



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5376

Introduced 1/26/2006, by Rep. Terry R. Parke

SYNOPSIS AS INTRODUCED:

805 ILCS 5/6.15	from Ch. 32, par. 6.15
805 ILCS 5/8.75	from Ch. 32, par. 8.75
805 ILCS 5/11.70	from Ch. 32, par. 11.70
805 ILCS 5/12.56	
805 ILCS 180/15-5	
805 ILCS 180/15-6 new	

Amends the Business Corporation Act of 1983. Requires that fair value (instead of just value) be paid for a fractional share that is paid in cash. Defines "fair value". Provides that, in the list of those who can make a determination for purposes of indemnification of a present or former director, officer, employee or agent in a particular case, the determination shall be by a committee of the directors who are not parties to such action, suit, or proceeding, even though less than a quorum, designated by a majority vote of the directors (instead of a committee of directors designated by a majority vote of the directors). Amends the Limited Liability Company Act. Provides that the operating agreement may not contain any provision inconsistent with the voting provisions in the listed Section. Limits situations in which a person may vote to ratify or approve matters.

LRB094 18006 LCT 53310 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 Business Corporation Act of 1983 is amended
5 by changing Sections 6.15, 8.75, 11.70, and 12.56 as follows:

6 (805 ILCS 5/6.15) (from Ch. 32, par. 6.15)

7 Sec. 6.15. Issuance of fractional shares or scrip. A
8 corporation may, but shall not be obliged to, issue a
9 certificate for a fractional share, and, by action of its board
10 of directors, may in lieu thereof, pay cash equal to the fair
11 value of said fractional share, or issue scrip in registered or
12 bearer form which shall entitle the holder to receive a
13 certificate for a full share upon the surrender of such scrip
14 aggregating a full share. A certificate for a fractional share
15 shall, but scrip shall not unless otherwise provided therein,
16 entitle the holder to exercise fractional voting rights, to
17 receive dividends thereon and to participate in any of the
18 assets of the corporation in the event of liquidation. The
19 board of directors may cause such scrip to be issued subject to
20 the condition that it shall become void if not exchanged for
21 certificates representing full shares before a specified date,
22 or subject to the condition that the shares for which such
23 scrip is exchangeable may be sold by the corporation or by an
24 agent on behalf of the holder thereof and the proceeds thereof
25 distributed to the holders of such scrip or subject to any
26 other conditions which the board of directors may deem
27 advisable.

28 For purposes of this Section, "fair value", with respect to
29 the cashout of a fractional share, means the proportionate
30 interest of the fractional share in the corporation, without
31 any discount for minority status or, absent extraordinary
32 circumstance, lack of marketability.

1 (Source: P.A. 83-1025.)

2 (805 ILCS 5/8.75) (from Ch. 32, par. 8.75)

3 Sec. 8.75. Indemnification of officers, directors,
4 employees and agents; insurance.

5 (a) A corporation may indemnify any person who was or is a
6 party, or is threatened to be made a party to any threatened,
7 pending or completed action, suit or proceeding, whether civil,
8 criminal, administrative or investigative (other than an
9 action by or in the right of the corporation) by reason of the
10 fact that he or she is or was a director, officer, employee or
11 agent of the corporation, or who is or was serving at the
12 request of the corporation as a director, officer, employee or
13 agent of another corporation, partnership, joint venture,
14 trust or other enterprise, against expenses (including
15 attorneys' fees), judgments, fines and amounts paid in
16 settlement actually and reasonably incurred by such person in
17 connection with such action, suit or proceeding, if such person
18 acted in good faith and in a manner he or she reasonably
19 believed to be in, or not opposed to the best interests of the
20 corporation, and, with respect to any criminal action or
21 proceeding, had no reasonable cause to believe his or her
22 conduct was unlawful. The termination of any action, suit or
23 proceeding by judgment, order, settlement, conviction, or upon
24 a plea of nolo contendere or its equivalent, shall not, of
25 itself, create a presumption that the person did not act in
26 good faith and in a manner which he or she reasonably believed
27 to be in or not opposed to the best interests of the
28 corporation or, with respect to any criminal action or
29 proceeding, that the person had reasonable cause to believe
30 that his or her conduct was unlawful.

31 (b) A corporation may indemnify any person who was or is a
32 party, or is threatened to be made a party to any threatened,
33 pending or completed action or suit by or in the right of the
34 corporation to procure a judgment in its favor by reason of the
35 fact that such person is or was a director, officer, employee

1 or agent of the corporation, or is or was serving at the
2 request of the corporation as a director, officer, employee or
3 agent of another corporation, partnership, joint venture,
4 trust or other enterprise, against expenses (including
5 attorneys' fees) actually and reasonably incurred by such
6 person in connection with the defense or settlement of such
7 action or suit, if such person acted in good faith and in a
8 manner he or she reasonably believed to be in, or not opposed
9 to, the best interests of the corporation, provided that no
10 indemnification shall be made with respect to any claim, issue,
11 or matter as to which such person has been adjudged to have
12 been liable to the corporation, unless, and only to the extent
13 that the court in which such action or suit was brought shall
14 determine upon application that, despite the adjudication of
15 liability, but in view of all the circumstances of the case,
16 such person is fairly and reasonably entitled to indemnity for
17 such expenses as the court shall deem proper.

18 (c) To the extent that a present or former director,
19 officer or employee of a corporation has been successful, on
20 the merits or otherwise, in the defense of any action, suit or
21 proceeding referred to in subsections (a) and (b), or in
22 defense of any claim, issue or matter therein, such person
23 shall be indemnified against expenses (including attorneys'
24 fees) actually and reasonably incurred by such person in
25 connection therewith, if the person acted in good faith and in
26 a manner he or she reasonably believed to be in, or not opposed
27 to, the best interests of the corporation.

28 (d) Any indemnification under subsections (a) and (b)
29 (unless ordered by a court) shall be made by the corporation
30 only as authorized in the specific case, upon a determination
31 that indemnification of the present or former director,
32 officer, employee or agent is proper in the circumstances
33 because he or she has met the applicable standard of conduct
34 set forth in subsections (a) or (b). Such determination shall
35 be made with respect to a person who is a director or officer
36 at the time of the determination: (1) by the majority vote of

1 the directors who are not parties to such action, suit or
2 proceeding, even though less than a quorum, (2) by a committee
3 of the directors who are not parties to such action, suit, or
4 proceeding, even though less than a quorum, designated by a
5 majority vote of the directors, ~~even though less than a quorum,~~
6 (3) if there are no such directors, or if the directors so
7 direct, by independent legal counsel in a written opinion, or
8 (4) by the shareholders.

9 (e) Expenses (including attorney's fees) incurred by an
10 officer or director in defending a civil or criminal action,
11 suit or proceeding may be paid by the corporation in advance of
12 the final disposition of such action, suit or proceeding upon
13 receipt of an undertaking by or on behalf of the director or
14 officer to repay such amount if it shall ultimately be
15 determined that such person is not entitled to be indemnified
16 by the corporation as authorized in this Section. Such expenses
17 (including attorney's fees) incurred by former directors and
18 officers or other employees and agents may be so paid on such
19 terms and conditions, if any, as the corporation deems
20 appropriate.

21 (f) The indemnification and advancement of expenses
22 provided by or granted under the other subsections of this
23 Section shall not be deemed exclusive of any other rights to
24 which those seeking indemnification or advancement of expenses
25 may be entitled under any by-law, agreement, vote of
26 shareholders or disinterested directors, or otherwise, both as
27 to action in his or her official capacity and as to action in
28 another capacity while holding such office.

29 (g) A corporation may purchase and maintain insurance on
30 behalf of any person who is or was a director, officer,
31 employee or agent of the corporation, or who is or was serving
32 at the request of the corporation as a director, officer,
33 employee or agent of another corporation, partnership, joint
34 venture, trust or other enterprise, against any liability
35 asserted against such person and incurred by such person in any
36 such capacity, or arising out of his or her status as such,

1 whether or not the corporation would have the power to
2 indemnify such person against such liability under the
3 provisions of this Section.

4 (h) If a corporation indemnifies or advances expenses to a
5 director or officer under subsection (b) of this Section, the
6 corporation shall report the indemnification or advance in
7 writing to the shareholders with or before the notice of the
8 next shareholders meeting.

9 (i) For purposes of this Section, references to "the
10 corporation" shall include, in addition to the surviving
11 corporation, any merging corporation (including any
12 corporation having merged with a merging corporation) absorbed
13 in a merger which, if its separate existence had continued,
14 would have had the power and authority to indemnify its
15 directors, officers, and employees or agents, so that any
16 person who was a director, officer, employee or agent of such
17 merging corporation, or was serving at the request of such
18 merging corporation as a director, officer, employee or agent
19 of another corporation, partnership, joint venture, trust or
20 other enterprise, shall stand in the same position under the
21 provisions of this Section with respect to the surviving
22 corporation as such person would have with respect to such
23 merging corporation if its separate existence had continued.

24 (j) For purposes of this Section, references to "other
25 enterprises" shall include employee benefit plans; references
26 to "fines" shall include any excise taxes assessed on a person
27 with respect to an employee benefit plan; and references to
28 "serving at the request of the corporation" shall include any
29 service as a director, officer, employee or agent of the
30 corporation which imposes duties on, or involves services by
31 such director, officer, employee, or agent with respect to an
32 employee benefit plan, its participants, or beneficiaries. A
33 person who acted in good faith and in a manner he or she
34 reasonably believed to be in the best interests of the
35 participants and beneficiaries of an employee benefit plan
36 shall be deemed to have acted in a manner "not opposed to the

1 best interest of the corporation" as referred to in this
2 Section.

3 (k) The indemnification and advancement of expenses
4 provided by or granted under this Section shall, unless
5 otherwise provided when authorized or ratified, continue as to
6 a person who has ceased to be a director, officer, employee, or
7 agent and shall inure to the benefit of the heirs, executors,
8 and administrators of that person.

9 (l) The changes to this Section made by this amendatory Act
10 of the 92nd General Assembly apply only to actions commenced on
11 or after the effective date of this amendatory Act of the 92nd
12 General Assembly.

13 (Source: P.A. 91-464, eff. 1-1-00; 92-33, eff. 7-1-01.)

14 (805 ILCS 5/11.70) (from Ch. 32, par. 11.70)

15 Sec. 11.70. Procedure to Dissent.

16 (a) If the corporate action giving rise to the right to
17 dissent is to be approved at a meeting of shareholders, the
18 notice of meeting shall inform the shareholders of their right
19 to dissent and the procedure to dissent. If, prior to the
20 meeting, the corporation furnishes to the shareholders
21 material information with respect to the transaction that will
22 objectively enable a shareholder to vote on the transaction and
23 to determine whether or not to exercise dissenters' rights, a
24 shareholder may assert dissenters' rights only if the
25 shareholder delivers to the corporation before the vote is
26 taken a written demand for payment for his or her shares if the
27 proposed action is consummated, and the shareholder does not
28 vote in favor of the proposed action.

29 (b) If the corporate action giving rise to the right to
30 dissent is not to be approved at a meeting of shareholders, the
31 notice to shareholders describing the action taken under
32 Section 11.30 or Section 7.10 shall inform the shareholders of
33 their right to dissent and the procedure to dissent. If, prior
34 to or concurrently with the notice, the corporation furnishes
35 to the shareholders material information with respect to the

1 transaction that will objectively enable a shareholder to
2 determine whether or not to exercise dissenters' rights, a
3 shareholder may assert dissenter's rights only if he or she
4 delivers to the corporation within 30 days from the date of
5 mailing the notice a written demand for payment for his or her
6 shares.

7 (c) Within 10 days after the date on which the corporate
8 action giving rise to the right to dissent is effective or 30
9 days after the shareholder delivers to the corporation the
10 written demand for payment, whichever is later, the corporation
11 shall send each shareholder who has delivered a written demand
12 for payment a statement setting forth the opinion of the
13 corporation as to the estimated fair value of the shares, the
14 corporation's latest balance sheet as of the end of a fiscal
15 year ending not earlier than 16 months before the delivery of
16 the statement, together with the statement of income for that
17 year and the latest available interim financial statements, and
18 either a commitment to pay for the shares of the dissenting
19 shareholder at the estimated fair value thereof upon
20 transmittal to the corporation of the certificate or
21 certificates, or other evidence of ownership, with respect to
22 the shares, or instructions to the dissenting shareholder to
23 sell his or her shares within 10 days after delivery of the
24 corporation's statement to the shareholder. The corporation
25 may instruct the shareholder to sell only if there is a public
26 market for the shares at which the shares may be readily sold.
27 If the shareholder does not sell within that 10 day period
28 after being so instructed by the corporation, for purposes of
29 this Section the shareholder shall be deemed to have sold his
30 or her shares at the average closing price of the shares, if
31 listed on a national exchange, or the average of the bid and
32 asked price with respect to the shares quoted by a principal
33 market maker, if not listed on a national exchange, during that
34 10 day period.

35 (d) A shareholder who makes written demand for payment
36 under this Section retains all other rights of a shareholder

1 until those rights are cancelled or modified by the
2 consummation of the proposed corporate action. Upon
3 consummation of that action, the corporation shall pay to each
4 dissenter who transmits to the corporation the certificate or
5 other evidence of ownership of the shares the amount the
6 corporation estimates to be the fair value of the shares, plus
7 accrued interest, accompanied by a written explanation of how
8 the interest was calculated.

9 (e) If the shareholder does not agree with the opinion of
10 the corporation as to the estimated fair value of the shares or
11 the amount of interest due, the shareholder, within 30 days
12 from the delivery of the corporation's statement of value,
13 shall notify the corporation in writing of the shareholder's
14 estimated fair value and amount of interest due and demand
15 payment for the difference between the shareholder's estimate
16 of fair value and interest due and the amount of the payment by
17 the corporation or the proceeds of sale by the shareholder,
18 whichever is applicable because of the procedure for which the
19 corporation opted pursuant to subsection (c).

20 (f) If, within 60 days from delivery to the corporation of
21 the shareholder notification of estimate of fair value of the
22 shares and interest due, the corporation and the dissenting
23 shareholder have not agreed in writing upon the fair value of
24 the shares and interest due, the corporation shall either pay
25 the difference in value demanded by the shareholder, with
26 interest, or file a petition in the circuit court of the county
27 in which either the registered office or the principal office
28 of the corporation is located, requesting the court to
29 determine the fair value of the shares and interest due. The
30 corporation shall make all dissenters, whether or not residents
31 of this State, whose demands remain unsettled parties to the
32 proceeding as an action against their shares and all parties
33 shall be served with a copy of the petition. Nonresidents may
34 be served by registered or certified mail or by publication as
35 provided by law. Failure of the corporation to commence an
36 action pursuant to this Section shall not limit or affect the

1 right of the dissenting shareholders to otherwise commence an
2 action as permitted by law.

3 (g) The jurisdiction of the court in which the proceeding
4 is commenced under subsection (f) by a corporation is plenary
5 and exclusive. The court may appoint one or more persons as
6 appraisers to receive evidence and recommend decision on the
7 question of fair value. The appraisers have the power described
8 in the order appointing them, or in any amendment to it.

9 (h) Each dissenter made a party to the proceeding is
10 entitled to judgment for the amount, if any, by which the court
11 finds that the fair value of his or her shares, plus interest,
12 exceeds the amount paid by the corporation or the proceeds of
13 sale by the shareholder, whichever amount is applicable.

14 (i) The court, in a proceeding commenced under subsection
15 (f), shall determine all costs of the proceeding, including the
16 reasonable compensation and expenses of the appraisers, if any,
17 appointed by the court under subsection (g), but shall exclude
18 the fees and expenses of counsel and experts for the respective
19 parties. If the fair value of the shares as determined by the
20 court materially exceeds the amount which the corporation
21 estimated to be the fair value of the shares or if no estimate
22 was made in accordance with subsection (c), then all or any
23 part of the costs may be assessed against the corporation. If
24 the amount which any dissenter estimated to be the fair value
25 of the shares materially exceeds the fair value of the shares
26 as determined by the court, then all or any part of the costs
27 may be assessed against that dissenter. The court may also
28 assess the fees and expenses of counsel and experts for the
29 respective parties, in amounts the court finds equitable, as
30 follows:

31 (1) Against the corporation and in favor of any or all
32 dissenters if the court finds that the corporation did not
33 substantially comply with the requirements of subsections
34 (a), (b), (c), (d), or (f).

35 (2) Against either the corporation or a dissenter and
36 in favor of any other party if the court finds that the

1 party against whom the fees and expenses are assessed acted
2 arbitrarily, vexatiously, or not in good faith with respect
3 to the rights provided by this Section.

4 If the court finds that the services of counsel for any
5 dissenter were of substantial benefit to other dissenters
6 similarly situated and that the fees for those services should
7 not be assessed against the corporation, the court may award to
8 that counsel reasonable fees to be paid out of the amounts
9 awarded to the dissenters who are benefited. Except as
10 otherwise provided in this Section, the practice, procedure,
11 judgment and costs shall be governed by the Code of Civil
12 Procedure.

13 (j) As used in this Section:

14 (1) "Fair value", with respect to a dissenter's shares,
15 means the proportionate interest of the shareholder in the
16 corporation, without discount for minority status or,
17 absent extraordinary circumstance, lack of marketability,
18 ~~value of the shares~~ immediately before the consummation of
19 the corporate action to which the dissenter objects
20 excluding any appreciation or depreciation in anticipation
21 of the corporate action, unless exclusion would be
22 inequitable.

23 (2) "Interest" means interest from the effective date
24 of the corporate action until the date of payment, at the
25 average rate currently paid by the corporation on its
26 principal bank loans or, if none, at a rate that is fair
27 and equitable under all the circumstances.

28 (Source: P.A. 86-1156.)

29 (805 ILCS 5/12.56)

30 Sec. 12.56. Shareholder remedies: non-public corporations.

31 (a) In an action by a shareholder in a corporation that has
32 no shares listed on a national securities exchange or regularly
33 traded in a market maintained by one or more members of a
34 national or affiliated securities association, the Circuit
35 Court may order one or more of the remedies listed in

1 subsection (b) if it is established that:

2 (1) The directors are deadlocked, whether because of
3 even division in the number of directors or because of
4 greater than majority voting requirements in the articles
5 of incorporation or the by-laws or otherwise, in the
6 management of the corporate affairs; the shareholders are
7 unable to break the deadlock; and either irreparable injury
8 to the corporation is thereby caused or threatened or the
9 business of the corporation can no longer be conducted to
10 the general advantage of the shareholders; or

11 (2) The shareholders are deadlocked in voting power and
12 have failed, for a period that includes at least 2
13 consecutive annual meeting dates, to elect successors to
14 directors whose terms have expired and either irreparable
15 injury to the corporation is thereby caused or threatened
16 or the business of the corporation can no longer be
17 conducted to the general advantage of the shareholders; or

18 (3) The directors or those in control of the
19 corporation have acted, are acting, or will act in a manner
20 that is illegal, oppressive, or fraudulent with respect to
21 the petitioning shareholder whether in his or her capacity
22 as a shareholder, director, or officer; or

23 (4) The corporation assets are being misapplied or
24 wasted.

25 (b) The relief which the court may order in an action under
26 subsection (a) includes but is not limited to the following:

27 (1) The performance, prohibition, alteration, or
28 setting aside of any action of the corporation or of its
29 shareholders, directors, or officers of or any other party
30 to the proceedings;

31 (2) The cancellation or alteration of any provision in
32 the corporation's articles of incorporation or by-laws;

33 (3) The removal from office of any director or officer;

34 (4) The appointment of any individual as a director or
35 officer;

36 (5) An accounting with respect to any matter in

1 dispute;

2 (6) The appointment of a custodian to manage the
3 business and affairs of the corporation to serve for the
4 term and under the conditions prescribed by the court;

5 (7) The appointment of a provisional director to serve
6 for the term and under the conditions prescribed by the
7 court;

8 (8) The submission of the dispute to mediation or other
9 forms of non-binding alternative dispute resolution;

10 (9) The payment of dividends;

11 (10) The award of damages to any aggrieved party;

12 (11) The purchase by the corporation or one or more
13 other shareholders of all, but not less than all, of the
14 shares of the petitioning shareholder for their fair value
15 and on the terms determined under subsection (e); or

16 (12) The dissolution of the corporation if the court
17 determines that no remedy specified in subdivisions (1)
18 through (11) or other alternative remedy is sufficient to
19 resolve the matters in dispute. In determining whether to
20 dissolve the corporation, the court shall consider among
21 other relevant evidence the financial condition of the
22 corporation but may not refuse to dissolve the corporation
23 solely because it has accumulated earnings or current
24 operating profits.

25 (c) The remedies set forth in subsection (b) shall not be
26 exclusive of other legal and equitable remedies which the court
27 may impose.

28 (d) In determining the appropriate relief to order pursuant
29 to this Section, the court may take into consideration the
30 reasonable expectations of the corporation's shareholders as
31 they existed at the time the corporation was formed and
32 developed during the course of the shareholders' relationship
33 with the corporation and with each other.

34 (e) If the court orders a share purchase, it shall:

35 (i) Determine the fair value of the shares, with or
36 without the assistance of appraisers, taking into

1 account any impact on the value of the shares resulting
2 from the actions giving rise to a petition under this
3 Section;

4 (ii) Consider any financial or legal constraints
5 on the ability of the corporation or the purchasing
6 shareholder to purchase the shares;

7 (iii) Specify the terms of the purchase,
8 including, if appropriate, terms for installment
9 payments, interest at the rate and from the date
10 determined by the court to be equitable, subordination
11 of the purchase obligation to the rights of the
12 corporation's other creditors, security for a deferred
13 purchase price, and a covenant not to compete or other
14 restriction on the seller;

15 (iv) Require the seller to deliver all of his or
16 her shares to the purchaser upon receipt of the
17 purchase price or the first installment of the purchase
18 price; and

19 (v) Retain jurisdiction to enforce the purchase
20 order by, among other remedies, ordering the
21 corporation to be dissolved if the purchase is not
22 completed in accordance with the terms of the purchase
23 order.

24 For purposes of this subsection (e), "fair value", with
25 respect to a petitioning shareholder's shares, means the
26 proportionate interest of the shareholder in the corporation,
27 without any discount for minority status or, absent
28 extraordinary circumstances, lack of marketability.

29 The purchase ordered pursuant to this subsection (e) shall
30 be consummated within 20 days after the date the order becomes
31 final unless before that time the corporation files with the
32 court a notice of its intention to dissolve and articles of
33 dissolution are properly filed with the Secretary of State
34 within 50 days after filing the notice with the court.

35 After the purchase order is entered and before the purchase
36 price is fully paid, any party may petition the court to modify

1 the terms of the purchase and the court may do so if it finds
2 that such changes are equitable.

3 Unless the purchase order is modified by the court, the
4 selling shareholder shall have no further rights as a
5 shareholder from the date the seller delivers all of his or her
6 shares to the purchaser or such other date specified by the
7 court.

8 If the court orders shares to be purchased by one or more
9 other shareholders, in allocating the shares to be purchased by
10 the other shareholders, unless equity requires otherwise, the
11 court shall attempt to preserve the existing distribution of
12 voting rights and other designations, preferences,
13 qualifications, limitations, restrictions and special or
14 relative rights among the holders of the class or classes and
15 may direct that holders of a specific class or classes shall
16 not participate in the purchase.

17 (f) When the relief requested by the petition includes the
18 purchase of the petitioner's shares, then at any time within 90
19 days after the filing of the petition under this Section, or at
20 such time determined by the court to be equitable, the
21 corporation or one or more shareholders may elect to purchase
22 all, but not less than all, of the shares owned by the
23 petitioning shareholder for their fair value. An election
24 pursuant to this Section shall state in writing the amount
25 which the electing party will pay for the shares.

26 (1) The election shall be irrevocable unless the court
27 determines that it is equitable to set aside or modify the
28 election.

29 (2) If the election to purchase is filed by one or more
30 shareholders, the corporation shall, within 10 days
31 thereafter, give written notice to all shareholders. The
32 notice must state: (i) the name and number of shares owned
33 by the petitioner; (ii) the name and number of shares owned
34 by each electing shareholder; and (iii) the amount which
35 each electing party will pay for the shares and must advise
36 the recipients of their right to join in the election to

1 purchase shares. Shareholders who wish to participate must
2 file notice of their intention to join in a purchase no
3 later than 30 days after the date of the notice to them or
4 at such time as the court in its discretion may allow. All
5 shareholders who have filed an election or notice of their
6 intention to participate in the election to purchase
7 thereby become parties to the proceeding and shall
8 participate in the purchase in proportion to their
9 ownership of shares as of the date the first election was
10 filed, unless they otherwise agree or the court otherwise
11 directs.

12 (3) The court in its discretion may allow the
13 corporation and all non-petitioning shareholders to file
14 an election to purchase the petitioning shareholder's
15 shares at a higher price. If the court does so, it shall
16 allow other shareholders an opportunity to join in the
17 purchase at the higher price in accordance with their
18 proportionate ownership interest.

19 (4) After an election has been filed by the corporation
20 or one or more shareholders, the proceeding filed under
21 this Section may not be discontinued or settled, nor may
22 the petitioning shareholder sell or otherwise dispose of
23 his or her shares, unless the court determines that it
24 would be equitable to the corporation and the shareholders,
25 other than the petitioner, to permit the discontinuance,
26 settlement, sale, or other disposition. In considering
27 whether equity exists to approve any settlement, the court
28 may take into consideration the reasonable expectations of
29 the shareholders as set forth in subsection (d), including
30 any existing agreement among the shareholders.

31 (5) If, within 30 days of the filing of the latest
32 election allowed by the court, the parties reach agreement
33 as to the fair value and terms of purchase of the
34 petitioner's shares, the court shall enter an order
35 directing the purchase of petitioner's shares upon the
36 terms and conditions agreed to by the parties.

1 (6) If the parties are unable to reach an agreement as
2 provided for in paragraph (5) of this subsection (f), the
3 court, upon application of any party, shall stay the
4 proceeding under subsection (a) and shall determine the
5 fair value of the petitioner's shares pursuant to
6 subsection (e) as of the day before the date on which the
7 petition under subsection (a) was filed or as of such other
8 date as the court deems appropriate under the
9 circumstances.

10 (g) In any proceeding under this Section, the court shall
11 allow reasonable compensation to the custodian, provisional
12 director, appraiser, or other such person appointed by the
13 court for services rendered and reimbursement or direct payment
14 of reasonable costs and expenses, which amounts shall be paid
15 by the corporation.

16 (Source: P.A. 94-394, eff. 8-1-05.)

17 Section 10. The Limited Liability Company Act is amended by
18 changing Section 15-5 and by adding Section 15-6 as follows:

19 (805 ILCS 180/15-5)

20 Sec. 15-5. Operating agreement.

21 (a) All members of a limited liability company may enter
22 into an operating agreement to regulate the affairs of the
23 company and the conduct of its business and to govern relations
24 among the members, managers, and company. To the extent the
25 operating agreement does not otherwise provide, this Act
26 governs relations among the members, managers, and company.
27 Except as provided in subsection (b) of this Section, an
28 operating agreement may modify any provision or provisions of
29 this Act governing relations among the members, managers, and
30 company.

31 (b) The operating agreement may not:

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

34 (2) vary the right to expel a member in an event

1 specified in subdivision (6) of Section 35-45;

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

5 (4) restrict rights of a person, other than a manager,
6 member, and transferee of a member's distributional
7 interest, under this Act;

8 (5) restrict the power of a member to dissociate under
9 Section 35-50, although an operating agreement may
10 determine whether a dissociation is wrongful under Section
11 35-50, and it may eliminate or vary the obligation of the
12 limited liability company to purchase the dissociated
13 member's distributional interest under Section 35-60;

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

16 (A) identify specific types or categories of
17 activities that do not violate these duties, if not
18 manifestly unreasonable; and

19 (B) specify the number or percentage of members or
20 disinterested managers that may authorize or ratify,
21 after full disclosure of all material facts, a
22 specific act or transaction that otherwise would
23 violate these duties; ~~or~~

24 (7) eliminate or reduce the obligation of good faith
25 and fair dealing under subsection (d) of Section 15-3, but
26 the operating agreement may determine the standards by
27 which the performance of the obligation is to be measured,
28 if the standards are not manifestly unreasonable; or

29 (8) contain any provision inconsistent with Section
30 15-6 of this Act.

31

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

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

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

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

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

8 (805 ILCS 180/15-6 new)

9 Sec. 15-6. Voting to approve in certain situations.

10 Notwithstanding any other provision of this Act:

11 (1) No person may vote to approve or ratify the person's
12 own misconduct or breach of fiduciary duty.

13 (2) A person who or which has no fiduciary duty or
14 managerial power with respect to a matter may vote to approve
15 or ratify the matter in which the person has the self-interest
16 or conflict of interest.