

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

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

13       **"35-8-109. Effect of operating agreement -- nonwaivable provisions.** (1) Except as provided in  
14        subsection (2) (3), all members of a limited liability company may enter into an operating agreement, which  
15        need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern  
16        relations among the members, managers, and company. To the extent that the operating agreement does not  
17        otherwise provide, this chapter governs relations among the members, managers, and company.

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

19 (2)(3) An operating agreement need not be in writing except as otherwise provided in this chapter to:

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

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

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

23 (3)(4) The operating agreement may not:

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

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

26 (i) identify specific types or categories of activities that do not violate the duty of loyalty, if not

27 manifestly unreasonable; and

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

**"35-8-307. Management and voting.** (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business;

and

(b) except as provided in subsection (3), any matter relating to the business of the company may be decided by a majority of the members.

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

(a) each manager has equal rights in the management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may  
                  be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers;

and

(c) a manager:

**Amendment - 1st Reading/2nd House-blue - Requested by: Eric Tilleman - (S) Business, Labor and Economic Affairs**

- 2025

69th Legislature 2025

Drafter: Matthew Weaver,

HB0898.001.001

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1 contributions or withdrawals from the assets or income of the series by the members associated with the series.

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

4 (6) A member or manager may appoint a proxy to vote or otherwise act for the member or  
5 manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-  
6 fact.

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

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

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

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

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

**NEW SECTION. Section 3. Ambiguity in operating agreement regarding dissolution.** If there is

an ambiguity in an operating agreement between a construction in favor of maintaining the existence of a  
limited liability company or in favor of the dissolution of a limited liability company, the operating agreement  
must be construed in favor of maintaining the existence of the limited liability company.

**NEW SECTION. Section 4. Appropriation.** There is appropriated \$100 from the general fund to the  
office of secretary of state for the fiscal year beginning July 1, 2025, for the purpose of updating the agency's  
website to reflect the changes pursuant to [section 1].

1           **NEW SECTION. Section 5. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
2 effective on passage and approval.

3           (2)     [Section-~~3~~4] is effective July 1, 2025.

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5           **NEW SECTION. Section 6. Retroactive applicability.** [This act] applies retroactively, within the  
6 meaning of 1-2-109, to operating agreements in existence before [the effective date of this act].

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8           **NEW SECTION. Section 7. Codification instruction.** [Section 3] is intended to be codified as an  
9 integral part of Title 35, chapter 8, part 9, and the provisions of Title 35, chapter 8, part 9, apply to [section 3].

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11           **NEW SECTION. Section 8. Applicability.** [This act] applies to operating agreements adopted on or  
12 after [the effective date of this act].

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