

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 Sections 15-3 and 15-5 as follows:

6 (805 ILCS 180/15-3)

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

9 (a) Without limiting any fiduciary duties owed at common  
10 law, the ~~The~~ fiduciary duties a member owes to a  
11 member-managed company and its other members include the duty  
12 of loyalty and the duty of care referred to in subsections (b)  
13 and (c) of this Section.

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

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

22 (2) to act fairly when a member deals with the company  
23 in the conduct or winding up of the company's business as

1 or on behalf of a party having an interest adverse to the  
2 company; and

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

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

11 (d) The implied contractual covenant of good faith and  
12 fair dealing applies to the operating agreement and members of  
13 a member-managed company in the same manner and to the same  
14 extent that it applies at law to other contracts and parties to  
15 the contracts. ~~A member shall discharge his or her duties to a~~  
16 ~~member managed company and its other members under this Act or~~  
17 ~~under the operating agreement and exercise any rights~~  
18 ~~consistent with the obligation of good faith and fair dealing.~~

19 (e) A member of a member-managed company does not violate  
20 a duty or obligation under this Act or under the operating  
21 agreement merely because the member's conduct furthers the  
22 member's own interest.

23 (f) This Section applies to a person winding up the  
24 limited liability company's business as the personal or legal  
25 representative of the last surviving member as if the person  
26 were a member.

1 (g) In a manager-managed company:

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

5 (2) a manager is held to the same standards of conduct  
6 prescribed for members in subsections (b), (c), (d), and  
7 (e) of this Section;

8 (3) a member who exercises some or all of the  
9 authority of a manager in the ~~and~~ conduct of the company's  
10 business is held to the standards of conduct in  
11 subsections (b), (c), (d), and (e) of this Section; ~~and~~

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

17 (5) subsection (d) of this Section applies to the  
18 operating agreement and members and managers of the  
19 company.

20 (Source: P.A. 99-637, eff. 7-1-17.)

21 (805 ILCS 180/15-5)

22 Sec. 15-5. Operating agreement.

23 (a) All members of a limited liability company may enter  
24 into an operating agreement to regulate the affairs of the  
25 company and the conduct of its business and to govern

1 relations among the members, managers, and company. The  
2 operating agreement may establish that a limited liability  
3 company is a manager-managed limited liability company and the  
4 rights and duties under this Act of a person in the capacity of  
5 a manager. To the extent the operating agreement does not  
6 otherwise provide, this Act governs relations among the  
7 members, managers, and company. Except as provided in  
8 subsections (b), (c), (d), and (e) of this Section, an  
9 operating agreement may modify any provision or provisions of  
10 this Act governing relations among the members, managers, and  
11 company.

12 (b) The operating agreement may not:

13 (1) unreasonably restrict a right to information or  
14 access to records under Section 1-40 or Section 10-15;

15 (2) vary the right to expel a member in an event  
16 specified in subdivision (6) of Section 35-45;

17 (3) vary the requirement to wind up the limited  
18 liability company's business in a case specified in  
19 subdivision (4), (5), or (6) of subsection (a) of Section  
20 35-1;

21 (4) restrict rights of a person, other than a manager,  
22 member, and transferee of a member's distributional  
23 interest, under this Act;

24 (5) restrict the power of a member to dissociate under  
25 Section 35-50, although an operating agreement may  
26 determine whether a dissociation is wrongful under Section

1 35-50;

2 (6) (blank);

3 (6.5) eliminate or reduce the obligations or purposes  
4 a low-profit limited liability company undertakes when  
5 organized under Section 1-26;

6 (7) eliminate or reduce the implied contractual  
7 covenant ~~obligation~~ of good faith and fair dealing under  
8 subsection (d) of Section 15-3, but the operating  
9 agreement may determine the standards by which the  
10 performance of the member's or manager's duties or the  
11 exercise of the member's or manager's rights is to be  
12 measured;

13 (8) eliminate, vary, or restrict the priority of a  
14 statement of authority over provisions in the articles of  
15 organization as provided in subsection (h) of Section  
16 13-15;

17 (9) vary the law applicable under Section 1-65;

18 (10) vary the power of the court under Section 5-50;

19 or

20 (11) restrict the right to approve a merger,  
21 conversion, or domestication under Article 37 or the  
22 Entity Omnibus Act of a member that will have personal  
23 liability with respect to a surviving, converted, or  
24 domesticated organization.

25 (c) In addition, with respect to fiduciary duties, the ~~The~~  
26 operating agreement ~~may~~:

1           (1) may not restrict or eliminate a fiduciary duty  
2           owed at common law or under this Act, unless ~~other than~~  
3           ~~the duty of care described in subsection (c) of Section~~  
4           ~~15-3, but only to the extent~~ the restriction or  
5           elimination in the operating agreement is clear and  
6           unambiguous;

7           (2) may not restrict or eliminate the fiduciary duty  
8           described in paragraph (2) of subsection (b) of Section  
9           15-3, except in the manner described in paragraph (4) of  
10           this subsection (c); ~~identify specific types or categories~~  
11           ~~of activities that do not violate any fiduciary duty; and~~

12           (3) may not alter the duty of care, ~~except~~ to  
13           authorize intentional misconduct or knowing violation of  
14           law; and ~~-~~

15           (4) may identify, subject to paragraph (1), specific  
16           types or categories of activities or provide one or more  
17           examples of activities that do not violate any fiduciary  
18           duty described in subsection (b) of Section 15-3 or any  
19           fiduciary duty owed at common law and may determine  
20           standards by which the performance of the fiduciary duty  
21           is to be measured.

22           The changes made to paragraphs (2) and (4) of this  
23           subsection by this amendatory Act of the 102nd General  
24           Assembly apply to: (i) any operating agreement entered into  
25           before the effective date of this amendatory Act of the 102nd  
26           General Assembly if the fiduciary duties of the members or

1 managers of the company described in paragraph (2) of  
2 subsection (b) of Section 15-3 are modified in any respect on  
3 or after the effective date of this amendatory Act of the 102nd  
4 General Assembly; and (ii) any operating agreement entered  
5 into on or after the effective date of this amendatory Act of  
6 the 102nd General Assembly.

7 (d) The operating agreement may specify the method by  
8 which a specific act or transaction that would otherwise  
9 violate the duty of loyalty may be authorized or ratified by  
10 all the members or by one or more disinterested and  
11 independent members or persons after full disclosure of all  
12 material facts.

13 (e) The operating agreement may alter or eliminate the  
14 right to payment or reimbursement for a member or manager  
15 provided by Section 15-7 and may eliminate or limit a member or  
16 manager's liability to the limited liability company and  
17 members for money damages, except for:

18 (1) subject to subsections (c) and (d) of this  
19 Section, breach of the duties as required in subdivisions  
20 (1), (2), and (3) of subsection (b) of Section 15-3 and  
21 subsection (g) of Section 15-3;

22 (2) a financial benefit received by the member or  
23 manager to which the member or manager is not entitled;

24 (3) a breach of a duty under Section 25-35;

25 (4) intentional infliction of harm on the company or a  
26 member; or

1           (5) an intentional violation of criminal law.

2           (f) A limited liability company is bound by and may  
3 enforce the operating agreement, whether or not the company  
4 has itself manifested assent to the operating agreement.

5           (g) A person that becomes a member of a limited liability  
6 company is deemed to assent to the operating agreement.

7           (h) An operating agreement may be entered into before,  
8 after, or at the time of filing of articles of organization  
9 and, whether entered into before, after, or at the time of the  
10 filing, may be made effective as of the time of formation of  
11 the limited liability company or as of the time or date  
12 provided in the operating agreement.

13           (Source: P.A. 99-637, eff. 7-1-17; 100-561, eff. 7-1-18.)