

State of Arizona  
House of Representatives  
Fifty-first Legislature  
First Regular Session  
2013

# HOUSE BILL 2166

AN ACT

AMENDING SECTIONS 29-601, 29-632 AND 29-635, ARIZONA REVISED STATUTES;  
AMENDING TITLE 29, CHAPTER 4, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING  
SECTION 29-658; AMENDING SECTIONS 29-681, 29-706, 29-781 AND 29-785, ARIZONA  
REVISED STATUTES; RELATING TO LIMITED LIABILITY COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 29-601, Arizona Revised Statutes, is amended to  
3 read:

4 29-601. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Articles of organization" means the initial articles of  
7 organization as amended or restated from time to time.

8 2. "Assignee" means any person who acquires in any manner the  
9 ownership of an interest in a limited liability company and who has not been  
10 admitted as a member.

11 3. "Capital contribution" means cash, other property, the use of  
12 property, services rendered or any other valuable consideration transferred  
13 to a limited liability company as consideration for issuing an interest in a  
14 limited liability company.

15 4. "Commission" means the corporation commission.

16 5. "Court" includes any court and judge with jurisdiction in the case.

17 6. "Domestic limited liability company" or "limited liability company"  
18 means a limited liability company organized and existing under this chapter.

19 7. "Event of withdrawal" means an event that causes a person to cease  
20 to be a member as provided in section 29-733.

21 8. "Executed" means executed by manual or facsimile signature on  
22 behalf of the limited liability company by a duly authorized member if  
23 management of the limited liability company is reserved to the members or  
24 manager if management of the limited liability company is vested in a  
25 manager, or if the limited liability company is in the hands of a receiver or  
26 trustee, by the receiver or trustee.

27 9. "Filing" means the commission completing the following procedure  
28 with respect to any document delivered for that purpose:

29 (a) Determining that the filing fee requirements of this chapter have  
30 been satisfied.

31 (b) Determining that the document appears in all respects to conform  
32 to the requirements of this chapter.

33 (c) On making the determinations required by this paragraph,  
34 endorsement of the word "filed" with the applicable date on or attached to  
35 the document and the return of copies to the person who delivered the  
36 document or the person's representative.

37 10. "Foreign limited liability company" means either:

38 (a) An unincorporated entity or association that is owned by one or  
39 more persons that have limited liability for the debts of the business, other  
40 than a partnership or trust, and that is formed under the laws of a  
41 jurisdiction other than this state for any lawful purpose, including the  
42 rendering of professional services as defined in that jurisdiction.

43 (b) An entity or unincorporated association that is formed under the  
44 laws of a jurisdiction other than this state for any lawful purpose,  
45 including the rendering of professional services as defined in that

1 jurisdiction, and that is characterized as a limited liability company by  
2 those laws.

3 11. "Initial articles of organization" means the articles of  
4 organization filed with the commission at the time a limited liability  
5 company is formed, including articles of organization that are corrected to  
6 conform to the filing provisions of this chapter pursuant to section 29-634,  
7 subsection C, paragraph 2.

8 12. "Member" means a person who is admitted as a member in a limited  
9 liability company pursuant to this chapter until an event of withdrawal  
10 occurs with respect to the person and, if reference is made to members, that  
11 reference means a member in the case of a limited liability company that has  
12 a single member. A member includes a noneconomic member of a limited  
13 liability company who:

14 (a) Does not own a member's interest in the company.

15 (b) Does not have an obligation to contribute capital to the company.

16 (c) Does not have a right to participate in or receive distributions  
17 of profits of the company or an obligation to contribute to the losses of the  
18 company.

19 (d) May have voting rights and other rights and privileges as  
20 prescribed by the articles of organization or operating agreement.

21 13. "Member's interest", "interest in a limited liability company" or  
22 "interest in the limited liability company" means a member's share of the  
23 profits and losses of a limited liability company and the right to receive  
24 distributions of limited liability company assets.

25 14. "Operating agreement" means either:

26 (a) Any written or oral agreements among all members concerning the  
27 affairs of a limited liability company or the conduct of its business.

28 (b) In the case of a limited liability company that has a single  
29 member, any written or oral statement of the member made in good faith  
30 purporting to govern the affairs of a limited liability company or the  
31 conduct of its business as of the effective time of the statement.

32 15. "Person" includes any individual, general partnership, limited  
33 partnership, domestic or foreign limited liability company, corporation,  
34 trust, business trust, real estate investment trust, estate and other  
35 association.

36 16. "Real property" includes land, any interest, leasehold or estate in  
37 land and any improvements on it.

38 17. "SERIES" AND "SERIES OF MEMBERS" MEANS A SERIES OF MEMBERS'  
39 INTERESTS HAVING SEPARATE RIGHTS, POWERS OR DUTIES WITH RESPECT TO PROPERTY,  
40 OBLIGATIONS OR PROFITS AND LOSSES ASSOCIATED WITH PROPERTY OR OBLIGATIONS  
41 THAT ARE SPECIFIED IN THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OR  
42 SPECIFIED BY ONE OR MORE MEMBERS OR MANAGERS OR OTHER PERSONS AS PROVIDED IN  
43 THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT.

44 ~~17.~~ 18. "State" means a state, possession or territory of the United  
45 States, the District of Columbia or the Commonwealth of Puerto Rico.

1           Sec. 2. Section 29-632, Arizona Revised Statutes, is amended to read:

2           29-632. Articles of organization

3           A. The articles of organization shall state:

4           1. The name of the limited liability company.

5           2. The name, street address in this state and signature of the agent  
6 for service of process required to be maintained by section 29-604.

7           3. The address of the LIMITED LIABILITY company's known place of  
8 business in this state, if different from the street address of the company's  
9 statutory agent.

10          4. The latest date, if any, on which the limited liability company  
11 must dissolve.

12          5. Either of the following statements:

13           (a) Management of the limited liability company is vested in a manager  
14 or managers.

15           (b) Management of the limited liability company is reserved to the  
16 members.

17          6. The name and address of either of the following:

18           (a) If management of the limited liability company is vested in a  
19 manager or managers, each person who is a manager of the limited liability  
20 company and each member who owns a twenty per cent or greater interest in the  
21 capital or profits of the limited liability company.

22           (b) If management of the limited liability company is reserved to the  
23 members, each person who is a member of the limited liability company.

24          7. IF THE LIMITED LIABILITY COMPANY IS TO HAVE ONE OR MORE SERIES OF  
25 MEMBERS AND THE DEBTS OR LIABILITIES OF ANY SERIES ARE TO BE ENFORCEABLE  
26 AGAINST THE ASSETS OF THAT SERIES ONLY AND NOT AGAINST THE ASSETS OF ANOTHER  
27 SERIES OR THE LIMITED LIABILITY COMPANY GENERALLY, A STATEMENT TO THAT EFFECT  
28 AND A STATEMENT THAT DOES EITHER OF THE FOLLOWING:

29           (a) SETS FORTH THE RELATIVE RIGHTS, POWERS AND DUTIES OF THE SERIES.

30           (b) INDICATES THAT THE RELATIVE RIGHTS, POWERS AND DUTIES OF THE  
31 SERIES WILL BE SET FORTH IN THE OPERATING AGREEMENT OR ESTABLISHED AS  
32 PROVIDED IN THE OPERATING AGREEMENT.

33          B. The articles of organization may include any other provision that  
34 is consistent with law, including any provisions under this chapter that are  
35 required or permitted to be set out in an operating agreement of the limited  
36 liability company.

37          C. It is not necessary to set out in the articles of organization any  
38 of the powers enumerated in this chapter.

39          Sec. 3. Section 29-635, Arizona Revised Statutes, is amended to read:

40          29-635. Formation of limited liability company

41          A. Except as provided in section 29-634, subsection D, a limited  
42 liability company is formed when the articles of organization are delivered  
43 to the commission for filing, even if the commission is unable to make the  
44 determination required for filing by section 29-634, subsection A at the time  
45 of delivery. If the articles of organization, as delivered to the

1 commission, do not conform to the filing provisions of this chapter and are  
2 not brought into conformance within the time period prescribed by section  
3 29-634, subsection C, paragraph 2, the existence of the limited liability  
4 company terminates at the end of the time period.

5 B. A copy of the articles of organization that is filed with the  
6 commission and that is stamped "filed" and marked with the filing date is  
7 conclusive evidence that all conditions precedent required to be performed by  
8 the organizers have been complied with and that the limited liability company  
9 has been legally organized and formed under this chapter. A limited  
10 liability company continues perpetually unless otherwise provided in its  
11 articles of organization or operating agreement or until the limited  
12 liability company is dissolved and terminated in accordance with this  
13 chapter.

14 C. Within sixty days after the commission approves the filing, there  
15 shall be published in a newspaper of general circulation in the county of the  
16 known place of business, for three consecutive publications, a notice of the  
17 filing of such articles of organization consisting of the information  
18 required in section 29-632, subsection A, paragraphs 1, 2, 3, 5, ~~and~~ 6 AND 7.  
19 An affidavit evidencing publication may be filed with the commission.

20 Sec. 4. Title 29, chapter 4, article 3, Arizona Revised Statutes, is  
21 amended by adding section 29-658, to read:

22 29-658. Series; limited liability companies

23 A. THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT OF A LIMITED  
24 LIABILITY COMPANY MAY CREATE ONE OR MORE SERIES OF MEMBERS OR VEST AUTHORITY  
25 IN ONE OR MORE MEMBERS OR MANAGERS OF THE LIMITED LIABILITY COMPANY OR IN  
26 OTHER PERSONS TO CREATE ONE OR MORE SERIES OF MEMBERS, INCLUDING RIGHTS,  
27 POWERS AND DUTIES SENIOR TO EXISTING MEMBERS. THE ARTICLES OF ORGANIZATION  
28 OR OPERATING AGREEMENT MAY PROVIDE THAT ANY MEMBER ASSOCIATED WITH A SERIES  
29 HAS VOTING RIGHTS THAT DIFFER FROM OTHER MEMBERS OR SERIES OR NO VOTING  
30 RIGHTS AT ALL. A SERIES MAY HAVE SEPARATE POWERS, RIGHTS OR DUTIES WITH  
31 RESPECT TO SPECIFIED PROPERTY OR OBLIGATIONS OF THE LIMITED LIABILITY COMPANY  
32 OR PROFITS AND LOSSES ASSOCIATED WITH SPECIFIED PROPERTY OR OBLIGATIONS AND  
33 ANY SERIES MAY HAVE A SEPARATE BUSINESS PURPOSE OR INVESTMENT OBJECTIVE.

34 B. THE DEBTS, LIABILITIES, OBLIGATIONS AND EXPENSES INCURRED,  
35 CONTRACTED FOR OR OTHERWISE EXISTING WITH RESPECT TO A PARTICULAR SERIES ARE  
36 ENFORCEABLE AGAINST THE ASSETS OF THAT SERIES ONLY AND NOT AGAINST THE ASSETS  
37 OF THE LIMITED LIABILITY COMPANY GENERALLY OR ANY OTHER SERIES, IF BOTH OF  
38 THE FOLLOWING ARE TRUE:

39 1. SEPARATE AND DISTINCT RECORDS ARE MAINTAINED FOR THE SERIES AND THE  
40 ASSETS ASSOCIATED WITH THE SERIES ARE HELD, DIRECTLY OR INDIRECTLY, INCLUDING  
41 THROUGH A NOMINEE OR OTHERWISE, AND ACCOUNTED FOR SEPARATELY FROM THE OTHER  
42 ASSETS OF THE LIMITED LIABILITY COMPANY AND ANY OTHER SERIES.

43 2. THE ARTICLES OF ORGANIZATION COMPLY, OR AN AMENDMENT TO THE  
44 ARTICLES COMPLIES, WITH SECTION 29-632, SUBSECTION A, PARAGRAPH 7,  
45 SUBDIVISION (a).

1 C. UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF ORGANIZATION OR  
2 OPERATING AGREEMENT, DEBTS, LIABILITIES, OBLIGATIONS AND EXPENSES INCURRED,  
3 CONTRACTED FOR OR OTHERWISE EXISTING WITH RESPECT TO THE LIMITED LIABILITY  
4 COMPANY GENERALLY OR ANY OTHER SERIES ARE NOT ENFORCEABLE AGAINST THE ASSETS  
5 OF THE SERIES.

6 D. THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT MAY PROVIDE  
7 THAT THE DEBTS, LIABILITIES, OBLIGATIONS AND EXPENSES INCURRED, CONTRACTED  
8 FOR OR OTHERWISE EXISTING WITH RESPECT TO A PARTICULAR SERIES ARE ENFORCEABLE  
9 AGAINST THE ASSETS OF THAT SERIES ONLY AND NOT AGAINST THE ASSETS OF THE  
10 LIMITED LIABILITY COMPANY GENERALLY OR ANY OTHER SERIES.

11 E. UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF ORGANIZATION OR  
12 OPERATING AGREEMENT, ANY EVENT DESCRIBED IN THIS CHAPTER OR IN THE ARTICLES  
13 OF ORGANIZATION OR OPERATING AGREEMENT THAT CAUSES A MANAGER TO CEASE TO BE A  
14 MANAGER WITH RESPECT TO A SERIES DOES NOT, IN ITSELF, CAUSE THE MANAGER TO  
15 CEASE TO BE A MANAGER WITH RESPECT TO THE LIMITED LIABILITY COMPANY OR WITH  
16 RESPECT TO ANY OTHER SERIES. UNLESS OTHERWISE PROVIDED IN THE ARTICLES OF  
17 ORGANIZATION OR OPERATING AGREEMENT, ANY EVENT DESCRIBED IN THIS CHAPTER OR  
18 IN THE ARTICLES OF ORGANIZATION OR OPERATING AGREEMENT THAT CAUSES A MANAGER  
19 TO CEASE TO BE ASSOCIATED WITH A SERIES DOES NOT, IN ITSELF, CAUSE THE MEMBER  
20 TO CEASE TO BE ASSOCIATED WITH ANY OTHER SERIES, TERMINATE THE CONTINUED  
21 MEMBERSHIP OF A MEMBER IN THE LIMITED LIABILITY COMPANY OR CAUSE THE  
22 TERMINATION OF THE SERIES, REGARDLESS OF WHETHER THE MEMBER WAS THE LAST  
23 REMAINING MEMBER ASSOCIATED WITH THE SERIES.

24 Sec. 5. Section 29-681, Arizona Revised Statutes, is amended to read:  
25 29-681. Management of limited liability company; series

26 A. Unless the articles of organization provide that management of the  
27 limited liability company OR SERIES is vested in one or more managers,  
28 management of the limited liability company OR SERIES is vested in the  
29 members, subject to any provision in an operating agreement restricting or  
30 enlarging the management rights or responsibilities of one or more members or  
31 classes of members.

32 B. If the articles of organization provide that management of the  
33 limited liability company is vested in one or more managers, management of  
34 the limited liability company is vested in a manager or managers, subject to  
35 any provisions in an operating agreement restricting or enlarging the  
36 management rights or responsibilities of one or more managers or classes of  
37 managers or reserving specified management rights to the members or classes  
38 of members. A manager need not be a member of the limited liability company  
39 unless otherwise required by an operating agreement. A manager shall be  
40 designated or elected and may be removed or replaced in the manner provided  
41 in an operating agreement. A manager also holds the office and has the  
42 responsibilities that are accorded to him by the members and that are  
43 provided in an operating agreement. If an operating agreement does not  
44 provide a manner for designating or electing additional or replacement  
45 managers, on the withdrawal or resignation of a manager, management of the

1 limited liability company continues to be vested in the remaining managers,  
2 or if there are no remaining managers, management is vested in one or more  
3 new managers to be designated or elected by a majority of the members.

4 C. Except as provided in an operating agreement, the affirmative vote,  
5 approval or consent of all members is required to:

6 1. Adopt, amend, amend and restate or revoke an operating agreement or  
7 authorize a transaction, agreement or action on behalf of the limited  
8 liability company that is unrelated to its purpose or business as stated in  
9 an operating agreement or that otherwise violates an operating agreement.

10 2. Issue an interest in the limited liability company to any person.

11 3. Approve a plan of merger or consolidation of the limited liability  
12 company with or into one or more business entities as defined in section  
13 29-751.

14 4. Authorize an amendment to the articles of organization that changes  
15 the status of the limited liability company from or to one in which  
16 management is vested in a manager or managers to or from one in which  
17 management is reserved to the members.

18 D. Except as provided in an operating agreement, the affirmative vote,  
19 approval or consent of a majority of the members, or if management of the  
20 limited liability company is vested in one or more managers, the affirmative  
21 vote, approval or consent of the sole manager or a majority of the managers,  
22 is required to:

23 1. Resolve any difference concerning matters connected with the  
24 business of the limited liability company.

25 2. Authorize the distribution of limited liability company cash or  
26 property to the members.

27 3. Authorize the limited liability company to repurchase all or part  
28 of any member's interest in the limited liability company from that member.

29 4. Authorize the filing of articles of termination concerning the  
30 limited liability company.

31 5. Subject to subsection C, paragraph 4 of this section, authorize an  
32 amendment to the articles of organization, except that an amendment that  
33 merely corrects a false or inaccurate statement in the articles of  
34 organization may be filed at any time by a manager if management of the  
35 limited liability company is vested in one or more managers or by a member if  
36 management of the limited liability company is reserved to the members.

37 E. For purposes of subsections B and D of this section, a majority  
38 consists of more than one-half of the members or managers, as the case may  
39 be, except that if an operating agreement provides for allocation of voting  
40 rights among different members or managers or classes of members or managers  
41 on any basis other than a per capita basis, a majority consists of one or  
42 more members or managers, as the case may be, who control more than one-half  
43 of the votes entitled to be cast with respect to general business decisions  
44 as provided in an operating agreement.

1           Sec. 6. Section 29-706, Arizona Revised Statutes, is amended to read:  
2           29-706. Limitation on distributions: wrongful distribution:  
3                           treatment as income

4           A. A limited liability company **OR A SERIES OF A LIMITED LIABILITY**  
5 **COMPANY** shall not make a distribution to a member to the extent that at the  
6 time of the distribution, after giving effect to the distribution, all  
7 liabilities of the limited liability company **OR SERIES OF THE LIMITED**  
8 **LIABILITY COMPANY** would exceed the fair value of the assets of the limited  
9 liability company, except that:

10           1. Liabilities to members and former members under sections 29-703 and  
11 29-707 and liabilities for which the recourse of creditors is limited to  
12 specified property shall be excluded.

13           2. The fair value of property subject to a liability for which the  
14 recourse of creditors is limited to specified property shall be included in  
15 the assets of the limited liability company **OR SERIES OF THE LIMITED**  
16 **LIABILITY COMPANY** only to the extent that the fair value of the property  
17 exceeds that liability.

18           B. The limited liability company may base a determination that a  
19 distribution is not prohibited under subsection A of this section on either  
20 of the following:

21           1. Financial statements prepared on the basis of accounting practices  
22 and principles that are reasonable in the circumstances.

23           2. A fair valuation or other method that is reasonable in the  
24 circumstances.

25           C. The effect of a distribution under subsection A of this section is  
26 measured either as of the date the distribution is authorized if the payment  
27 occurs within one hundred twenty days after the date of authorization or as  
28 of the date the payment is made if it occurs more than one hundred twenty  
29 days after the date of authorization.

30           D. If a member receives a distribution with respect to his interest in  
31 a limited liability company in violation of this chapter or an operating  
32 agreement, he is liable to the limited liability company for a period of six  
33 years thereafter for the amount of the wrongful distribution.

34           E. Except as otherwise provided in the operating agreement or the  
35 trust instrument, a distribution to a member that is a charitable remainder  
36 trust as defined in section 664(d) of the internal revenue code is income for  
37 the purposes of title 14, chapter 7, article 4 to the extent that the value  
38 of the member's interest in the limited liability company after distribution  
39 is equal to or greater than its value at the date of contribution of the  
40 member's interest in the limited liability company to the charitable  
41 remainder trust. In this subsection, "internal revenue code" has the same  
42 meaning prescribed in section 43-105.

1           Sec. 7. Section 29-781, Arizona Revised Statutes, is amended to read:  
2           29-781. Dissolution

3           A limited liability company OR SERIES OF A LIMITED LIABILITY COMPANY  
4 organized under this chapter is dissolved on the occurrence of the first of  
5 the following:

6           1. At the time or on the happening of the events specified for  
7 dissolution in the articles of organization or an operating agreement.

8           2. Except as otherwise provided in an operating agreement, the written  
9 consent to dissolve by more than one-half of the members and by one or more  
10 members who on dissolution and liquidation of the assets of the limited  
11 liability company OR SERIES OF THE LIMITED LIABILITY COMPANY would be  
12 entitled to receive assets valued at more than one-half of the value of all  
13 assets distributed to all members on liquidation.

14           3. Involuntary judicial dissolution under section 29-785 or an  
15 administrative dissolution under section 29-786.

16           4. Except as otherwise provided in an operating agreement, an event of  
17 withdrawal of the last remaining member unless within ninety days all  
18 assignees by written consent admit at least one member pursuant to section  
19 29-731, subsection B, paragraph 4 to continue the business of the limited  
20 liability company OR THE SERIES OF THE LIMITED LIABILITY COMPANY.

21           Sec. 8. Section 29-785, Arizona Revised Statutes, is amended to read:  
22           29-785. Involuntary judicial dissolution

23           A. On application by or for a member, the superior court in the county  
24 in which the known place of business of the limited liability company is  
25 located may decree dissolution of a limited liability company on judicial  
26 determination of any of the following:

27           1. It is not reasonably practicable to carry on the limited liability  
28 company business in conformity with an operating agreement.

29           2. Unless otherwise provided in an operating agreement, the members or  
30 managers are deadlocked in the management of the limited liability company  
31 and irreparable injury to the limited liability company is threatened or  
32 being suffered or the business of the limited liability company cannot be  
33 conducted to the advantage of the members generally because of the deadlock.

34           3. Unless otherwise provided in an operating agreement, the members or  
35 managers of the limited liability company have acted or are acting in a  
36 manner that is illegal or fraudulent with respect to the business of the  
37 limited liability company.

38           4. Unless otherwise provided in an operating agreement, substantial  
39 assets of the limited liability company are being wasted, misapplied or  
40 diverted for purposes not related to the business of the limited liability  
41 company.

42           B. The superior court has full power to wind up and liquidate the  
43 assets and business of a limited liability company:

44           1. On application by a limited liability company after dissolution to  
45 have its liquidation continued under the supervision of the court.

1           2. In an action filed by any member after the issuance of a judgment  
2 of dissolution as provided in subsection A OF THIS SECTION.

3           C. ON APPLICATION BY OR FOR A MEMBER OF A SERIES, THE SUPERIOR COURT  
4 MAY DECREE THE TERMINATION OF THE SERIES ONLY AND NOT THE DISSOLUTION OF THE  
5 LIMITED LIABILITY COMPANY WHEN IT IS REASONABLY PRACTICABLE TO CARRY ON THE  
6 BUSINESS OF THE SERIES IN CONFORMITY WITH THE ARTICLES OF ORGANIZATION OR  
7 OPERATION AGREEMENT.

8           Sec. 9. Effective date

9           A. Sections 29-601, 29-632, 29-635, 29-681, 29-706, 29-781 and 29-785,  
10 Arizona Revised Statutes, as amended by this act, are effective from and  
11 after December 31, 2014.

12           B. Section 29-658, Arizona Revised Statutes, as added by this act, is  
13 effective from and after December 31, 2014.