

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:

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

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

28 (ii) specify the number or percentage of members or disinterested managers that may authorize or

1 ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty
2 of loyalty;

3 (c) unreasonably reduce the duty of care under 35-8-310;

4 (d) eliminate the obligation of good faith and fair dealing under 35-8-310, but the operating
5 agreement may determine the standards by which the performance of the obligation is to be measured, if the
6 standards are not manifestly unreasonable;

7 (e) vary the right to expel a member upon the occurrence of an event specified in 35-8-803;

8 (f) vary the requirement to wind up the limited liability company's business in a case specified in
9 35-8-901(1)(c) or 35-8-902; or

10 (g) restrict the rights of a person under this chapter, other than a manager, member, or transferee
11 of a member's distributional interest."

12

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

14 **"35-8-307. Management and voting.** (1) Unless the articles of organization or the operating
15 agreement provide otherwise, in a member-managed company:

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

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

22 (a) each manager has equal rights in the management and conduct of the company's business;
23 (b) except as provided in subsection (3), any matter relating to the business of the company may
24 be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers;
25 and

26 (c) a manager:
27 (i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent
28 of a majority of the members; and

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

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

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

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

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

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

(b) the use of the company's property to endorse an interest subject to a charging order.

17 (i) the consent to dissolve the company under 25.8.001;

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

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

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

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

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

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

12 (c) A series of members may have separate powers, rights, or duties with respect to specified
13 property or obligations of the company or profits and losses associated with specified property or obligations,
14 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

22 office of secretary of state for the fiscal year beginning July 1, 2025, for the purpose of updating the agency's
23 website to reflect the changes pursuant to [section 1].

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

27 (2) [Section 3.4] is effective July 1, 2025.

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

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4 **NEW SECTION. SECTION 7. CODIFICATION INSTRUCTION.** [SECTION 3] IS INTENDED TO BE CODIFIED AS AN
5 INTEGRAL PART OF TITLE 35, CHAPTER 8, PART 9, AND THE PROVISIONS OF TITLE 35, CHAPTER 8, PART 9, APPLY TO
6 [SECTION 3].

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

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