

**As Reported by the Senate Civil Justice Committee**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 181**

**Senators Obhof, Schiavoni**

**Cosponsors: Senators Bacon, Eklund, Seitz, LaRose**

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**A BILL**

To amend sections 1701.56, 1701.64, 1705.081, 1705.161, 1705.281, 1705.30, and 1705.48 and to enact sections 1701.641, 1705.031, 1705.291, and 1705.292 of the Revised Code to prescribe the fiduciary duties of corporate and limited liability company officers, to specify that officers are not required for limited liability companies, to permit a written waiver or elimination of the fiduciary duties of limited liability company members, managers, or officers, to clarify when a limited liability company manager's or officer's duties can be the same as a member's duties, to declare the policy of the Limited Liability Company Law generally to give maximum effect to freedom of contract, and to make other changes regarding corporations and limited liability companies.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1701.56, 1701.64, 1705.081, 1705.161, 1705.281, 1705.30, and 1705.48 be amended and sections

1701.641, 1705.031, 1705.291, and 1705.292 of the Revised Code 20  
be enacted to read as follows: 21

**Sec. 1701.56.** (A) Except as provided in division (B) of 22  
this section and section 1701.911 of the Revised Code: 23

(1) The number of directors may be fixed by the articles 24  
or the regulations, but the number so fixed shall not be less 25  
than one. 26

(2) Unless the articles or the regulations fix the number 27  
of directors or provide the manner in which such number may be 28  
fixed or changed by the shareholders, the number may be fixed or 29  
changed to a number not less than one at a meeting of the 30  
shareholders called for the purpose of electing directors at 31  
which a quorum is present, by the affirmative vote of the 32  
holders of a majority of the shares which are represented at the 33  
meeting and entitled to vote on the proposal. In addition to the 34  
authority of the shareholders to fix or change the number of 35  
directors and the manner in which such number may be fixed or 36  
changed, the articles or the regulations may authorize the 37  
directors to change the number of directors, may specify the 38  
manner in which the directors are to change the number of 39  
directors and limitations upon the ~~directors~~directors' use of 40  
this authority, and may authorize the directors who are in 41  
office to fill any director's office that is created by an 42  
increase in the number of directors. No reduction in the number 43  
of directors shall of itself have the effect of shortening the 44  
term of any incumbent director. 45

(3) The directors shall be natural persons of at least 46  
eighteen years of age and shall have such qualifications, if 47  
any, as are stated in the articles or the regulations. 48

(4) The directors may elect a chairperson of the board who shall be a director. Unless otherwise provided in the articles or regulations or in a resolution of the directors, the chairperson of the board is not an officer of the corporation. 49  
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(B) The court of common pleas of the county in which a corporation maintains its principal office may, pursuant to division (A) of section 1701.911 of the Revised Code, order the appointment of a provisional director for the corporation without regard to the number or qualifications of directors stated in the articles or regulations of the corporation. 53  
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**Sec. 1701.64.** (A) The officers of a corporation shall consist of a president, a secretary, a treasurer, and, if desired, ~~a chairman of the board,~~ one or more vice-presidents, and such other officers and assistant officers as may be deemed necessary. The officers shall be elected by the directors. ~~The chairman of the board shall be a director. Unless the articles or the regulations otherwise provide, none~~ None of the other officers need be a director unless the articles or the regulations otherwise provide or the directors determine that there is to be a chairperson of the board who is to be an officer. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law or by the articles, the regulations, or the bylaws to be executed, acknowledged, or verified by two or more officers. Unless the articles or the regulations otherwise provide, all officers shall be elected annually. 59  
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(B) Unless the articles or the regulations otherwise provide, and subject to the exceptions, applicable during an emergency, as that term is defined in section 1701.01 of the 76  
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Revised Code, for which provision is made in division (F) of 79  
section 1701.11 of the Revised Code: 80

(1) All officers, as between themselves and the 81  
corporation, shall respectively have such authority and perform 82  
such duties as are determined by the directors; 83

(2) Any officer may be removed, with or without cause, by 84  
the directors without prejudice to the contract rights of such 85  
officer. The election or appointment of an officer for a given 86  
term, or a general provision in the articles, the regulations, 87  
or the bylaws with respect to term of office, shall not be 88  
deemed to create contract rights; 89

(3) The directors may fill any vacancy in any office 90  
occurring from whatever reason. 91

Sec. 1701.641. (A) Unless the articles, the regulations, 92  
or a written agreement with an officer establishes additional 93  
fiduciary duties, the only fiduciary duties of an officer are 94  
the duties to the corporation set forth in division (B) of this 95  
section. 96

(B) An officer shall perform the officer's duties to the 97  
corporation in good faith, in a manner the officer reasonably 98  
believes to be in or not opposed to the best interests of the 99  
corporation, and with the care that an ordinarily prudent person 100  
in a like position would use under similar circumstances. In 101  
performing an officer's duties, an officer is entitled to rely 102  
on information, opinions, reports, or statements, including 103  
financial statements and other financial data, that are prepared 104  
or presented by any of the following: 105

(1) One or more directors, officers, or employees of the 106  
corporation who the officer reasonably believes are reliable and 107

competent in the matters prepared or presented; 108

(2) Counsel, public accountants, or other persons as to 109  
matters that the officer reasonably believes are within the 110  
person's professional or expert competence. 111

(C) For purposes of this section, both of the following 112  
apply: 113

(1) In any action brought against an officer, the officer 114  
shall not be found to have violated the officer's duties under 115  
division (B) of this section unless it is proved by clear and 116  
convincing evidence that the officer has not acted in good 117  
faith, in a manner the officer reasonably believes to be in or 118  
not opposed to the best interests of the corporation, or with 119  
the care that an ordinarily prudent person in a like position 120  
would use under similar circumstances. 121

(2) An officer shall not be considered to be acting in 122  
good faith if the officer has knowledge concerning the matter in 123  
question that would cause reliance on information, opinions, 124  
reports, or statements that are prepared or presented by any of 125  
the persons described in division (B) (1) or (2) of this section 126  
to be unwarranted. 127

(D) An officer shall be liable in damages for a violation 128  
of the officer's duties under division (B) of this section only 129  
if it is proved by clear and convincing evidence in a court of 130  
competent jurisdiction that the officer's action or failure to 131  
act involved an act or omission undertaken with deliberate 132  
intent to cause injury to the corporation or undertaken with 133  
reckless disregard for the best interests of the corporation. 134  
This division does not apply if, and only to the extent that, at 135  
the time of an officer's act or omission that is the subject of 136

the complaint, either of the following is true: 137

(1) The articles or the regulations of the corporation 138  
state by specific reference to division (D) of this section that 139  
the provisions of this division do not apply to the corporation. 140

(2) A written agreement between the officer and the 141  
corporation states by specific reference to division (D) of this 142  
section that the provisions of this division do not apply to the 143  
officer. 144

(E) Nothing in this section affects the duties of an 145  
officer who acts in any capacity other than the officer's 146  
capacity as an officer. Nothing in this section affects any 147  
contractual obligations of an officer to the corporation. 148

**Sec. 1705.031.** The provisions of sections 1705.01 to 149  
1705.52 and section 1705.61 of the Revised Code apply to all 150  
limited liability companies formed under this chapter whether 151  
the limited liability company has one or more members or whether 152  
it is formed by a filing under section 1705.04 of the Revised 153  
Code or by merger, consolidation, or conversion. 154

**Sec. 1705.081.** (A) Except as otherwise provided in 155  
~~division~~divisions (B) and (C) of this section, an operating 156  
agreement governs relations among members and between members, 157  
any managers, and the limited liability company. A limited 158  
liability company is bound by the operating agreement of its 159  
member or members whether or not the limited liability company 160  
executes the operating agreement. To the extent the operating 161  
agreement does not otherwise provide, this chapter governs 162  
relations among the members and between the members, any 163  
managers, and the limited liability company. 164

(B) ~~The~~ Except as otherwise provided in division (C) of 165

this section, the operating agreement may not do any of the 166  
following: 167

(1) Vary the rights and duties under section 1705.04 of 168  
the Revised Code; 169

(2) Unreasonably restrict the right of access to books and 170  
records under section 1705.22 of the Revised Code; 171

(3) Eliminate the duty of loyalty under division ~~(C)~~(B) 172  
of section 1705.161 of the Revised Code or division (B) of 173  
section 1705.281 of the Revised Code, but the operating 174  
agreement may identify activities that do not violate the duty 175  
of loyalty, and all of the members or a number or percentage of 176  
members specified in the operating agreement may authorize or 177  
ratify, after full disclosure of all material facts, a specific 178  
act or transaction that otherwise would violate the duty of 179  
loyalty; 180

(4) Eliminate the duty of care under division ~~(C)~~(B) of 181  
section 1705.161 of the Revised Code or division (C) of section 182  
1705.281 of the Revised Code, but the operating agreement may 183  
prescribe the standards by which the duty is to be measured; 184

(5) Eliminate the obligation of good faith and fair 185  
dealing under division (D) of section 1705.281 of the Revised 186  
Code, but the operating agreement may prescribe the standards by 187  
which the performance of the obligation is to be measured; 188

(6) Eliminate the duties of a manager under division (B) 189  
of section 1705.29 of the Revised Code, but the articles or the 190  
operating agreement may provide that a manager who is a member 191  
of the limited liability company or who is serving as the 192  
representative of a member owes to the limited liability company 193  
and the other members only the duties that would be owed by the 194

member or may prescribe in writing the standards by which 195  
performance is to be measured or identify activities that do not 196  
violate the manager's duties; 197

(7) Eliminate the duties of an officer under section 198  
1705.292 of the Revised Code, but the articles or the operating 199  
agreement may provide that an officer who is a member of the 200  
limited liability company or who is serving as the 201  
representative of a member owes to the limited liability company 202  
and the other members only the duties that would be owed by the 203  
member or may prescribe in writing the standards by which 204  
performance is to be measured or specify activities that do not 205  
violate the officer's duties; 206

(8) Vary the requirement to wind up the limited liability 207  
company's business in cases specified in division (A) or (B) of 208  
section 1705.47 of the Revised Code; 209

~~(8)~~ (9) Restrict the rights of third parties under this 210  
chapter. 211

(C) A written agreement, including a written operating 212  
agreement, that modifies, waives, or eliminates the duty of 213  
loyalty, the duty of care, or both for one or more members, 214  
managers, or officers shall be given effect. 215

(D) It is the policy of this chapter, subject to the 216  
limitations of divisions (B) and (C) of this section, to give 217  
maximum effect to the principle of freedom of contract and to 218  
the enforceability of operating agreements. Except as provided 219  
in divisions (B) and (C) of this section, the default rules 220  
relating to the rights and obligations between and among the 221  
members, managers, and officers of a limited liability company 222  
set forth in sections 1705.01 to 1705.52 and section 1705.61 of 223



the Revised Code may be modified by the operating agreement or 224  
by the articles of organization. 225

**Sec. 1705.161.** (A) Upon a member's withdrawal from a 226  
limited liability company, the member's right to participate in 227  
the management and conduct of the limited liability company's 228  
business terminates. 229

~~(B) Upon a member's withdrawal, the member's duty of~~ 230  
~~loyalty under division (B) (3) of section 1705.281 of the Revised~~ 231  
~~Code terminates.~~ 232

~~(C) Upon a member's withdrawal, a member's duty of loyalty~~ 233  
~~under divisions division (B) (1) and (2) of section 1705.281 of~~ 234  
the Revised Code and duty of care under division (C) of section 235  
1705.281 of the Revised Code continue only with regard to 236  
matters arising and events occurring before the member's 237  
withdrawal. 238

**Sec. 1705.281.** (A) The only fiduciary duties a member owes 239  
to a limited liability company and the other members are the 240  
duty of loyalty and the duty of care set forth in divisions (B) 241  
and (C) of this section. 242

(B) A member's duty of loyalty to the limited liability 243  
company and the other members is limited to the following: 244

(1) To account to the limited liability company and hold 245  
as trustee for the limited liability company any property, 246  
profit, or benefit derived by the member in the conduct and 247  
winding up of the limited liability company's business or 248  
derived from a use by the member of the limited liability 249  
company's property, including the appropriation of a limited 250  
liability company opportunity; 251

(2) ~~To~~ Either to satisfy the requirements of division (A) 252

(1) (a), (b), or (c) of section 1705.31 of the Revised Code or 253  
else to refrain from dealing with the limited liability company 254  
in the conduct or winding up of the limited liability company's 255  
business as or on behalf of a party having an interest adverse 256  
to the limited liability company. 257

~~(3) To refrain from competing with the limited liability~~ 258  
~~company in the conduct of the limited liability company's~~ 259  
~~business before the dissolution of the limited liability~~ 260  
~~company.~~ 261

(C) A member's duty of care to the limited liability 262  
company in the conduct and winding up of the limited liability 263  
company's business is limited to refraining from engaging in 264  
grossly negligent or reckless conduct, intentional misconduct, 265  
or a knowing violation of law. 266

(D) A member shall discharge duties to the limited 267  
liability company and the other members pursuant to this chapter 268  
or under the operating agreement and shall exercise any rights 269  
consistent with the obligation of good faith and fair dealing. 270

(E) A member does not violate a duty or obligation under 271  
this chapter or under the operating agreement merely because the 272  
member's conduct furthers the member's own interest. 273

(F) ~~A~~ If a member ~~may lend money to and transact other~~ 274  
~~business with the limited liability company and as to each loan~~ 275  
has satisfied the requirements of division (A) (1) (a), (b), or 276  
(c) of section 1705.31 of the Revised Code with respect to a 277  
contract, action, or transaction, the rights and obligations of 278  
the member with respect to that contract, action, or transaction 279  
are the same as those of a person who is not a member, subject 280  
to other applicable law. 281

(G) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

Sec. 1705.291. A limited liability company may have officers. No officers are required for a limited liability company.

Sec. 1705.292. (A) Unless either a written operating agreement for the limited liability company or a written agreement with an officer establishes additional fiduciary duties or the duties of an officer have been modified, waived, or eliminated as contemplated by section 1705.081 of the Revised Code, the only fiduciary duties of an officer to the limited liability company or its members are the following:

(1) If the individual is a member of the limited liability company or serving as the representative of a member and the individual is not a manager of the limited liability company, then the individual owes the duties that would be owed by a member.

(2) If the individual is a member of the limited liability company or serving as the representative of a member and the individual is a manager of the limited liability company and in that capacity owes the duties that would be owed by a member, then the individual owes the duties that would be owed by a member.

(3) If divisions (A)(1) and (2) of this section do not apply, the individual owes to the limited liability company the duties of an officer set forth in division (B) of this section.

(B) An officer of a limited liability company shall

perform the officer's duties in good faith, in a manner the 311  
officer reasonably believes to be in or not opposed to the best 312  
interests of the limited liability company, and with the care 313  
that an ordinarily prudent person in a like position would use 314  
under similar circumstances. 315

(C) For purposes of division (B) of this section, both of 316  
the following apply: 317

(1) An officer of a limited liability company shall not be 318  
found to have violated the officer's duties under this section 319  
unless it is proved by clear and convincing evidence in any 320  
action brought against the officer that the officer has not 321  
acted in good faith, in a manner the officer reasonably believes 322  
to be in or not opposed to the best interests of the limited 323  
liability company, or with the care that an ordinarily prudent 324  
person in a like position would use under similar circumstances. 325

(2) An officer shall not be considered to be acting in 326  
good faith if the officer has knowledge concerning the matter in 327  
question that would cause reliance on information, opinions, 328  
reports, or statements that are prepared or presented by any of 329  
the persons described in section 1705.30 of the Revised Code to 330  
be unwarranted. 331

(D) An officer shall be liable in damages for a violation 332  
of the officer's duties under division (B) of this section only 333  
if it is proved by clear and convincing evidence in a court of 334  
competent jurisdiction that the officer's action or failure to 335  
act involved an act or omission undertaken with deliberate 336  
intent to cause injury to the limited liability company or 337  
undertaken with reckless disregard for the best interests of the 338  
company. This division does not apply if, and only to the extent 339  
that, at the time of an officer's act or omission that is the 340

subject of complaint, either of the following is true: 341

(1) The articles or the operating agreement of the limited liability company state by specific reference to division (D) of this section that the provisions of this division do not apply to the limited liability company. 342  
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(2) A written agreement between the officer and the limited liability company states by specific reference to division (D) of this section that the provisions of this division do not apply to the officer. 346  
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(E) Nothing in this section affects the duties of an officer who acts in any capacity other than the officer's capacity as an officer. Nothing in this section affects any contractual obligations of an officer to the limited liability company. 350  
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**Sec. 1705.30.** In performing his the duties to or 355  
exercising his the authority on behalf of a limited liability 356  
company, a member ~~or~~, manager, or officer of a limited 357  
liability company is entitled to rely on information, opinions, 358  
reports, or statements, including, but not limited to, financial 359  
statements and other financial data, that are prepared or 360  
presented by any of the following persons: 361

(A) One or more members, managers, officers, or employees 362  
of the company who the member ~~or~~, manager, or officer 363  
reasonably believes are reliable and competent in the matters 364  
prepared or presented; 365

(B) Counsel, public accountants, or other persons as to 366  
matters that the member ~~or~~, manager, or officer reasonably 367  
believes are within the person's professional or expert 368  
competence. 369

**Sec. 1705.48.** Except as otherwise provided by this chapter 370  
or any other provision of the Revised Code, including, but not 371  
limited to, sections 3734.908, 5739.33, 5743.57, 5747.07, and 372  
5753.02 of the Revised Code, all of the following apply: 373

(A) The debts, obligations, and liabilities of a limited 374  
liability company, whether arising in contract, tort, or 375  
otherwise, are solely the debts, obligations, and liabilities of 376  
the limited liability company. 377

~~(B) Neither the members of the limited liability company~~ 378  
~~nor any managers~~ No member, manager, or officer of the a limited 379  
liability company ~~are~~ is personally liable to satisfy any 380  
judgment, decree, or order of a court for, or ~~are~~ is personally 381  
liable to satisfy in any other manner, a debt, obligation, or 382  
liability of the company solely by reason of being a member ~~or,~~ 383  
manager, or officer of the limited liability company. 384

(C) The failure of a limited liability company or any of 385  
its members, managers, or officers to observe any formalities 386  
relating to the exercise of the limited liability company's 387  
powers or the management of its activities is not a factor to 388  
consider in, or a ground for, imposing liability on the members, 389  
managers, or officers for the debts, obligations, or other 390  
liabilities of the company. 391

(D) Nothing in this chapter affects any personal liability 392  
of a any member ~~of a limited liability company or,~~ any manager, 393  
or any officer of a limited liability company for the member's 394  
~~or,~~ manager's, or officer's own actions or omissions. 395

~~(D)~~ (E) This chapter does not affect any statutory or 396  
common law of this or another state that pertains to the 397  
relationship between an individual who renders a professional 398

service and a recipient of that service, including, but not 399  
limited to, any contract or tort liability arising out of acts 400  
or omissions committed or omitted during the course of rendering 401  
the professional service. 402

**Section 2.** That existing sections 1701.56, 1701.64, 403  
1705.081, 1705.161, 1705.281, 1705.30, and 1705.48 of the 404  
Revised Code are hereby repealed. 405