



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

**HB4449**

by Rep. Emanuel Chris Welch

#### SYNOPSIS AS INTRODUCED:

|                     |                          |
|---------------------|--------------------------|
| 805 ILCS 5/1.10     | from Ch. 32, par. 1.10   |
| 805 ILCS 105/101.10 | from Ch. 32, par. 101.10 |
| 805 ILCS 105/112.35 | from Ch. 32, par. 112.35 |
| 805 ILCS 105/112.40 | from Ch. 32, par. 112.40 |
| 805 ILCS 180/35-25  |                          |
| 805 ILCS 180/37-40  |                          |

Amends the Business Corporation Act of 1983 and the General Not For Profit Corporation Act of 1986. Requires the president, vice-president, secretary, assistant secretary, treasurer, or other officer duly authorized by a corporation's board of directors to execute and verify (rather than execute) certain documents required to be filed in the office of the Secretary of State. In regard to corporations organized under the General Not For Profit Corporation Act of 1986, provides that the Secretary of State may dissolve any corporation administratively if it has failed to elect and maintain at least 3 directors. Provides that failure to receive a notice of administrative dissolution shall not relieve a corporation of its obligation to pay the filing fee and any penalties due or invalidate the validity thereof. Amends the Limited Liability Company Act. Provides that the Secretary of State may dissolve any limited liability company administratively if it has failed to appoint and maintain a registered agent in Illinois (rather than if it has failed to appoint and maintain a registered agent in Illinois within 60 days after a registered agent's notice of resignation). Provides that the name of a series with limited liability must commence with the entire name of the limited liability company, as set forth in its articles of organization (rather than articles of incorporation) and be distinguishable from the names of the other series set forth in the articles of organization. Effective July 1, 2016.

LRB099 16147 KTG 40473 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning business organizations.

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 Section 1.10 as follows:

6 (805 ILCS 5/1.10) (from Ch. 32, par. 1.10)

7 Sec. 1.10. Forms, execution, acknowledgment and filing.

8 (a) All reports required by this Act to be filed in the  
9 office of the Secretary of State shall be made on forms which  
10 shall be prescribed and furnished by the Secretary of State.  
11 Forms for all other documents to be filed in the office of the  
12 Secretary of State shall be furnished by the Secretary of State  
13 on request therefor, but the use thereof, unless otherwise  
14 specifically prescribed in this Act, shall not be mandatory.

15 (b) Whenever any provision of this Act specifically  
16 requires any document to be executed by the corporation in  
17 accordance with this Section, unless otherwise specifically  
18 stated in this Act and subject to any additional provisions of  
19 this Act, such document shall be executed, in ink, as follows:

20 (1) The articles of incorporation, and any other  
21 document to be filed before the election of the initial  
22 board of directors if the initial directors were not named  
23 in the articles of incorporation, shall be signed by the

1 incorporator or incorporators.

2 (2) All other documents shall be signed:

3 (i) By the president, a vice-president, the  
4 secretary, an assistant secretary, the treasurer, or  
5 other officer duly authorized by the board of directors  
6 of the corporation to execute the document and verified  
7 by him or her; or

8 (ii) If it shall appear from the document that  
9 there are no such officers, then by a majority of the  
10 directors or by such directors as may be designated by  
11 the board; or

12 (iii) If it shall appear from the document that  
13 there are no such officers or directors, then by the  
14 holders of record, or such of them as may be designated  
15 by the holders of record of a majority of all  
16 outstanding shares; or

17 (iv) By the holders of all outstanding shares; or

18 (v) If the corporate assets are in the possession  
19 of a receiver, trustee or other court appointed  
20 officer, then by the fiduciary or the majority of them  
21 if there are more than one.

22 (c) The name of a person signing the document and the  
23 capacity in which he or she signs shall be stated beneath or  
24 opposite his or her signature.

25 (d) Whenever any provision of this Act requires any  
26 document to be verified, such requirement is satisfied by

1 either:

2 (1) The formal acknowledgment by the person or one of  
3 the persons signing the instrument that it is his or her  
4 act and deed or the act and deed of the corporation, as the  
5 case may be, and that the facts stated therein are true.  
6 Such acknowledgment shall be made before a person who is  
7 authorized by the law of the place of execution to take  
8 acknowledgments of deeds and who, if he or she has a seal  
9 of office, shall affix it to the instrument.

10 (2) The signature, without more, of the person or  
11 persons signing the instrument, in which case such  
12 signature or signatures shall constitute the affirmation  
13 or acknowledgment of the signatory, under penalties of  
14 perjury, that the instrument is his or her act and deed or  
15 the act and deed of the corporation, as the case may be,  
16 and that the facts stated therein are true.

17 (e) Whenever any provision of this Act requires any  
18 document to be filed with the Secretary of State or in  
19 accordance with this Section, such requirement means that:

20 (1) The original signed document, and if in duplicate  
21 as provided by this Act, one true copy, which may be  
22 signed, carbon or photocopy, shall be delivered to the  
23 office of the Secretary of State.

24 (2) All fees, taxes and charges authorized by law to be  
25 collected by the Secretary of State in connection with the  
26 filing of the document shall be tendered to the Secretary

1 of State.

2 (3) If the Secretary of State finds that the document  
3 conforms to law, he or she shall, when all fees, taxes and  
4 charges have been paid as in this Act prescribed:

5 (i) Endorse on the original and on the true copy,  
6 if any, the word "filed" and the month, day and year  
7 thereof;

8 (ii) File the original in his or her office;

9 (iii) (Blank); or

10 (iv) If the filing is in duplicate, he or she shall  
11 return one true copy to the corporation or its  
12 representative.

13 (f) If another Section of this Act specifically prescribes  
14 a manner of filing or executing a specified document which  
15 differs from the corresponding provisions of this Section, then  
16 the provisions of such other Section shall govern.

17 (Source: P.A. 96-1121, eff. 1-1-11.)

18 Section 10. The General Not For Profit Corporation Act of  
19 1986 is amended by changing Sections 101.10, 112.35, and 112.40  
20 as follows:

21 (805 ILCS 105/101.10) (from Ch. 32, par. 101.10)

22 Sec. 101.10. Forms, execution, acknowledgment and filing.

23 (a) All reports required by this Act to be filed in the  
24 office of the Secretary of State shall be made on forms which

1 shall be prescribed and furnished by the Secretary of State.  
2 Forms for all other documents to be filed in the office of the  
3 Secretary of State shall be furnished by the Secretary of State  
4 on request therefor, but the use thereof, unless otherwise  
5 specifically prescribed in this Act, shall not be mandatory.

6 (b) Whenever any provision of this Act specifically  
7 requires any document to be executed by the corporation in  
8 accordance with this Section, unless otherwise specifically  
9 stated in this Act and subject to any additional provisions of  
10 this Act, such document shall be executed, in ink, as follows:

11 (1) The articles of incorporation shall be signed by  
12 the incorporator or incorporators.

13 (2) All other documents shall be signed:

14 (i) By the president, a vice-president, the  
15 secretary, an assistant secretary, the treasurer, or  
16 other officer duly authorized by the board of directors  
17 of the corporation to execute the document and verified  
18 by him or her; or

19 (ii) If it shall appear from the document that  
20 there are no such officers, then by a majority of the  
21 directors or by such directors as may be designated by  
22 the board; or

23 (iii) If it shall appear from the document that  
24 there are no such officers or directors, then by the  
25 members, or such of them as may be designated by the  
26 members at a lawful meeting; or

1           (iv) If the corporate assets are in the possession  
2           of a receiver, trustee or other court-appointed  
3           officer, then by the fiduciary or the majority of them  
4           if there are more than one.

5           (c) The name of a person signing the document and the  
6           capacity in which he or she signs shall be stated beneath or  
7           opposite his or her signature.

8           (d) Whenever any provision of this Act requires any  
9           document to be verified, such requirement is satisfied by  
10          either:

11           (1) The formal acknowledgment by the person or one of  
12          the persons signing the instrument that it is his or her  
13          act and deed or the act and deed of the corporation, as the  
14          case may be, and that the facts stated therein are true.  
15          Such acknowledgment shall be made before a person who is  
16          authorized by the law of the place of execution to take  
17          acknowledgments of deeds and who, if he or she has a seal  
18          of office, shall affix it to the instrument; or

19           (2) The signature, without more, of the person or  
20          persons signing the instrument, in which case such  
21          signature or signatures shall constitute the affirmation  
22          or acknowledgment of the signatory, under penalties of  
23          perjury, that the instrument is his or her act and deed or  
24          the act and deed of the corporation, as the case may be,  
25          and that the facts stated therein are true.

26          (e) Whenever any provision of this Act requires any

1 document to be filed with the Secretary of State or in  
2 accordance with this Section, such requirement means that:

3 (1) The original signed document, and if in duplicate  
4 as provided by this Act, one true copy, which may be  
5 signed, or carbon or photocopy shall be delivered to the  
6 office of the Secretary of State.

7 (2) All fees and charges authorized by law to be  
8 collected by the Secretary of State in connection with the  
9 filing of the document shall be tendered to the Secretary  
10 of State.

11 (3) If the Secretary of State finds that the document  
12 conforms to law, he or she shall, when all fees and charges  
13 have been paid as in this Act prescribed:

14 (i) Endorse on the original and on the true copy,  
15 if any, the word "filed" and the month, day and year  
16 thereof;

17 (ii) File the original in his or her office;

18 (iii) (Blank); and

19 (iv) If the filing is in duplicate, he or she shall  
20 return the copy to the corporation or its  
21 representative.

22 (f) If another Section of this Act specifically prescribes  
23 a manner of filing or executing a specified document which  
24 differs from the corresponding provisions of this Section, then  
25 the provisions of such other Section shall govern.

26 (Source: P.A. 96-1121, eff. 1-1-11.)



1 (805 ILCS 105/112.35) (from Ch. 32, par. 112.35)

2 Sec. 112.35. Grounds for administrative dissolution. The  
3 Secretary of State may dissolve any corporation  
4 administratively if:

5 (a) It has failed to file its annual report as required by  
6 this Act before the first day of the anniversary month of the  
7 corporation of the year in which such annual report becomes  
8 due;

9 (b) It has failed to file in the office of the Secretary of  
10 State any report after the expiration of the period prescribed  
11 in this Act for filing such report;

12 (c) It has failed to pay any fees or charges prescribed by  
13 this Act;

14 (d) It has failed to appoint and maintain a registered  
15 agent in this State;

16 (e) It has misrepresented any material matter in any  
17 application, report, affidavit, or other document filed by the  
18 corporation pursuant to this Act; ~~or~~

19 (f) The Secretary of State receives notification from a  
20 local liquor commissioner, pursuant to Section 4-4(3) of "The  
21 Liquor Control Act of 1934," as now or hereafter amended, that  
22 an organization incorporated under this Act and functioning as  
23 a club has violated that Act by selling or offering for sale at  
24 retail alcoholic liquors without a retailer's license; or ~~or~~

25 (g) It has failed to elect and maintain at least 3

1 directors in accordance with Section 108.10 of this Act.

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

3 (805 ILCS 105/112.40) (from Ch. 32, par. 112.40)

4 Sec. 112.40. Procedure for administrative dissolution.

5 (a) After the Secretary of State determines that one or  
6 more grounds exist under Section 112.35 of this Act for the  
7 administrative dissolution of a corporation, he or she shall  
8 send by regular mail to each delinquent corporation a Notice of  
9 Delinquency to its registered office, or, if the corporation  
10 has failed to maintain a registered office, then to the  
11 president or other principal officer at the last known office  
12 of said officer. Failure to receive such notice shall not  
13 relieve the corporation of its obligation to pay the filing fee  
14 and any penalties due or invalidate the validity thereof.

15 (b) If the corporation does not correct the default within  
16 90 days following such notice, the Secretary of State shall  
17 thereupon dissolve the corporation by issuing a certificate of  
18 dissolution that recites the ground or grounds for dissolution  
19 and its effective date. The Secretary of State shall file the  
20 original of the certificate in his or her office and mail one  
21 copy to the corporation at its registered office or, if the  
22 corporation has failed to maintain a registered office, then to  
23 the president or other principal officer at the last known  
24 office of said officer.

25 (c) The administrative dissolution of a corporation

1 terminates its corporate existence and such a dissolved  
2 corporation shall not thereafter carry on any affairs, provided  
3 however, that such a dissolved corporation may take all action  
4 authorized under Section 112.75 of this Act or as otherwise  
5 necessary or appropriate to wind up and liquidate its affairs  
6 under Section 112.30 of this Act.

7 (Source: P.A. 98-776, eff. 1-1-15.)

8 Section 15. The Limited Liability Company Act is amended by  
9 changing Sections 35-25 and 37-40 as follows:

10 (805 ILCS 180/35-25)

11 Sec. 35-25. Grounds for administrative dissolution. The  
12 Secretary of State may dissolve any limited liability company  
13 administratively if:

14 (1) it has failed to file its annual report and pay its  
15 fee as required by this Act before the first day of the  
16 anniversary month or has failed to pay any fees, penalties,  
17 or charges required by this Act;

18 (2) it has failed to file in the Office of the  
19 Secretary of State any report after the expiration of the  
20 period prescribed in this Act for filing the report;

21 (2.5) it has misrepresented any material matter in any  
22 application, report, affidavit, or other document  
23 submitted by the limited liability company under this Act;

24 (3) it has failed to appoint and maintain a registered

1 agent in Illinois in accordance with the provisions of this  
2 Act ~~within 60 days after a registered agent's notice of~~  
3 ~~resignation under Section 1-35;~~

4 (4) a manager or member to whom interrogatories have  
5 been propounded by the Secretary of State as provided in  
6 Section 5-60 of this Act fails to answer the  
7 interrogatories fully and to timely file the answer in the  
8 office of the Secretary of State; or

9 (5) it has tendered payment to the Secretary of State  
10 which is returned due to insufficient funds, a closed  
11 account, or for any other reason, and acceptable payment  
12 has not been subsequently tendered.

13 (Source: P.A. 98-171, eff. 8-5-13.)

14 (805 ILCS 180/37-40)

15 Sec. 37-40. Series of members, managers or limited  
16 liability company interests.

17 (a) An operating agreement may establish or provide for the  
18 establishment of designated series of members, managers or  
19 limited liability company interests having separate rights,  
20 powers or duties with respect to specified property or  
21 obligations of the limited liability company or profits and  
22 losses associated with specified property or obligations, and  
23 to the extent provided in the operating agreement, any such  
24 series may have a separate business purpose or investment  
25 objective.

1           (b) Notwithstanding anything to the contrary set forth in  
2 this Section or under other applicable law, in the event that  
3 an operating agreement creates one or more series, and if  
4 separate and distinct records are maintained for any such  
5 series and the assets associated with any such series are held  
6 (directly or indirectly, including through a nominee or  
7 otherwise) and accounted for separately from the other assets  
8 of the limited liability company, or any other series thereof,  
9 and if the operating agreement so provides, and notice of the  
10 limitation on liabilities of a series as referenced in this  
11 subsection is set forth in the articles of organization of the  
12 limited liability company and if the limited liability company  
13 has filed a certificate of designation for each series which is  
14 to have limited liability under this Section, then the debts,  
15 liabilities and obligations incurred, contracted for or  
16 otherwise existing with respect to a particular series shall be  
17 enforceable against the assets of such series only, and not  
18 against the assets of the limited liability company generally  
19 or any other series thereof, and unless otherwise provided in  
20 the operating agreement, none of the debts, liabilities,  
21 obligations and expenses incurred, contracted for or otherwise  
22 existing with respect to the limited liability company  
23 generally or any other series thereof shall be enforceable  
24 against the assets of such series. The fact that the articles  
25 of organization contain the foregoing notice of the limitation  
26 on liabilities of a series and a certificate of designation for

1 a series is on file in the Office of the Secretary of State  
2 shall constitute notice of such limitation on liabilities of a  
3 series. A series with limited liability shall be treated as a  
4 separate entity to the extent set forth in the articles of  
5 organization. Each series with limited liability may, in its  
6 own name, contract, hold title to assets, grant security  
7 interests, sue and be sued and otherwise conduct business and  
8 exercise the powers of a limited liability company under this  
9 Act. The limited liability company and any of its series may  
10 elect to consolidate their operations as a single taxpayer to  
11 the extent permitted under applicable law, elect to work  
12 cooperatively, elect to contract jointly or elect to be treated  
13 as a single business for purposes of qualification to do  
14 business in this or any other state. Such elections shall not  
15 affect the limitation of liability set forth in this Section  
16 except to the extent that the series have specifically accepted  
17 joint liability by contract.

18 (c) Except in the case of a foreign limited liability  
19 company that has adopted an assumed name pursuant to Section  
20 45-15, the name of the series with limited liability must  
21 commence with the entire name of the limited liability company,  
22 as set forth in its articles of organization ~~incorporation~~, and  
23 be distinguishable from the names of the other series set forth  
24 in the articles of organization. In the case of a foreign  
25 limited liability company that has adopted an assumed name  
26 pursuant to Section 45-15, the name of the series with limited

1 liability must commence with the entire name, as set forth in  
2 the foreign limited liability company's assumed name  
3 application, under which the foreign limited liability company  
4 has been admitted to transact business in this State.

5 (d) Upon the filing of the certificate of designation with  
6 the Secretary of State setting forth the name of each series  
7 with limited liability, the series' existence shall begin, and  
8 each of the duplicate copies stamped "Filed" and marked with  
9 the filing date shall be conclusive evidence, except as against  
10 the State, that all conditions precedent required to be  
11 performed have been complied with and that the series has been  
12 or shall be legally organized and formed under this Act. If  
13 different from the limited liability company, the certificate  
14 of designation for each series shall list the names of the  
15 members if the series is member managed or the names of the  
16 managers if the series is manager managed. The name of a series  
17 with limited liability under subsection (b) of this Section may  
18 be changed by filing with the Secretary of State a certificate  
19 of designation identifying the series whose name is being  
20 changed and the new name of such series. If not the same as the  
21 limited liability company, the names of the members of a member  
22 managed series or of the managers of a manager managed series  
23 may be changed by filing a new certificate of designation with  
24 the Secretary of State. A series with limited liability under  
25 subsection (b) of this Section may be dissolved by filing with  
26 the Secretary of State a certificate of designation identifying

1 the series being dissolved or by the dissolution of the limited  
2 liability company as provided in subsection (m) of this  
3 Section. Certificates of designation may be executed by the  
4 limited liability company or any manager, person or entity  
5 designated in the operating agreement for the limited liability  
6 company.

7 (e) A series of a limited liability company will be deemed  
8 to be in good standing as long as the limited liability company  
9 is in good standing.

10 (f) The registered agent and registered office for the  
11 limited liability company in Illinois shall serve as the agent  
12 and office for service of process in Illinois for each series.

13 (g) An operating agreement may provide for classes or  
14 groups of members or managers associated with a series having  
15 such relative rights, powers and duties as the operating  
16 agreement may provide, and may make provision for the future  
17 creation of additional classes or groups of members or managers  
18 associated with the series having such relative rights, powers  
19 and duties as may from time to time be established, including  
20 rights, powers and duties senior to existing classes and groups  
21 of members or managers associated with the series.

22 (h) A series may be managed by either the member or members  
23 associated with the series or by a manager or managers chosen  
24 by the members of such series, as provided in the operating  
25 agreement. Unless otherwise provided in an operating  
26 agreement, the management of a series shall be vested in the



1 members associated with such series.

2 (i) An operating agreement may grant to all or certain  
3 identified members or managers or a specified class or group of  
4 the members or managers associated with a series the right to  
5 vote separately or with all or any class or group of the  
6 members or managers associated with the series, on any matter.  
7 An operating agreement may provide that any member or class or  
8 group of members associated with a series shall have no voting  
9 rights.

10 (j) Except to the extent modified in this Section, the  
11 provisions of this Act which are generally applicable to  
12 limited liability companies, their managers, members and  
13 transferees shall be applicable to each particular series with  
14 respect to the operation of such series.

15 (k) Except as otherwise provided in an operating agreement,  
16 any event under this Act or in an operating agreement that  
17 causes a manager to cease to be a manager with respect to a  
18 series shall not, in itself, cause such manager to cease to be  
19 a manager of the limited liability company or with respect to  
20 any other series thereof.

21 (l) Except as otherwise provided in an operating agreement,  
22 any event under this Act or an operating agreement that causes  
23 a member to cease to be associated with a series shall not, in  
24 itself, cause such member to cease to be associated with any  
25 other series or terminate the continued membership of a member  
26 in the limited liability company or cause the termination of

1 the series, regardless of whether such member was the last  
2 remaining member associated with such series.

3 (m) Except to the extent otherwise provided in the  
4 operating agreement, a series may be dissolved and its affairs  
5 wound up without causing the dissolution of the limited  
6 liability company. The dissolution of a series established in  
7 accordance with subsection (b) of this Section shall not affect  
8 the limitation on liabilities of such series provided by  
9 subsection (b) of this Section. A series is terminated and its  
10 affairs shall be wound up upon the dissolution of the limited  
11 liability company under Article 35 of this Act.

12 (n) If a limited liability company with the ability to  
13 establish series does not register to do business in a foreign  
14 jurisdiction for itself and certain of its series, a series of  
15 a limited liability company may itself register to do business  
16 as a limited liability company in the foreign jurisdiction in  
17 accordance with the laws of the foreign jurisdiction.

18 (o) If a foreign limited liability company, as permitted in  
19 the jurisdiction of its organization, has established a series  
20 having separate rights, powers or duties and has limited the  
21 liabilities of such series so that the debts, liabilities and  
22 obligations incurred, contracted for or otherwise existing  
23 with respect to a particular series are enforceable against the  
24 assets of such series only, and not against the assets of the  
25 limited liability company generally or any other series  
26 thereof, or so that the debts, liabilities, obligations and

1 expenses incurred, contracted for or otherwise existing with  
2 respect to the limited liability company generally or any other  
3 series thereof are not enforceable against the assets of such  
4 series, then the limited liability company, on behalf of itself  
5 or any of its series, or any of its series on their own behalf  
6 may register to do business in the State in accordance with  
7 Section 45-5 of this Act. The limitation of liability shall be  
8 so stated on the application for admission as a foreign limited  
9 liability company and a certificate of designation shall be  
10 filed for each series being registered to do business in the  
11 State by the limited liability company. Unless otherwise  
12 provided in the operating agreement, the debts, liabilities and  
13 obligations incurred, contracted for or otherwise existing  
14 with respect to a particular series of such a foreign limited  
15 liability company shall be enforceable against the assets of  
16 such series only, and not against the assets of the foreign  
17 limited liability company generally or any other series thereof  
18 and none of the debts, liabilities, obligations and expenses  
19 incurred, contracted for or otherwise existing with respect to  
20 such a foreign limited liability company generally or any other  
21 series thereof shall be enforceable against the assets of such  
22 series.

23 (Source: P.A. 98-720, eff. 7-16-14.)

24 Section 99. Effective date. This Act takes effect July 1,  
25 2016.