

March 24, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1136

Page 19, line 19, after the second underscored quotation mark insert "or "membership interest""

Page 21, line 23, after the first "the" insert "limited liability"

Page 21, line 23, after "company" insert "under chapter 10-32 at the time the limited liability company becomes subject to this chapter"

Page 21, line 24, after "the" insert "limited liability"

Page 21, line 25, replace "21" with "35"

Page 21, line 26, after the first underscored comma insert "the"

Page 21, line 26, after the second underscored comma insert "and any"

Page 21, line 31, replace the underscored period with "; and

c. Subject to the operating agreement of the limited liability company:

- (1) The limited liability company shall keep the records specified in subdivision k of subsection 1 of section 10-32-51, at the principal executive office of the limited liability company, or at another place or places within the United States as determined under subsection 1 of section 10-32-51, before the limited liability company became subject to this chapter;
- (2) For the purpose of applying paragraph 1, subsections 3 and 4 of section 10-32-56, continue to apply to the limited liability company as if those provisions had not been repealed;
- (3) Subsection 1 of section 10-32.1-30, does not apply to the limited liability company;
- (4) The profits and losses of the limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;
- (5) The voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;
- (6) Distributions of cash or other assets of the limited liability company, including distributions on the dissolution of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;
- (7) Subdivision a of subsection 1 and subsections 2 and 3 of 10-32-54 and section 10-32-55 continue to apply to the limited

liability company as if those provisions had not been repealed;
and

- (8) For the purpose of applying paragraph 7, subsection 1 of section 10-32-40.1 continues to apply to the limited liability company as if that provision had not been repealed."

Page 22, line 14, after the underscored period insert: "With respect to loans, guarantees, and suretyship:

- a. Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities, a limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved pursuant to this chapter and the operating agreement of the limited liability company, and:
- (1) Is in the usual and regular course of business of the limited liability company;
- (2) Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
- (3) Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or
- (4) Whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by:
- (a) The owners of two-thirds of the voting power of persons other than the interested person or persons; or
- (b) The unanimous vote of all members, whether or not ordinarily entitled to vote.
- b. Any loan, guaranty, surety contract, or other financial assistance described in subdivision a may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in the transferable interest of a member in the limited liability company.
- c. This subsection does not grant any authority to act as a bank or to carry on the business of banking."

Page 28, line 6, replace the second "subsection" with "subsections"

Page 28, line 6, after "7" insert "and 8"

Page 28, line 12, replace the second "subsection" with "subsections"

Page 28, line 12, after "7" insert "and 8"

Page 28, line 16, replace the second "subsection" with "subsections"

Page 28, line 16, after "7" insert "and 8"

Page 29, line 8, replace "subsection 1" with "subsection 2"

Page 31, line 18, remove "appoint or"

Page 38, after line 16, insert:

"11. If a member-managed limited liability company, a manager of a manager-managed limited liability company, or a governor of a board-managed limited liability company, knows that any information in articles of organization filed with the secretary of state was inaccurate when the articles were filed, or has become inaccurate owing to changed circumstances, the member, manager, or governor shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, file with the secretary of state a change of registered agent or change of registered office in the manner prescribed by chapter 10-01.1."

Page 43, line 6, replace "Any" with "Subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any"

Page 46, line 10, after "member-managed" insert "or board-managed"

Page 46, line 14, after "member" insert ", manager,"

Page 50, line 12, replace "5" with "11"

Page 54, line 25, replace "For" with "Subject to subsection 4 of section 10-32.1-05, for"

Page 54, line 26, replace "then current profits" with "distributions"

Page 54, line 27, after "company" insert "before dissolution"

Page 59, line 15, after the second underscored comma insert "subject to subsection 4 of section 10-32.1-05"

Page 59, line 16, remove "member's"

Page 59, line 16, after "interest" insert "of the member"

Page 59, line 16, remove "then"

Page 59, line 17, replace "current profits" with "distributions"

Page 59, line 17, after "company" insert "before dissolution"

Page 62, line 29, after "member-managed" insert "or board-managed"

Page 77, line 2, replace "coowns" with "co-owns"

Page 77, line 4, replace "coowning" with "co-owning"

Page 77, line 9, replace "coowning" with "co-owning"

Page 77, line 10, after "interest" insert ", or interests"

Page 77, line 10, after "member" insert ", or members"

Renumber accordingly