



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1522

Introduced 2/15/2019, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

805 ILCS 180/10-10
805 ILCS 180/15-5

Amends the Limited Liability Company Act. Deletes a provision that provides that all or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if: (i) a provision to that effect is contained in the articles of organization and (ii) a member so liable has consented in writing to the adoption of the provision or to be bound by the provision. Provides that with respect to imposing liability upon a member because of a member's personal conduct, nothing in the Act shall be deemed to limit the effect of law other than the Act. Provides that a limited liability company's operating agreement may not restrict the duty to act fairly as described in the Act. Provides that the operating agreement may identify the standards by which the obligation to act fairly is measured.

LRB101 00163 KTG 45163 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 Sections 10-10 and 15-5 as follows:

6 (805 ILCS 180/10-10)

7 Sec. 10-10. Liability of members and managers.

8 (a) ~~The Except as otherwise provided in subsection (d) of~~
9 ~~this Section, the~~ debts, obligations, and liabilities of a
10 limited liability company, whether arising in contract, tort,
11 or otherwise, are solely the debts, obligations, and
12 liabilities of the company. A member or manager is not
13 personally liable for a debt, obligation, or liability of the
14 company solely by reason of being or acting as a member or
15 manager.

16 (b) (Blank).

17 (b-5) With respect to imposing liability upon a member
18 because of a member's personal conduct, nothing in this Act
19 shall be deemed to limit the effect of law other than this Act.

20 (c) The failure of a limited liability company to observe
21 the usual company formalities or requirements relating to the
22 exercise of its company powers or management of its business is
23 not a ground for imposing personal liability on the members or

1 managers for liabilities of the company.

2 (d) (Blank). ~~All or specified members of a limited~~
3 ~~liability company are liable in their capacity as members for~~
4 ~~all or specified debts, obligations, or liabilities of the~~
5 ~~company if:~~

6 ~~(1) a provision to that effect is contained in the~~
7 ~~articles of organization; and~~

8 ~~(2) a member so liable has consented in writing to the~~
9 ~~adoption of the provision or to be bound by the provision.~~

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

11 (805 ILCS 180/15-5)

12 Sec. 15-5. Operating agreement.

13 (a) All members of a limited liability company may enter
14 into an operating agreement to regulate the affairs of the
15 company and the conduct of its business and to govern relations
16 among the members, managers, and company. The operating
17 agreement may establish that a limited liability company is a
18 manager-managed limited liability company and the rights and
19 duties under this Act of a person in the capacity of a manager.
20 To the extent the operating agreement does not otherwise
21 provide, this Act governs relations among the members,
22 managers, and company. Except as provided in subsections (b),
23 (c), (d), and (e) of this Section, an operating agreement may
24 modify any provision or provisions of this Act governing
25 relations among the members, managers, and company.

- 1 (b) The operating agreement may not:
- 2 (1) unreasonably restrict a right to information or
3 access to records under Section 1-40 or Section 10-15;
- 4 (2) vary the right to expel a member in an event
5 specified in subdivision (6) of Section 35-45;
- 6 (3) vary the requirement to wind up the limited
7 liability company's business in a case specified in
8 subdivision (4), (5), or (6) of subsection (a) of Section
9 35-1;
- 10 (4) restrict rights of a person, other than a manager,
11 member, and transferee of a member's distributional
12 interest, under this Act;
- 13 (5) restrict the power of a member to dissociate under
14 Section 35-50, although an operating agreement may
15 determine whether a dissociation is wrongful under Section
16 35-50;
- 17 (6) (blank);
- 18 (6.5) eliminate or reduce the obligations or purposes a
19 low-profit limited liability company undertakes when
20 organized under Section 1-26;
- 21 (7) eliminate or reduce the obligation of good faith
22 and fair dealing under subsection (d) of Section 15-3, but
23 the operating agreement may determine the standards by
24 which the performance of the member's duties or the
25 exercise of the member's rights is to be measured;
- 26 (8) eliminate, vary, or restrict the priority of a

1 statement of authority over provisions in the articles of
2 organization as provided in subsection (h) of Section
3 13-15;

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

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

6 (11) restrict the right to approve a merger,
7 conversion, or domestication under Article 37 or the Entity
8 Omnibus Act of a member that will have personal liability
9 with respect to a surviving, converted, or domesticated
10 organization.

11 (c) The operating agreement may:

12 (1) restrict or eliminate a fiduciary duty, other than
13 the duty to act fairly as described in paragraph (2) of
14 subsection (b) of Section 15-3, or the duty of care
15 described in subsection (c) of Section 15-3, but only to
16 the extent the restriction or elimination in the operating
17 agreement is clear and unambiguous;

18 (2) identify specific types or categories of
19 activities that do not violate any fiduciary duty; ~~and~~

20 (3) alter the duty of care, except to authorize
21 intentional misconduct or knowing violation of law; and ~~and~~

22 (4) identify the standards by which the obligation to
23 act fairly is measured.

24 (d) The operating agreement may specify the method by which
25 a specific act or transaction that would otherwise violate the
26 duty of loyalty may be authorized or ratified by one or more

1 disinterested and independent persons after full disclosure of
2 all material facts.

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

8 (1) subject to subsections (c) and (d) of this Section,
9 breach of the duties as required in subdivisions (1), (2),
10 and (3) of subsection (b) of Section 15-3 and subsection
11 (g) of Section 15-3;

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

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

15 (4) intentional infliction of harm on the company or a
16 member; or

17 (5) an intentional violation of criminal law.

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

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

23 (h) An operating agreement may be entered into before,
24 after, or at the time of filing of articles of organization
25 and, whether entered into before, after, or at the time of the
26 filing, may be made effective as of the time of formation of

1 the limited liability company or as of the time or date
2 provided in the operating agreement.

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