



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

HB1336

Introduced 2/18/2009, by Rep. JoAnn D. Osmond

#### SYNOPSIS AS INTRODUCED:

805 ILCS 180/15-3

Amends the Limited Liability Corporation Act. Provides that in a manager-managed company a member is held to specified standards of conduct to the extent that the member exercises the managerial authority vested in a manager by this Act (rather than a member who pursuant to the operating agreement exercises some or all of the authority of a manager in the management and conduct of the company's business is held to specified standards of conduct to the extent that the member exercises the managerial authority vested in a manager by this Act).

LRB096 10290 KTG 20460 b

1 AN ACT concerning business.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Limited Liability Company Act is amended by  
5 changing Section 15-3 as follows:

6 (805 ILCS 180/15-3)

7 Sec. 15-3. General standards of member and manager's  
8 conduct.

9 (a) The fiduciary duties a member owes to a member-managed  
10 company and its other members include the duty of loyalty and  
11 the duty of care referred to in subsections (b) and (c) of this  
12 Section.

13 (b) A member's duty of loyalty to a member-managed company  
14 and its other members includes the following:

15 (1) to account to the company and to hold as trustee  
16 for it any property, profit, or benefit derived by the  
17 member in the conduct or winding up of the company's  
18 business or derived from a use by the member of the  
19 company's property, including the appropriation of a  
20 company's opportunity;

21 (2) to act fairly when a member deals with the company  
22 in the conduct or winding up of the company's business as  
23 or on behalf of a party having an interest adverse to the

1 company; and

2 (3) to refrain from competing with the company in the  
3 conduct of the company's business before the dissolution of  
4 the company.

5 (c) A member's duty of care to a member-managed company and  
6 its other members in the conduct of and winding up of the  
7 company's business is limited to refraining from engaging in  
8 grossly negligent or reckless conduct, intentional misconduct,  
9 or a knowing violation of law.

10 (d) A member shall discharge his or her duties to a  
11 member-managed company and its other members under this Act or  
12 under the operating agreement and exercise any rights  
13 consistent with the obligation of good faith and fair dealing.

14 (e) A member of a member-managed company does not violate a  
15 duty or obligation under this Act or under the operating  
16 agreement merely because the member's conduct furthers the  
17 member's own interest.

18 (f) This Section applies to a person winding up the limited  
19 liability company's business as the personal or legal  
20 representative of the last surviving member as if the person  
21 were a member.

22 (g) In a manager-managed company:

23 (1) a member who is not also a manager owes no duties  
24 to the company or to the other members solely by reason of  
25 being a member;

26 (2) a manager is held to the same standards of conduct

1 prescribed for members in subsections (b), (c), (d), and  
2 (e) of this Section;

3 (3) a member ~~who pursuant to the operating agreement~~  
4 ~~exercises some or all of the authority of a manager in the~~  
5 ~~management and conduct of the company's business~~ is held to  
6 the standards of conduct in subsections (b), (c), (d), and  
7 (e) of this Section to the extent that the member exercises  
8 the managerial authority vested in a manager by this Act;  
9 and

10 (4) a manager is relieved of liability imposed by law  
11 for violations of the standards prescribed by subsections  
12 (b), (c), (d), and (e) to the extent of the managerial  
13 authority delegated to the members by the operating  
14 agreement.

15 (Source: P.A. 95-331, eff. 8-21-07.)