf shall provide the information required in § 47-34A-
4 1002 and pay the fees required by § 47-34A-212 and any other required fees.

5 **Section 7.** That a NEW SECTION be added:

6 **47-34A-707. Requirements for application for certificate of designation.**

7 An application for a certificate of designation shall exist in a medium prescribed by
8 the secretary of state and shall set forth:

9 (1) The name of the limited liability company;

10 (2) The name of the series of the limited liability company;

11 (3) The principal office address for the series; and

12 (4) Whether the series is to be manager-managed, and, if so, the name and address
13 for each initial manager, if different than the manager of the limited liability
14 company in subsection (1).

15 Any amendment to the certificate of designation shall require a new application for
16 a certificate of designation and payment of the applicable filing fee.

17 **Section 8.** That § 47-34A-203 be AMENDED:

18 **47-34A-203. Articles of organization.**

19 (a) Articles of organization of a limited liability company must set forth:

20 (1) The name of the company;

21 (2) The address of the initial designated office;

22 (3) The information required by § 59-11-6;

23 (4) The name and address of each organizer;

24 (5) The duration of the company if other than perpetual;

25 (6) Whether the company is to be manager-managed, and, if so, the name and address
26 for each initial manager; ~~and~~

27 (7) Whether one or more of the members of the company are to be liable for its debts
28 and obligations under § 47-34A-303(c); and

29 (8) Whether the limited liability company is authorized to establish one or more series
30 and the matters required under § 47-34A-702.

31 (b) Articles of organization of a limited liability company may set forth:

32 (1) Provisions permitted to be set forth in an operating agreement; or

33 (2) Other matters not inconsistent with law.

1 (c) Articles of organization of a limited liability company may not vary the nonwaivable
2 provisions of § 47-34A-103(b). As to all other matters, if any provision of an operating
3 agreement is inconsistent with the articles of organization:

- 4 (1) The operating agreement controls as to managers, members, and members'
5 transferees; and
6 (2) The articles of organization control as to persons, other than managers, members
7 and their transferees, who reasonably rely on the articles to their detriment.

8 **Section 9.** That § 47-34A-212 be AMENDED:

9 **47-34A-212. Fees.**

10 The secretary of state shall charge and collect for:

- 11 (a) Filing the articles of organization in the case of a domestic limited liability company,
12 a filing fee of one hundred fifty dollars. Filing the articles of organization in the case
13 of a foreign limited liability company, a filing fee of seven hundred fifty dollars;
14 (b) A reporting fee of fifty dollars, due and payable with the filing of each annual report.
15 Each entity that does not file or refuses to file its annual report within the time
16 prescribed is subject to a penalty of fifty dollars to be assessed by the secretary of
17 state-;
- 18 (c) Filing the articles of organization in the case of a domestic limited liability company,
19 where the articles of organization contain a notice that the limited liability company
20 is authorized to establish one or more series, a filing fee of two hundred dollars.
21 Filing an application for a certificate of authority in the case of a foreign limited
22 liability company authorized to establish a series under the laws of another state or
23 jurisdiction, or series of such limited liability company on its own behalf, a filing fee
24 of eight hundred dollars.

25 **Section 10.** That § 47-34A-1002 be AMENDED:

26 **47-34A-1002. Application for certificate of authority.**

27 (a) A foreign limited liability company may not do business in this state until it
28 obtains a certificate of authority from the secretary of state.

29 (b) A foreign limited liability company may apply for a certificate of authority to
30 transact business in this state by delivering an application to the secretary of state for
31 filing. Delivery may be made by electronic transmission if and to the extent permitted by
32 the Office of the Secretary of State. If the document is filed in typewritten or printed form

1 and not transmitted electronically, the Office of the Secretary of State may require one
2 exact or conformed copy to be delivered with the document. The application must state:

3 (1) The name of the company and, if the name does not comply with § 47-34A-105, an
4 alternate name adopted pursuant to § 47-34A-105;

5 (2) The name of the state or other jurisdiction under whose law the company is formed;

6 (3) The street and mailing addresses of the company's principal office and if the law of
7 the jurisdiction under which the company is formed requires the company to
8 maintain an office in that jurisdiction, the street and mailing address of the required
9 office; ~~and~~

10 (4) If the limited liability company is authorized to establish one or more series, the
11 matters required under § 47-34A-702; and

12 ~~(4)~~(5) The name and street and mailing address of the company's initial agent for service
13 of process in this state.

14 (c) A foreign limited liability company shall deliver with a completed application under
15 subsection (a) a certificate of existence or a record of similar import signed by the
16 secretary of state or other official having custody of the company's publicly filed records
17 in the state or other jurisdiction under whose law the company is formed together with
18 the fees required by § 47-34A-212, and all other fees.

19 **Section 11.** That § 47-34A-1206 be AMENDED:

20 **47-34A-1206. Fees.**

21 The secretary of state may charge the following fees:

22 (a) For amending or restating the articles of organization in the case of a domestic
23 limited liability company, a filing fee of sixty dollars. For amending the ~~registration~~
24 certificate of authority in the case of a foreign limited liability company, a filing fee
25 of seven hundred fifty dollars;

26 (b) For filing articles of termination, ten dollars;

27 (c) For filing articles of merger, sixty dollars;

28 (d) For filing a statement of dissociation, ten dollars;

29 (e) For filing an application to reserve a name, twenty-five dollars;

30 (f) For issuing a certificate of existence, twenty dollars;

31 (g) For filing an application for registration of name, twenty-five dollars;

32 (h) For filing an annual renewal of registration, a limited liability company which has in
33 effect a registration of its name, may renew such registration from year to year by
34 annually filing an application for renewal setting forth the facts required to be set

1 forth in an original application for registration and a certificate of good standing as
2 required for the original registration and by paying a fee of fifteen dollars. A renewal
3 application may be filed between the first day of October and the thirty-first day of
4 December in each year and shall extend the registration for the following year.
5 Delivery may be made by electronic transmission if and to the extent permitted by
6 the Office of the Secretary of State. If the document is filed in typewritten or printed
7 form and not transmitted electronically, the Office of the Secretary of State may
8 require one exact or conformed copy to be delivered with the document;

9 (i) For acting as agent for service of process the secretary of state shall charge and
10 collect at the time of such service thirty dollars which may be recoverable as taxable
11 costs by the party to the suit or action causing the service to be made if the party
12 prevails in the suit or action;

13 (j) For filing articles of domestication, one hundred fifty dollars;

14 (k) For filing articles of organization surrender, one hundred fifty dollars;

15 (l) For filing a plan of conversion, one hundred fifty dollars-;

16 (m) For amending or restating the articles of organization in the case of a domestic
17 limited liability company or for filing an application to amend or restate the
18 certificate of authority in the case of a foreign limited liability company, where the
19 amendment contains a notice that the limited liability company is authorized to
20 establish one or more series, a filing fee of one hundred ten dollars;

21 (n) For filing an application for a certificate of designation, fifty dollars.

22 **Section 12.** That § 57A-9-528 be AMENDED:

23 **57A-9-528. Fees deposited in filing fee fund.**

24 For each effective financing statement filed ~~pursuant to~~ under this chapter, three
25 dollars of the fee collected pursuant to § 57A-9-525, and the computer search fee
26 assessed pursuant to § 57A-9-525, shall be deposited in the financing statement and
27 annual report filing fee fund. For each annual report filed pursuant to § 59-11-24 in fiscal
28 years 2010 and 2011, three dollars of the fee collected shall be deposited in the financing
29 statement and annual report filing fee fund. For each annual report filed pursuant to § 59-
30 11-24 in fiscal year 2012 and each year thereafter, one dollar of the annual report fee
31 shall be deposited in the financing statement and annual report filing fee fund. For each
32 amendment of an annual report filed pursuant to § 59-11-24 in fiscal year 2016 and each
33 year after, the fee for the amendment shall be deposited in the financing statement and
34 annual report filing fee fund. For each application for a certificate of designation filed under

1 § 47-34A-707, five dollars of the fee collected shall be deposited in the financing
2 statement and annual report filing fee fund.

3 **Section 13.** That § 59-11-24 be AMENDED:

4 **59-11-24. Annual report.**

5 Each filing entity or qualified foreign entity, except a bank organized ~~pursuant to~~
6 under § 51A-3-1.1, and a limited partnership organized pursuant to chapter 48-7, or a
7 series of a limited liability company established under §§ 47-34A-701 through 47-34A-
8 707 shall deliver to the Office of the Secretary of State for filing an annual report that sets
9 forth:

- 10 (1) The name of the filing entity or qualified foreign entity;
- 11 (2) The jurisdiction under whose law it is formed;
- 12 (3) The address of its principal office, wherever located;
- 13 (4) The information required by § 59-11-6; and
- 14 (5) The names and business addresses of its governors except in the following two
15 cases:
- 16 (a) If a business corporation has eliminated its board of directors pursuant to
17 § 47-1A-732, the annual report shall set forth the names of the shareholders
18 instead; and
- 19 (b) If a limited liability company is member-managed, the names and business
20 addresses of its governors need not be set forth.

21 Information in the annual report must be current as of the date the annual report is
22 executed on behalf of the filing entity or qualified foreign entity. Any other provisions of
23 law notwithstanding the annual report may be executed by any authorized person. Any
24 amendment filed is a supplement to, and not in place of, the annual filing required by this
25 section.

26 **Section 14. This Act is effective on November 15, 2020.**