

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 1-5, 1-10, and 15-5 and adding Section 1-26
6 as follows:

7 (805 ILCS 180/1-5)

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

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

18 "Anniversary month" means the month in which the
19 anniversary of the limited liability company occurs.

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

23 "Assumed limited liability company name" means any limited

1 liability company name other than the true limited liability
2 company name, except that the identification by a limited
3 liability company of its business with a trademark or service
4 mark of which it is the owner or licensed user shall not
5 constitute the use of an assumed name under this Act.

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

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

10 "Contribution" means any cash, property, or services
11 rendered or a promissory note or other binding obligation to
12 contribute cash or property or to perform services, that a
13 person contributes to the limited liability company in that
14 person's capacity as a member.

15 "Court" includes every court and judge having jurisdiction
16 in a case.

17 "Debtor in bankruptcy" means a person who is the subject of
18 an order for relief under Title 11 of the United States Code, a
19 comparable order under a successor statute of general
20 application, or a comparable order under federal, state, or
21 foreign law governing insolvency.

22 "Distribution" means a transfer of money, property, or
23 other benefit from a limited liability company to a member in
24 the member's capacity as a member or to a transferee of the
25 member's distributional interest.

26 "Distributional interest" means all of a member's interest

1 in distributions by the limited liability company.

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

3 "Federal employer identification number" means either (i)
4 the federal employer identification number assigned by the
5 Internal Revenue Service to the limited liability company or
6 foreign limited liability company or (ii) in the case of a
7 limited liability company or foreign limited liability company
8 not required to have a federal employer identification number,
9 any other number that may be assigned by the Internal Revenue
10 Service for purposes of identification.

11 "Foreign limited liability company" means an
12 unincorporated entity organized under laws other than the laws
13 of this State that afford limited liability to its owners
14 comparable to the liability under Section 10-10 and is not
15 required to register to transact business under any law of this
16 State other than this Act.

17 "Insolvent" means that a limited liability company is
18 unable to pay its debts as they become due in the usual course
19 of its business.

20 "Limited liability company" means a limited liability
21 company organized under this Act.

22 "L3C" or "low-profit limited liability company" means a
23 for-profit limited liability company which satisfies the
24 requirements of Section 1-26 of this Act and does not have as a
25 significant purpose the production of income or the
26 appreciation of property.

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

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

6 "Member" means a person who becomes a member of the limited
7 liability company upon formation of the company or in the
8 manner and at the time provided in the operating agreement or,
9 if the operating agreement does not so provide, in the manner
10 and at the time provided in this Act.

11 "Member-managed company" means a limited liability company
12 other than a manager-managed company.

13 "Membership interest" means a member's rights in the
14 limited liability company, including the member's right to
15 receive distributions of the limited liability company's
16 assets.

17 "Operating agreement" means the agreement under Section
18 15-5 concerning the relations among the members, managers, and
19 limited liability company. The term "operating agreement"
20 includes amendments to the agreement.

21 "Organizer" means one of the signers of the original
22 articles of organization.

23 "Person" means an individual, partnership, domestic or
24 foreign limited partnership, limited liability company or
25 foreign limited liability company, trust, estate, association,
26 corporation, governmental body, or other juridical being.

1 "Registered office" means that office maintained by the
2 limited liability company in this State, the address, including
3 street, number, city and county, of which is on file in the
4 office of the Secretary of State, at which, any process,
5 notice, or demand required or permitted by law may be served
6 upon the registered agent of the limited liability company.

7 "Registered agent" means a person who is an agent for
8 service of process on the limited liability company who is
9 appointed by the limited liability company and whose address is
10 the registered office of the limited liability company.

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

13 "State" means a state, territory, or possession of the
14 United States, the District of Columbia, or the Commonwealth of
15 Puerto Rico.

16 "Transfer" includes an assignment, conveyance, deed, bill
17 of sale, lease, mortgage, security interest, encumbrance, and
18 gift.

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

20 (805 ILCS 180/1-10)

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

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

24 (1) shall contain the terms "limited liability
25 company", "L.L.C.", or "LLC", or, if organized as a

1 low-profit limited liability company under Section 1-26 of
2 this Act, shall contain the term "L3C";

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

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

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

13 (5) shall be the name under which the limited liability
14 company transacts business in this State unless the limited
15 liability company also elects to adopt an assumed name or
16 names as provided in this Act; provided, however, that the
17 limited liability company may use any divisional
18 designation or trade name without complying with the
19 requirements of this Act, provided the limited liability
20 company also clearly discloses its name;

21 (6) shall not contain any word or phrase that indicates
22 or implies that the limited liability company is authorized
23 or empowered to be in the business of a corporate fiduciary
24 unless otherwise permitted by the Commissioner of the
25 Office of Banks and Real Estate under Section 1-9 of the
26 Corporate Fiduciary Act. The word "trust", "trustee", or

1 "fiduciary" may be used by a limited liability company only
2 if it has first complied with Section 1-9 of the Corporate
3 Fiduciary Act; and

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

7 (b) Nothing in this Section or Section 1-20 shall abrogate
8 or limit the common law or statutory law of unfair competition
9 or unfair trade practices, nor derogate from the common law or
10 principles of equity or the statutes of this State or of the
11 United States of America with respect to the right to acquire
12 and protect copyrights, trade names, trademarks, service
13 marks, service names, or any other right to the exclusive use
14 of names or symbols.

15 (c) (Blank).

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

18 (1) Any limited liability company that has articles of
19 organization filed with the Secretary of State under
20 Section 5-5.

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

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

26 (4) Any assumed name that is registered with the

1 Secretary of State under Section 1-20.

2 (5) Any corporate name or assumed corporate name of a
3 domestic or foreign corporation subject to the provisions
4 of Section 4.05 of the Business Corporation Act of 1983 or
5 Section 104.05 of the General Not For Profit Corporation
6 Act of 1986.

7 (e) The provisions of subsection (d) of this Section shall
8 not apply if the organizer files with the Secretary of State a
9 certified copy of a final decree of a court of competent
10 jurisdiction establishing the prior right of the applicant to
11 the use of that name in this State.

12 (f) The Secretary of State shall determine whether a name
13 is "distinguishable" from another name for the purposes of this
14 Act. Without excluding other names that may not constitute
15 distinguishable names in this State, a name is not considered
16 distinguishable, for purposes of this Act, solely because it
17 contains one or more of the following:

18 (1) The word "limited", "liability" or "company" or an
19 abbreviation of one of those words.

20 (2) Articles, conjunctions, contractions,
21 abbreviations, or different tenses or number of the same
22 word.

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

24 (805 ILCS 180/1-26 new)

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

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

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

12 (1) no significant purpose of the company is the
13 production of income or the appreciation of property;
14 however, the fact that a person produces significant income
15 or capital appreciation shall not, in the absence of other
16 factors, be conclusive evidence of a significant purpose
17 involving the production of income or the appreciation of
18 property; and

19 (2) no purpose of the company is to accomplish one or
20 more political or legislative purposes within the meaning
21 of Section 170(c)(2)(D) of the Internal Revenue Code of
22 1986, 26 U.S.C. 170(c)(2)(D), or its successor.

23 (c) A company that no longer satisfies the requirements of
24 this Section 1-26 continues to exist as a limited liability
25 company and shall promptly amend its articles of organization
26 so that its name and purpose no longer identify it as a

1 low-profit limited liability company or L3C.

2 (d) Any company operating or holding itself out as a
3 low-profit limited liability company in Illinois, any company
4 formed as a low-profit limited liability company under this
5 Act, and any chief operating officer, director, or manager of
6 any such company is a "trustee" as defined in Section 3 of the
7 Charitable Trust Act.

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

12 (805 ILCS 180/15-5)

13 Sec. 15-5. Operating agreement.

14 (a) All members of a limited liability company may enter
15 into an operating agreement to regulate the affairs of the
16 company and the conduct of its business and to govern relations
17 among the members, managers, and company. To the extent the
18 operating agreement does not otherwise provide, this Act
19 governs relations among the members, managers, and company.
20 Except as provided in subsection (b) of this Section, an
21 operating agreement may modify any provision or provisions of
22 this Act governing relations among the members, managers, and
23 company.

24 (b) The operating agreement may not:

25 (1) unreasonably restrict a right to information or

1 access to records under Section 10-15;

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

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

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

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

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

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

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

26 (6.5) eliminate or reduce the obligations or purposes a

1 low-profit limited liability company undertakes when
2 organized under Section 1-26; or

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

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

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

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

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

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