

AN ACT concerning business.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Limited Liability Company Act is amended by changing Sections 15-3 and 15-5 as follows:

(805 ILCS 180/15-3)

Sec. 15-3. General standards of member and manager's conduct.

(a) Without limiting any fiduciary duties owed at common law, the ~~The~~ fiduciary duties a member owes to a member-managed company and its other members include the duty of loyalty and the duty of care referred to in subsections (b) and (c) of this Section.

(b) A member's duty of loyalty to a member-managed company and its other members includes the following:

(1) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(2) to act fairly when a member deals with the company in the conduct or winding up of the company's business as

or on behalf of a party having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) The implied contractual covenant of good faith and fair dealing applies to the operating agreement and members of a member-managed company in the same manner and to the same extent that it applies at law to other contracts and parties to the contracts. ~~A member shall discharge his or her duties to a member managed company and its other members under this Act or under the operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing.~~

(e) A member of a member-managed company does not violate a duty or obligation under this Act or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) This Section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

(g) In a manager-managed company:

(1) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

(2) a manager is held to the same standards of conduct prescribed for members in subsections (b), (c), (d), and (e) of this Section;

(3) a member who exercises some or all of the authority of a manager in the ~~and~~ conduct of the company's business is held to the standards of conduct in subsections (b), (c), (d), and (e) of this Section; ~~and~~

(4) a manager is relieved of liability imposed by law for violations of the standards prescribed by subsections (b), (c), (d), and (e) to the extent of the managerial authority delegated to the members by the operating agreement; and -

(5) subsection (d) of this Section applies to the operating agreement and members and managers of the company.

(Source: P.A. 99-637, eff. 7-1-17.)

(805 ILCS 180/15-5)

Sec. 15-5. Operating agreement.

(a) All members of a limited liability company may enter into an operating agreement to regulate the affairs of the company and the conduct of its business and to govern

relations among the members, managers, and company. The operating agreement may establish that a limited liability company is a manager-managed limited liability company and the rights and duties under this Act of a person in the capacity of a manager. To the extent the operating agreement does not otherwise provide, this Act governs relations among the members, managers, and company. Except as provided in subsections (b), (c), (d), and (e) of this Section, an operating agreement may modify any provision or provisions of this Act governing relations among the members, managers, and company.

(b) The operating agreement may not:

(1) unreasonably restrict a right to information or access to records under Section 1-40 or Section 10-15;

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

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

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

(5) restrict the power of a member to dissociate under Section 35-50, although an operating agreement may determine whether a dissociation is wrongful under Section

35-50;

(6) (blank);

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

(7) eliminate or reduce the implied contractual covenant obligation of good faith and fair dealing under subsection (d) of Section 15-3, but the operating agreement may determine the standards by which the performance of the member's or manager's duties or the exercise of the member's or manager's rights is to be measured;

(8) eliminate, vary, or restrict the priority of a statement of authority over provisions in the articles of organization as provided in subsection (h) of Section 13-15;

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

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

or

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

(c) In addition, with respect to fiduciary duties, the ~~The~~ operating agreement ~~may~~:

(1) may not restrict or eliminate a fiduciary duty owed at common law or under this Act, unless ~~other than the duty of care described in subsection (c) of Section 15-3, but only to the extent~~ the restriction or elimination in the operating agreement is clear and unambiguous;

(2) may not restrict or eliminate the fiduciary duty described in paragraph (2) of subsection (b) of Section 15-3, except in the manner described in paragraph (4) of this subsection (c); ~~identify specific types or categories of activities that do not violate any fiduciary duty; and~~

(3) may not alter the duty of care, ~~except~~ to authorize intentional misconduct or knowing violation of law; and ~~-~~

(4) may identify, subject to paragraph (1), specific types or categories of activities or provide one or more examples of activities that do not violate any fiduciary duty described in subsection (b) of Section 15-3 or any fiduciary duty owed at common law and may determine standards by which the performance of the fiduciary duty is to be measured.

The changes made to paragraphs (2) and (4) of this subsection by this amendatory Act of the 102nd General Assembly apply to: (i) any operating agreement entered into before the effective date of this amendatory Act of the 102nd General Assembly if the fiduciary duties of the members or

managers of the company described in paragraph (2) of subsection (b) of Section 15-3 are modified in any respect on or after the effective date of this amendatory Act of the 102nd General Assembly; and (ii) any operating agreement entered into on or after the effective date of this amendatory Act of the 102nd General Assembly.

(d) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by all the members or by one or more disinterested and independent members or persons after full disclosure of all material facts.

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

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

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

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

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

(5) an intentional violation of criminal law.

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

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

(h) An operating agreement may be entered into before, after, or at the time of filing of articles of organization and, whether entered into before, after, or at the time of the filing, may be made effective as of the time of formation of the limited liability company or as of the time or date provided in the operating agreement.

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