

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 CLARIFICATION FOR AMBIGUITY IN THE CASE OF DISSOLUTION; 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 of loyalty;

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

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

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

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

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

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-managed 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:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

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

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

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

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

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

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

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

(g) the admission of a new member;

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

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

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

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

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

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

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

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

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

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

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

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

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

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