

## HOUSE BILL NO. 898

INTRODUCED BY E. TILLEMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE INTERPRETATION OF LIMITED LIABILITY COMPANY OPERATING AGREEMENTS; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 35-8-109 AND 35-8-307, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 35-8-109, MCA, is amended to read:

**"35-8-109. Effect of operating agreement -- nonwaivable provisions.** (1) Except as provided in subsection ~~(2)~~ (3), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

~~(2)~~ The terms of an operating agreement must be interpreted according to Title 28, chapter 3.

~~(2)~~(3) An operating agreement need not be in writing except as otherwise provided in this chapter to:

(a) vary the recordkeeping requirements under 35-8-405;

(b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or

(c) vary the process for admission of members under 35-8-707.

~~(3)~~(4) The operating agreement may not:

(a) unreasonably restrict a right to information or access to records under 35-8-405;

(b) eliminate the duty of loyalty under 35-8-310, but the agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty

- 1 of loyalty;
- 2 (c) unreasonably reduce the duty of care under 35-8-310;
- 3 (d) eliminate the obligation of good faith and fair dealing under 35-8-310, but the operating
- 4 agreement may determine the standards by which the performance of the obligation is to be measured, if the
- 5 standards are not manifestly unreasonable;
- 6 (e) vary the right to expel a member upon the occurrence of an event specified in 35-8-803;
- 7 (f) vary the requirement to wind up the limited liability company's business in a case specified in
- 8 35-8-901(1)(c) or 35-8-902; or
- 9 (g) restrict the rights of a person under this chapter, other than a manager, member, or transferee
- 10 of a member's distributional interest."
- 11

12 **Section 2.** Section 35-8-307, MCA, is amended to read:

13 **"35-8-307. Management and voting.** (1) Unless the articles of organization or the operating

14 agreement provide otherwise, in a member-managed company:

- 15 (a) each member has equal rights in the management and conduct of the company's business;
- 16 and
- 17 (b) except as provided in subsection (3), any matter relating to the business of the company may
- 18 be decided by a majority of the members.

19 (2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-

20 managed company:

- 21 (a) each manager has equal rights in the management and conduct of the company's business;
- 22 (b) except as provided in subsection (3), any matter relating to the business of the company may
- 23 be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers;
- 24 and
- 25 (c) a manager:
- 26 (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent
- 27 of a majority of the members; and
- 28 (ii) holds office until a successor has been elected and qualified, unless the manager sooner

1 resigns or is removed.

2 (3) Unless the articles of organization or the operating agreement provide otherwise, the only  
3 matters of a member-managed or manager-managed company's business requiring the consent of all of the  
4 members are:

5 (a) the amendment of the operating agreement under 35-8-109;

6 (b) the authorization or ratification of acts or transactions under ~~35-8-109(3)(b)(ii)~~ 35-8-109 that  
7 would otherwise violate the duty of loyalty;

8 (c) an amendment to the articles of organization under 35-8-203;

9 (d) the compromise of an obligation to make a contribution under 35-8-502;

10 (e) the compromise, as among members, of an obligation to make a contribution or return money  
11 or other property paid or distributed in violation of this chapter;

12 (f) the making of interim distributions under 35-8-601, including the redemption or repurchase of  
13 an interest;

14 (g) the admission of a new member;

15 (h) the use of the company's property to redeem an interest subject to a charging order;

16 (i) the consent to dissolve the company under 35-8-901;

17 (j) a waiver of the right to have the company's business wound up and the company terminated  
18 under 35-8-901;

19 (k) the consent of members to merge with another entity under 35-8-1201; and

20 (l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's  
21 property with or without goodwill.

22 (4) Unless the articles of organization or the operating agreement provide otherwise, the  
23 management of a series of members is vested in the members associated with the series in proportion to their  
24 contribution to the capital of the series as adjusted from time to time to reflect properly any additional  
25 contributions or withdrawals from the assets or income of the series by the members associated with the series.

26 (5) Action requiring the consent of members or managers under this chapter may be taken without  
27 a meeting.

28 (6) A member or manager may appoint a proxy to vote or otherwise act for the member or

1 manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-  
2 fact.

3 (7) (a) The articles of organization or operating agreement of a limited liability company may:

4 (i) create one or more series of members; or

5 (ii) vest authority in one or more members or managers of the company or in other persons to  
6 create one or more series of members that may include, without limitation, rights, powers, and duties senior to  
7 any existing series of members.

8 (b) The articles of organization or operating agreement may provide that any member associated  
9 with a series of members has no voting rights or has voting rights that differ from other members or other series  
10 of members.

11 (c) A series of members may have separate powers, rights, or duties with respect to specified  
12 property or obligations of the company or profits and losses associated with specified property or obligations,  
13 and any series of members may have a separate business purpose or investment objective."  
14

15 NEW SECTION. Section 3. Appropriation. There is appropriated \$100 from the general fund to the  
16 office of secretary of state for the fiscal year beginning July 1, 2025, for the purpose of updating the agency's  
17 website to reflect the changes pursuant to [section 1].  
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19 NEW SECTION. Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is  
20 effective on passage and approval.

21 (2) [Section 3] is effective July 1, 2025.  
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23 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the  
24 meaning of 1-2-109, to operating agreements in existence before [the effective date of this act].  
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26 NEW SECTION. Section 6. Applicability. [This act] applies to operating agreements adopted on or  
27 after [the effective date of this act].  
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