

SB2797



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB2797

Introduced 2/4/2020, by Sen. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

805 ILCS 180/15-5

Amends the Limited Liability Company 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 16401 KTG 65779 b

A BILL FOR

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 Section 15-5 as follows:

6 (805 ILCS 180/15-5)

7 Sec. 15-5. Operating agreement.

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

21 (b) The operating agreement may not:

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

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

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

14 (6) (blank);

15 (6.5) eliminate or reduce the obligations or purposes a
16 low-profit limited liability company undertakes when
17 organized under Section 1-26;

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

23 (8) eliminate, vary, or restrict the priority of a
24 statement of authority over provisions in the articles of
25 organization as provided in subsection (h) of Section
26 13-15;

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

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

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

8 (c) The operating agreement may:

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

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

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

19 (4) identify the standards by which the obligation to
20 act fairly is measured.

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

26 (e) The operating agreement may alter or eliminate the

1 right to payment or reimbursement for a member or manager
2 provided by Section 15-7 and may eliminate or limit a member or
3 manager's liability to the limited liability company and
4 members for money damages, except for:

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

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

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

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

14 (5) an intentional violation of criminal law.

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

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

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

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