



Sen. Heather Steans

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1 AMENDMENT TO SENATE BILL 239

2 AMENDMENT NO. _____. Amend Senate Bill 239, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Limited Liability Company Act is amended by
6 changing Sections 1-5, 1-10, and 15-5 and adding Section 1-26
7 as follows:

8 (805 ILCS 180/1-5)

9 Sec. 1-5. Definitions. As used in this Act, unless the
10 context otherwise requires:

11 "Anniversary" means that day every year exactly one or more
12 years after: (i) the date the articles of organization filed
13 under Section 5-5 of this Act were filed by the Office of the
14 Secretary of State, in the case of a limited liability company;
15 or (ii) the date the application for admission to transact
16 business filed under Section 45-5 of this Act was filed by the

1 Office of the Secretary of State, in the case of a foreign
2 limited liability company.

3 "Anniversary month" means the month in which the
4 anniversary of the limited liability company occurs.

5 "Articles of organization" means the articles of
6 organization filed by the Secretary of State for the purpose of
7 forming a limited liability company as specified in Article 5.

8 "Assumed limited liability company name" means any limited
9 liability company name other than the true limited liability
10 company name, except that the identification by a limited
11 liability company of its business with a trademark or service
12 mark of which it is the owner or licensed user shall not
13 constitute the use of an assumed name under this Act.

14 "Bankruptcy" means bankruptcy under the Federal Bankruptcy
15 Code of 1978, Title 11, Chapter 7 of the United States Code.

16 "Business" includes every trade, occupation, profession,
17 and other lawful purpose, whether or not carried on for profit.

18 "Contribution" means any cash, property, or services
19 rendered or a promissory note or other binding obligation to
20 contribute cash or property or to perform services, that a
21 person contributes to the limited liability company in that
22 person's capacity as a member.

23 "Court" includes every court and judge having jurisdiction
24 in a case.

25 "Debtor in bankruptcy" means a person who is the subject of
26 an order for relief under Title 11 of the United States Code, a

1 comparable order under a successor statute of general
2 application, or a comparable order under federal, state, or
3 foreign law governing insolvency.

4 "Distribution" means a transfer of money, property, or
5 other benefit from a limited liability company to a member in
6 the member's capacity as a member or to a transferee of the
7 member's distributional interest.

8 "Distributional interest" means all of a member's interest
9 in distributions by the limited liability company.

10 "Entity" means a person other than an individual.

11 "Federal employer identification number" means either (i)
12 the federal employer identification number assigned by the
13 Internal Revenue Service to the limited liability company or
14 foreign limited liability company or (ii) in the case of a
15 limited liability company or foreign limited liability company
16 not required to have a federal employer identification number,
17 any other number that may be assigned by the Internal Revenue
18 Service for purposes of identification.

19 "Foreign limited liability company" means an
20 unincorporated entity organized under laws other than the laws
21 of this State that afford limited liability to its owners
22 comparable to the liability under Section 10-10 and is not
23 required to register to transact business under any law of this
24 State other than this Act.

25 "Insolvent" means that a limited liability company is
26 unable to pay its debts as they become due in the usual course

1 of its business.

2 "Limited liability company" means a limited liability
3 company organized under this Act.

4 "L3C" or "low-profit limited liability company" means a for
5 profit limited liability company which satisfies the
6 requirements of Section 1-26 of this Act and does not have as a
7 significant purpose the production of income or the
8 appreciation of property.

9 "Manager" means a person, whether or not a member of a
10 manager-managed company, who is vested with authority under
11 Section 13-5.

12 "Manager-managed company" means a limited liability
13 company which is so designated in its articles of organization.

14 "Member" means a person who becomes a member of the limited
15 liability company upon formation of the company or in the
16 manner and at the time provided in the operating agreement or,
17 if the operating agreement does not so provide, in the manner
18 and at the time provided in this Act.

19 "Member-managed company" means a limited liability company
20 other than a manager-managed company.

21 "Membership interest" means a member's rights in the
22 limited liability company, including the member's right to
23 receive distributions of the limited liability company's
24 assets.

25 "Operating agreement" means the agreement under Section
26 15-5 concerning the relations among the members, managers, and

1 limited liability company. The term "operating agreement"
2 includes amendments to the agreement.

3 "Organizer" means one of the signers of the original
4 articles of organization.

5 "Person" means an individual, partnership, domestic or
6 foreign limited partnership, limited liability company or
7 foreign limited liability company, trust, estate, association,
8 corporation, governmental body, or other juridical being.

9 "Registered office" means that office maintained by the
10 limited liability company in this State, the address, including
11 street, number, city and county, of which is on file in the
12 office of the Secretary of State, at which, any process,
13 notice, or demand required or permitted by law may be served
14 upon the registered agent of the limited liability company.

15 "Registered agent" means a person who is an agent for
16 service of process on the limited liability company who is
17 appointed by the limited liability company and whose address is
18 the registered office of the limited liability company.

19 "Restated articles of organization" means the articles of
20 organization restated as provided in Section 5-30.

21 "State" means a state, territory, or possession of the
22 United States, the District of Columbia, or the Commonwealth of
23 Puerto Rico.

24 "Transfer" includes an assignment, conveyance, deed, bill
25 of sale, lease, mortgage, security interest, encumbrance, and
26 gift.

1 (Source: P.A. 90-424, eff. 1-1-98.)

2 (805 ILCS 180/1-10)

3 Sec. 1-10. Limited liability company name.

4 (a) The name of each limited liability company as set forth
5 in its articles of organization:

6 (1) shall contain the terms "limited liability
7 company", "L.L.C.", or "LLC", or, if organized as a
8 low-profit limited liability company under Section 1-26 of
9 this Act, shall contain the term "L3C";

10 (2) may not contain a word or phrase, or an
11 abbreviation or derivation thereof, the use of which is
12 prohibited or restricted by any other statute of this State
13 unless the restriction has been complied with;

14 (3) shall consist of letters of the English alphabet,
15 Arabic or Roman numerals, or symbols capable of being
16 readily reproduced by the Office of the Secretary of State;

17 (4) shall not contain any of the following terms:
18 "Corporation," "Corp.," "Incorporated," "Inc.," "Ltd.,"
19 "Co.," "Limited Partnership" or "L.P.";

20 (5) shall be the name under which the limited liability
21 company transacts business in this State unless the limited
22 liability company also elects to adopt an assumed name or
23 names as provided in this Act; provided, however, that the
24 limited liability company may use any divisional
25 designation or trade name without complying with the

1 requirements of this Act, provided the limited liability
2 company also clearly discloses its name;

3 (6) shall not contain any word or phrase that indicates
4 or implies that the limited liability company is authorized
5 or empowered to be in the business of a corporate fiduciary
6 unless otherwise permitted by the Commissioner of the
7 Office of Banks and Real Estate under Section 1-9 of the
8 Corporate Fiduciary Act. The word "trust", "trustee", or
9 "fiduciary" may be used by a limited liability company only
10 if it has first complied with Section 1-9 of the Corporate
11 Fiduciary Act; and

12 (7) shall contain the word "trust", if it is a limited
13 liability company organized for the purpose of accepting
14 and executing trusts.

15 (b) Nothing in this Section or Section 1-20 shall abrogate
16 or limit the common law or statutory law of unfair competition
17 or unfair trade practices, nor derogate from the common law or
18 principles of equity or the statutes of this State or of the
19 United States of America with respect to the right to acquire
20 and protect copyrights, trade names, trademarks, service
21 marks, service names, or any other right to the exclusive use
22 of names or symbols.

23 (c) (Blank).

24 (d) The name shall be distinguishable upon the records in
25 the Office of the Secretary of State from all of the following:

26 (1) Any limited liability company that has articles of

1 organization filed with the Secretary of State under
2 Section 5-5.

3 (2) Any foreign limited liability company admitted to
4 transact business in this State.

5 (3) Any name for which an exclusive right has been
6 reserved in the Office of the Secretary of State under
7 Section 1-15.

8 (4) Any assumed name that is registered with the
9 Secretary of State under Section 1-20.

10 (5) Any corporate name or assumed corporate name of a
11 domestic or foreign corporation subject to the provisions
12 of Section 4.05 of the Business Corporation Act of 1983 or
13 Section 104.05 of the General Not For Profit Corporation
14 Act of 1986.

15 (e) The provisions of subsection (d) of this Section shall
16 not apply if the organizer files with the Secretary of State a
17 certified copy of a final decree of a court of competent
18 jurisdiction establishing the prior right of the applicant to
19 the use of that name in this State.

20 (f) The Secretary of State shall determine whether a name
21 is "distinguishable" from another name for the purposes of this
22 Act. Without excluding other names that may not constitute
23 distinguishable names in this State, a name is not considered
24 distinguishable, for purposes of this Act, solely because it
25 contains one or more of the following:

26 (1) The word "limited", "liability" or "company" or an

1 abbreviation of one of those words.

2 (2) Articles, conjunctions, contractions,
3 abbreviations, or different tenses or number of the same
4 word.

5 (Source: P.A. 92-33, eff. 7-1-01; 93-59, eff. 7-1-03.)

6 (805 ILCS 180/1-26 new)

7 Sec. 1-26. Low-profit limited liability company.

8 (a) A low-profit limited liability company shall at all
9 times significantly further the accomplishment of one or more
10 charitable or educational purposes within the meaning of
11 Section 170(c)(2)(B) of the Internal Revenue Code of 1986, 26
12 U.S.C. 170(c)(2)(B), or its successor, and would not have been
13 formed but for the relationship to the accomplishment of such
14 charitable or educational purposes.

15 (b) A limited liability company which intends to qualify as
16 a low-profit limited liability company pursuant to the
17 provisions of this Section shall so indicate in its articles of
18 organization, and further state that:

19 (1) no significant purpose of the company is the
20 production of income or the appreciation of property;
21 however, the fact that a person produces significant income
22 or capital appreciation shall not, in the absence of other
23 factors, be conclusive evidence of a significant purpose
24 involving the production of income or the appreciation of
25 property; and

1 (2) no purpose of the company is to accomplish one or
2 more political or legislative purposes within the meaning
3 of Section 170(c)(2)(D) of the Internal Revenue Code of
4 1986, 26 U.S.C. 170(c)(2)(D), or its successor.

5 (c) A company that no longer satisfies the requirements of
6 this Section 1-26 continues to exist as a limited liability
7 company and shall promptly amend its articles of organization
8 so that its name and purpose no longer identify it as a
9 low-profit limited liability company or L3C.

10 (d) Any company operating or holding itself out as a
11 low-profit limited liability company in Illinois, any company
12 formed as a low-profit limited liability company under this
13 Act, and any chief operating officer, director, or manager of
14 any such company is a "trustee" as defined in Section 3 of the
15 Charitable Trust Act.

16 (e) Nothing in this Section 1-26 prevents a limited
17 liability company that is not organized under it from electing
18 a charitable or educational purpose in whole or in part for
19 doing business under this Act.

20 (805 ILCS 180/15-5)

21 Sec. 15-5. Operating agreement.

22 (a) All members of a limited liability company may enter
23 into an operating agreement to regulate the affairs of the
24 company and the conduct of its business and to govern relations
25 among the members, managers, and company. To the extent the

1 operating agreement does not otherwise provide, this Act
2 governs relations among the members, managers, and company.
3 Except as provided in subsection (b) of this Section, an
4 operating agreement may modify any provision or provisions of
5 this Act governing relations among the members, managers, and
6 company.

7 (b) The operating agreement may not:

8 (1) unreasonably restrict a right to information or
9 access to records under Section 10-15;

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

12 (3) vary the requirement to wind up the limited
13 liability company's business in a case specified in
14 subdivisions (3) or (4) of Section 35-1;

15 (4) restrict rights of a person, other than a manager,
16 member, and transferee of a member's distributional
17 interest, under this Act;

18 (5) restrict the power of a member to dissociate under
19 Section 35-50, although an operating agreement may
20 determine whether a dissociation is wrongful under Section
21 35-50, and it may eliminate or vary the obligation of the
22 limited liability company to purchase the dissociated
23 member's distributional interest under Section 35-60;

24 (6) eliminate or reduce a member's fiduciary duties,
25 but may;

26 (A) identify specific types or categories of

1 activities that do not violate these duties, if not
2 manifestly unreasonable; and

3 (B) specify the number or percentage of members or
4 disinterested managers that may authorize or ratify,
5 after full disclosure of all materials facts, a
6 specific act or transaction that otherwise would
7 violate these duties; ~~or~~

8 (6.5) eliminate or reduce the obligations or purposes a
9 low-profit limited liability company undertakes when
10 organized under Section 1-26; or

11 (7) eliminate or reduce the obligation of good faith
12 and fair dealing under subsection (d) of Section 15-3, but
13 the operating agreement may determine the standards by
14 which the performance of the obligation is to be measured,
15 if the standards are not manifestly unreasonable.

16 (c) In a limited liability company with only one member,
17 the operating agreement includes any of the following:

18 (1) Any writing, without regard to whether the writing
19 otherwise constitutes an agreement, as to the company's
20 affairs signed by the sole member.

21 (2) Any written agreement between the member and the
22 company as to the company's affairs.

23 (3) Any agreement, which need not be in writing,
24 between the member and the company as to a company's
25 affairs, provided that the company is managed by a manager
26 who is a person other than the member.

1 (Source: P.A. 92-33, eff. 7-1-01.)".