

UNIFORM LIMITED LIABILITY COMPANY ACT (2006)
(Last Amended 2013)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-SECOND YEAR
BOSTON, MASSACHUSETTS
JULY 6 - JULY 12, 2013

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

December 9, 2014

UNIFORM LIMITED LIABILITY COMPANY ACT (2006)
(Last Amended 2013)

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Limited Liability Company Act.

SECTION 102. DEFINITIONS. In this [act]:

(1) “Certificate of organization” means the certificate required by Section 201. The term includes the certificate as amended or restated.

(2) “Contribution”, except in the phrase “right of contribution”, means property or a benefit described in Section 402 which is provided by a person to a limited liability company to become a member or in the person’s capacity as a member.

(3) “Debtor in bankruptcy” means a person that is the subject of:

(A) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(B) a comparable order under federal, state, or foreign law governing insolvency.

(4) “Distribution” means a transfer of money or other property from a limited liability company to a person on account of a transferable interest or in the person’s capacity as a member. The term:

(A) includes:

(i) a redemption or other purchase by a limited liability company of a transferable interest; and

(ii) a transfer to a member in return for the member’s relinquishment of any right to participate as a member in the management or conduct of the company’s activities

and affairs or to have access to records or other information concerning the company's activities and affairs; and

(B) does not include amounts constituting reasonable compensation for present or past service or payments made in the ordinary course of business under a bona fide retirement plan or other bona fide benefits program.

(5) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited liability company if formed under the law of this state.

(6) "Jurisdiction", used to refer to a political entity, means the United States, a state, a foreign county, or a political subdivision of a foreign country.

(7) "Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of an entity.

(8) "Limited liability company", except in the phrase "foreign limited liability company" and in [Article] 10, means an entity formed under this [act] or which becomes subject to this [act] under [Article] 10 or Section 110.

(9) "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Section 407(c).

(10) "Manager-managed limited liability company" means a limited liability company that qualifies under Section 407(a).

(11) "Member" means a person that:

(A) has become a member of a limited liability company under Section 401 or was a member in a company when the company became subject to this [act] under Section 110; and

(B) has not dissociated under Section 602.

(12) “Member-managed limited liability company” means a limited liability company that is not a manager-managed limited liability company.

(13) “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Section 105(a). The term includes the agreement as amended or restated.

(14) “Organizer” means a person that acts under Section 201 to form a limited liability company.

(15) “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, [general cooperative association,] limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(16) “Principal office” means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

(17) “Property” means all property, whether real, personal, or mixed or tangible or intangible, or any right or interest therein.

(18) “Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(19) “Registered agent” means an agent of a limited liability company or foreign limited liability company which is authorized to receive service of any process, notice, or demand required or permitted by law to be served on the company.

(20) “Registered foreign limited liability company” means a foreign limited liability company that is registered to do business in this state pursuant to a statement of registration filed by the [Secretary of State].

(21) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(22) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(23) “Transfer” includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

(E) an encumbrance, including a mortgage or security interest;

(F) a gift; and

(G) a transfer by operation of law.

(24) “Transferable interest” means the right, as initially owned by a person in the person’s capacity as a member, to receive distributions from a limited liability company, whether or not the person remains a member or continues to own any part of the right. The term applies to any fraction of the interest, by whomever owned.

(25) “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a

transferable interest under Section 603(a)(3).

SECTION 103. KNOWLEDGE; NOTICE.

(a) A person knows a fact if the person:

- (1) has actual knowledge of it; or
- (2) is deemed to know it under subsection (d)(1) or law other than this [act].

(b) A person has notice of a fact if the person:

(1) has reason to know the fact from all the facts known to the person at the time in question; or

(2) is deemed to have notice of the fact under subsection (d)(2).

(c) Subject to Section 210(f), a person notifies another person of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not those steps cause the other person to know the fact.

(d) A person not a member is deemed:

(1) to know of a limitation on authority to transfer real property as provided in Section 302(g); and

(2) to have notice of a limited liability company's:

(A) dissolution 90 days after a statement of dissolution under Section 702(b)(2)(A) becomes effective;

(B) termination 90 days after a statement of termination under Section 702(b)(2)(F) becomes effective; and

(C) participation in a merger, interest exchange, conversion, or domestication, 90 days after articles of merger, interest exchange, conversion, or domestication under [Article] 10 become effective.

SECTION 104. GOVERNING LAW. The law of this state governs:

- (1) the internal affairs of a limited liability company; and
- (2) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of a limited liability company.

SECTION 105. OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

(a) Except as otherwise provided in subsections (c) and (d), the operating agreement governs:

- (1) relations among the members as members and between the members and the limited liability company;
- (2) the rights and duties under this [act] of a person in the capacity of manager;
- (3) the activities and affairs of the company and the conduct of those activities and affairs; and
- (4) the means and conditions for amending the operating agreement.

(b) To the extent the operating agreement does not provide for a matter described in subsection (a), this [act] governs the matter.

(c) An operating agreement may not:

- (1) vary the law applicable under Section 104;
- (2) vary a limited liability company's capacity under Section 109 to sue and be sued in its own name;
- (3) vary any requirement, procedure, or other provision of this [act] pertaining to:
 - (A) registered agents; or
 - (B) the [Secretary of State], including provisions pertaining to records authorized or required to be delivered to the [Secretary of State] for filing under this [act];

(4) vary the provisions of Section 204;

(5) alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in subsection (d);

(6) eliminate the contractual obligation of good faith and fair dealing under Section 409(d), but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;

(7) relieve or exonerate a person from liability for conduct involving bad faith, willful or intentional misconduct, or knowing violation of law;

(8) unreasonably restrict the duties and rights under Section 410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(9) vary the causes of dissolution specified in Section 701(a)(4);

(10) vary the requirement to wind up the company's activities and affairs as specified in Section 702(a), (b)(1), and (e);

(11) unreasonably restrict the right of a member to maintain an action under [Article] 8;

(12) vary the provisions of Section 805, but the operating agreement may provide that the company may not have a special litigation committee;

(13) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Section 1023(a)(2), 1033(a)(2), 1043(a)(2), or 1053(a)(2);

(14) vary the required contents of a plan of merger under Section 1022(a), plan of interest exchange under Section 1032(a), plan of conversion under Section 1042(a), or plan of domestication under Section 1052(a); or

(15) except as otherwise provided in Sections 106 and 107(b), restrict the rights under this [act] of a person other than a member or manager.

(d) Subject to subsection (c)(7), without limiting other terms that may be included in an operating agreement, the following rules apply:

(1) The operating agreement may:

(A) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts; and

(B) alter the prohibition in Section 405(a)(2) so that the prohibition requires only that the company's total assets not be less than the sum of its total liabilities.

(2) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member otherwise would have under this [act] and imposes the responsibility on one or more other members, the agreement also may eliminate or limit any fiduciary duty of the member relieved of the responsibility which would have pertained to the responsibility.

(3) If not manifestly unreasonable, the operating agreement may:

(A) alter or eliminate the aspects of the duty of loyalty stated in Section 409(b) and (i);

(B) identify specific types or categories of activities that do not violate the duty of loyalty;

(C) alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law; and

(D) alter or eliminate any other fiduciary duty.

(e) The court shall decide as a matter of law whether a term of an operating agreement is

manifestly unreasonable under subsection (c)(6) or (d)(3). The court:

(1) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(2) may invalidate the term only if, in light of the purposes, activities, and affairs of the limited liability company, it is readily apparent that:

(A) the objective of the term is unreasonable; or

(B) the term is an unreasonable means to achieve the term's objective.

SECTION 106. OPERATING AGREEMENT; EFFECT ON LIMITED LIABILITY COMPANY AND PERSON BECOMING MEMBER; PREFORMATION AGREEMENT.

(a) A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

(b) A person that becomes a member is deemed to assent to the operating agreement.

(c) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

SECTION 107. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

(a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified

condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Subject only to a court order issued under Section 503(b)(2) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

(1) is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or person dissociated as a member; and

(2) is not effective to the extent the amendment imposes a new debt, obligation, or other liability on the transferee or person dissociated as a member.

(c) If a record delivered by a limited liability company to the [Secretary of State] for filing becomes effective and contains a provision that would be ineffective under Section 105(c) or (d)(3) if contained in the operating agreement, the provision is ineffective in the record.

(d) Subject to subsection (c), if a record delivered by a limited liability company to the [Secretary of State] for filing becomes effective and conflicts with a provision of the operating agreement:

(1) the agreement prevails as to members, persons dissociated as members, transferees, and managers; and

(2) the record prevails as to other persons to the extent they reasonably rely on the record.

SECTION 108. NATURE, PURPOSE, AND DURATION OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is an entity distinct from its member or members.

(b) A limited liability company may have any lawful purpose, regardless of whether for profit.

(c) A limited liability company has perpetual duration.

SECTION 109. POWERS. A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities and affairs.

SECTION 110. APPLICATION TO EXISTING RELATIONSHIPS.

(a) Before [all-inclusive date], this [act] governs only:

(1) a limited liability company formed on or after [the effective date of this [act]]; and

and

(2) except as otherwise provided in subsection (c), a limited liability company formed before [the effective date of this [act]] which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this [act].

(b) Except as otherwise provided in subsection (c), on and after [all-inclusive date] this [act] governs all limited liability companies.

(c) For purposes of applying this [act] to a limited liability company formed before [the effective date of this [act]]:

(1) the company's articles of organization are deemed to be the company's certificate of organization; and

(2) for purposes of applying Section 102(10) and subject to Section 107(d), language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

Legislative Note:

For states that have previously enacted ULLCA (2006): For these states this section is unnecessary. There is no need for a delayed effective date, even with regard to pre-existing

limited liability companies.

For states that have not previously enacted ULLCA (2006):

Each enacting jurisdiction should consider whether: (i) this act makes material changes to the “default” (or “gap filler”) rules of a predecessor statute; and (ii) if so, whether Subsection (c) should carry forward any of those rules for pre-existing limited liability companies. In this assessment, the focus is on pre-existing limited liability companies that have left default rules in place, whether advisedly or not. The central question is whether, for such limited liability companies, expanding Subsection (c) is necessary to prevent material changes to the members’ “deal.”

Section 301 (de-codifying statutory apparent authority) does not require any special transition provisions, because: (i) applying the law of agency, as explained in the Comments to Sections 301 and 407, will produce appropriate results; and (ii) the notion of “lingering apparent authority” will protect any third party that has previously relied on the statutory apparent authority of a member of a particular member-managed LLC or a manager of a particular manager-managed LLC. RESTATEMENT (THIRD) OF AGENCY § 3.11, cmt. c (2006).

It is recommended that the “all-inclusive” date should be at least one year after the effective date of this act, Section 1106, but no more than two years.

SECTION 111. SUPPLEMENTAL PRINCIPLES OF LAW. Unless displaced by particular provisions of this [act], the principles of law and equity supplement this [act].

SECTION 112. PERMITTED NAMES.

(a) The name of a limited liability company must contain the phrase “limited liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”.

“Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

(b) Except as otherwise provided in subsection (d), the name of a limited liability company, and the name under which a foreign limited liability company may register to do business in this state, must be distinguishable on the records of the [Secretary of State] from any:

(1) name of an existing person whose formation required the filing of a record by the [Secretary of State] and which is not at the time administratively dissolved;

(2) name of a limited liability partnership whose statement of qualification is in effect;

(3) name under which a person is registered to do business in this state by the

filing of a record by the [Secretary of State];

(4) name reserved under Section 113 or other law of this state providing for the reservation of a name by the filing of a record by the [Secretary of State];

(5) name registered under Section 114 or other law of this state providing for the registration of a name by the filing of a record by the [Secretary of State]; and

(6) name registered under [this state's assumed or fictitious name statute].

(c) If a person consents in a record to the use of its name and submits an undertaking in a form satisfactory to the [Secretary of State] to change its name to a name that is distinguishable on the records of the [Secretary of State] from any name in any category of names in subsection (b), the name of the consenting person may be used by the person to which the consent was given.

(d) Except as otherwise provided in subsection (e), in determining whether a name is the same as or not distinguishable on the records of the [Secretary of State] from the name of another person, words, phrases, or abbreviations indicating a type of person, such as "corporation", "corp.", "incorporated", "Inc.", "professional corporation", "P.C.", "PC", "professional association", "P.A.", "PA", "Limited", "Ltd.", "limited partnership", "L.P.", "LP", "limited liability partnership", "L.L.P.", "LLP", "registered limited liability partnership", "R.L.L.P.", "RLLP", "limited liability limited partnership", "L.L.L.P.", "LLL.P.", "registered limited liability limited partnership", "R.L.L.L.P.", "RLLL.P.", "limited liability company", "L.L.C.", "LLC", "limited cooperative association", "limited cooperative", or "L.C.A.", or "LCA" may not be taken into account.

(e) A person may consent in a record to the use of a name that is not distinguishable on the records of the [Secretary of State] from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in subsection (d). In such a case, the

person need not change its name pursuant to subsection (c).

(f) The name of a limited liability company or foreign limited liability company may not contain the words [insert prohibited word or words that may be used only with approval by an appropriate state agency].

(g) A limited liability company or foreign limited liability company may use a name that is not distinguishable from a name described in subsection (b)(1) through (6) if the company delivers to the [Secretary of State] a certified copy of a final judgment of a court of competent jurisdiction establishing the right of the company to use the name in this state.

SECTION 113. RESERVATION OF NAME.

(a) A person may reserve the exclusive use of a name that complies with Section 112 by delivering an application to the [Secretary of State] for filing. The application must state the name and address of the applicant and the name to be reserved. If the [Secretary of State] finds that the name is available, the [Secretary of State] shall reserve the name for the applicant's exclusive use for [120] days.

(b) The owner of a reserved name may transfer the reservation to another person by delivering to the [Secretary of State] a signed notice in a record of the transfer which states the name and address of the person to which the reservation is being transferred.

SECTION 114. REGISTRATION OF NAME.

(a) A foreign limited liability company not registered to do business in this state under [Article] 9 may register its name, or an alternate name adopted pursuant to Section 906, if the name is distinguishable on the records of the [Secretary of State] from the names that are not available under Section 112.

(b) To register its name or an alternate name adopted pursuant to Section 906, a foreign limited liability company must deliver to the [Secretary of State] for filing an application stating

the company's name, the jurisdiction and date of its formation, and any alternate name adopted pursuant to Section 906. If the [Secretary of State] finds that the name applied for is available, the [Secretary of State] shall register the name for the applicant's exclusive use.

(c) The registration of a name under this section is effective for [one year] after the date of registration.

(d) A foreign limited liability company whose name registration is effective may renew the registration for successive [one-year] periods by delivering, not earlier than [three months] before the expiration of the registration, to the [Secretary of State] for filing a renewal application that complies with this section. When filed, the renewal application renews the registration for a succeeding [one-year] period.

(e) A foreign limited liability company whose name registration is effective may register as a foreign limited liability company under the registered name or consent in a signed record to the use of that name by another person that is not an individual.

SECTION 115. REGISTERED AGENT.

(a) Each limited liability company and each registered foreign limited liability company shall designate and maintain a registered agent in this state. The designation of a registered agent is an affirmation of fact by the limited liability company or registered foreign limited liability company that the agent has consented to serve.

(b) A registered agent for a limited liability company or registered foreign limited liability company must have a place of business in this state.

(c) The only duties under this [act] of a registered agent that has complied with this [act] are:

(1) to forward to the limited liability company or registered foreign limited liability company at the address most recently supplied to the agent by the company or foreign

company any process, notice, or demand pertaining to the company or foreign company which is served on or received by the agent;

(2) if the registered agent resigns, to provide the notice required by Section 117(c) to the company or foreign company at the address most recently supplied to the agent by the company or foreign company; and

(3) to keep current the information with respect to the agent in the certificate of organization or foreign registration statement.

SECTION 116. CHANGE OF REGISTERED AGENT OR ADDRESS FOR REGISTERED AGENT BY LIMITED LIABILITY COMPANY.

(a) A limited liability company or registered foreign limited liability company may change its registered agent or the address of its registered agent by delivering to the [Secretary of State] for filing a statement of change that states:

(1) the name of the company or foreign company; and

(2) the information that is to be in effect as a result of the filing of the statement of change.

(b) The members or managers of a limited liability company need not approve the delivery to the [Secretary of State] filing of:

(1) a statement of change under this section; or

(2) a similar filing changing the registered agent or registered office, if any, of the company in any other jurisdiction.

(c) A statement of change under this section designating a new registered agent is an affirmation of fact by the limited liability company or registered foreign limited liability company that the agent has consented to serve.

(d) As an alternative to using the procedure in this section, a limited liability company

may amend its certificate of organization.

SECTION 117. RESIGNATION OF REGISTERED AGENT.

(a) A registered agent may resign as an agent for a limited liability company or registered foreign limited liability company by delivering to the [Secretary of State] for filing a statement of resignation that states:

(1) the name of the company or foreign company;

(2) the name of the agent;

(3) that the agent resigns from serving as registered agent for the company or foreign company; and

(4) the address of the company or foreign company to which the agent will send the notice required by subsection (c).

(b) A statement of resignation takes effect on the earlier of:

(1) the 31st day after the day on which it is filed by the [Secretary of State]; or

(2) the designation of a new registered agent for the limited liability company or registered foreign limited liability company.

(c) A registered agent promptly shall furnish to the limited liability company or registered foreign limited liability company notice in a record of the date on which a statement of resignation was filed.

(d) When a statement of resignation takes effect, the registered agent ceases to have responsibility under this [act] for any matter thereafter tendered to it as agent for the limited liability company or registered foreign limited liability company. The resignation does not affect any contractual rights the company or foreign company has against the agent or that the agent has against the company or foreign company.

(e) A registered agent may resign with respect to a limited liability company or registered

foreign limited liability company whether or not the company or foreign company is in good standing.

SECTION 118. CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.

(a) If a registered agent changes its name or address, the agent may deliver to the [Secretary of State] for filing a statement of change that states:

(1) the name of the limited liability company or registered foreign limited liability company represented by the registered agent;

(2) the name of the agent as currently shown in the records of the [Secretary of State] for the company or foreign company;

(3) if the name of the agent has changed, its new name; and

(4) if the address of the agent has changed, its new address.

(b) A registered agent promptly shall furnish notice to the represented limited liability company or registered foreign limited liability company of the filing by the [Secretary of State] of the statement of change and the changes made by the statement.

***Legislative Note:** Many registered agents act in that capacity for many entities, and the Model Registered Agents Act (2006) (Last Amended 2013) provides a streamlined method through which a commercial registered agent can make a single filing to change its information for all represented entities. The single filing does not prevent an enacting state from assessing filing fees on the basis of the number of entity records affected. Alternatively the fees can be set on an incremental sliding fee or capitated amount based upon potential economies of costs for a bulk filing.*

SECTION 119. SERVICE OF PROCESS, NOTICE, OR DEMAND.

(a) A limited liability company or registered foreign limited liability company may be served with any process, notice, or demand required or permitted by law by serving its registered agent.

(b) If a limited liability company or registered foreign limited liability company ceases to have a registered agent, or if its registered agent cannot with reasonable diligence be served, the

company or foreign company may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the company or foreign company at its principal office. The address of the principal office must be as shown on the company's or foreign company's most recent [annual] [biennial] report filed by the [Secretary of State]. Service is effected under this subsection on the earliest of:

(1) the date the company or foreign company receives the mail or delivery by the commercial delivery service;

(2) the date shown on the return receipt, if signed by the company or foreign company; or

(3) five days after its deposit with the United States Postal Service, or with the commercial delivery service, if correctly addressed and with sufficient postage or payment.

(c) If process, notice, or demand cannot be served on a limited liability company or registered foreign limited liability company pursuant to subsection (a) or (b), service may be made by handing a copy to the individual in charge of any regular place of business or activity of the company or foreign company if the individual served is not a plaintiff in the action.

(d) Service of process, notice, or demand on a registered agent must be in a written record.

(e) Service of process, notice, or demand may be made by other means under law other than this [act].

SECTION 120. DELIVERY OF RECORD.

(a) Except as otherwise provided in this [act], permissible means of delivery of a record include delivery by hand, mail, conventional commercial practice, and electronic transmission.

(b) Delivery to the [Secretary of State] is effective only when a record is received by the [Secretary of State].

SECTION 121. RESERVATION OF POWER TO AMEND OR REPEAL. The [legislature of this state] has power to amend or repeal all or part of this [act] at any time, and all limited liability companies and foreign limited liability companies subject to this [act] are governed by the amendment or repeal.

[ARTICLE] 2

FORMATION; CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

**SECTION 201. FORMATION OF LIMITED LIABILITY COMPANY;
CERTIFICATE OF ORGANIZATION.**

(a) One or more persons may act as organizers to form a limited liability company by delivering to the [Secretary of State] for filing a certificate of organization.

(b) A certificate of organization must state:

(1) the name of the limited liability company, which must comply with Section 112;

(2) the street and mailing addresses of the company's principal office; and

(3) the name and street and mailing addresses in this state of the company's registered agent.

(c) A certificate of organization may contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified in Section 105(c) and (d) in a manner inconsistent with that section. However, a statement in a certificate of organization is not effective as a statement of authority.

(d) A limited liability company is formed when the certificate of organization becomes effective and at least one person has become a member.

SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.

(a) A certificate of organization may be amended or restated at any time.

(b) To amend its certificate of organization, a limited liability company must deliver to the [Secretary of State] for filing an amendment stating:

- (1) the name of the company;
- (2) the date of filing of its initial certificate; and
- (3) the text of the amendment.

(c) To restate its certificate of organization, a limited liability company must deliver to the [Secretary of State] for filing a restatement, designated as such in its heading.

(d) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate due to changed circumstances, the member or manager shall promptly:

- (1) cause the certificate to be amended; or
- (2) if appropriate, deliver to the [Secretary of State] for filing a statement of change under Section 116 or a statement of correction under Section 209.

SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO [SECRETARY OF STATE].

(a) A record delivered to the [Secretary of State] for filing pursuant to this [act] must be signed as follows:

(1) Except as otherwise provided in paragraphs (2) and (3), a record signed by a limited liability company must be signed by a person authorized by the company.

(2) A company's initial certificate of organization must be signed by at least one

person acting as an organizer.

(3) A record delivered on behalf of a dissolved company that has no member must be signed by the person winding up the company's activities and affairs under Section 702(c) or a person appointed under Section 702(d) to wind up the activities and affairs.

(4) A statement of denial by a person under Section 303 must be signed by that person.

(5) Any other record delivered on behalf of a person to the [Secretary of State] for filing must be signed by that person.

(b) A record delivered for filing under this [act] may be signed by an agent. Whenever this [act] requires a particular individual to sign a record and the individual is deceased or incompetent, the record may be signed by a legal representative of the individual.

(c) A person that signs a record as an agent or legal representative affirms as a fact that the person is authorized to sign the record.

SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.

(a) If a person required by this [act] to sign a record or deliver a record to the [Secretary of State] for filing under this [act] does not do so, any other person that is aggrieved may petition [the appropriate court] to order:

- (1) the person to sign the record;
- (2) the person to deliver the record to the [Secretary of State] for filing; or
- (3) the [Secretary of State] to file the record unsigned.

(b) If a petitioner under subsection (a) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company or foreign company a party to the action.

(c) A record filed under subsection (a)(3) is effective without being signed.

SECTION 205. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.

(a) If a record delivered to the [Secretary of State] for filing under this [act] and filed by the [Secretary of State] contains inaccurate information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(1) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(2) subject to subsection (b), a member of a member-managed limited liability company or a manager of a manager-managed limited liability company if:

(A) the record was delivered for filing on behalf of the company; and

(B) the member or manager knew or had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(i) effected an amendment under Section 202;

(ii) filed a petition under Section 204; or

(iii) delivered to the [Secretary of State] for filing a statement of change under Section 116 or a statement of correction under Section 209.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the [Secretary of State] for filing under this [act] and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(c) An individual who signs a record authorized or required to be filed under this [act]

affirms under penalty of perjury that the information stated in the record is accurate.

SECTION 206. FILING REQUIREMENTS.

(a) To be filed by the [Secretary of State] pursuant to this [act], a record must be received by the [Secretary of State], comply with this [act], and satisfy the following:

(1) The filing of the record must be required or permitted by this [act].

(2) The record must be physically delivered in written form unless and to the extent the [Secretary of State] permits electronic delivery of records.

(3) The words in the record must be in English, and numbers must be in Arabic or Roman numerals, but the name of an entity need not be in English if written in English letters or Arabic or Roman numerals.

(4) The record must be signed by a person authorized or required under this [act] to sign the record.

(5) The record must state the name and capacity, if any, of each individual who signed it, either on behalf of the individual or the person authorized or required to sign the record, but need not contain a seal, attestation, acknowledgment, or verification.

(b) If law other than this [act] prohibits the disclosure by the [Secretary of State] of information contained in a record delivered to the [Secretary of State] for filing, the [Secretary of State] shall file the record if the record otherwise complies with this [act] but may redact the information.

(c) When a record is delivered to the [Secretary of State] for filing, any fee required under this [act] and any fee, tax, interest, or penalty required to be paid under this [act] or law other than this [act] must be paid in a manner permitted by the [Secretary of State] or by that law.

(d) The [Secretary of State] may require that a record delivered in written form be accompanied by an identical or conformed copy.

(e) The [Secretary of State] may provide forms for filings required or permitted to be made by this [act], but, except as otherwise provided in subsection (f), their use is not required.

(f) The [Secretary of State] may require that a cover sheet for a filing be on a form prescribed by the [Secretary of State].

SECTION 207. EFFECTIVE DATE AND TIME. Except as otherwise provided in Section 208 and subject to Section 209(d), a record filed under this [act] is effective:

(1) on the date and at the time of its filing by the [Secretary of State], as provided in Section 210(b);

(2) on the date of filing and at the time specified in the record as its effective time, if later than the time under paragraph (1);

(3) at a specified delayed effective date and time, which may not be more than 90 days after the date of filing; or

(4) if a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the date specified, which may not be more than 90 days after the date of filing.

SECTION 208. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.

(a) Except as otherwise provided in Sections 1024, 1034, 1044, and 1054, a record delivered to the [Secretary of State] for filing may be withdrawn before it takes effect by delivering to the [Secretary of State] for filing a statement of withdrawal.

(b) A statement of withdrawal must:

(1) be signed by each person that signed the record being withdrawn, except as otherwise agreed by those persons;

(2) identify the record to be withdrawn; and

(3) if signed by fewer than all the persons that signed the record being withdrawn,

state that the record is withdrawn in accordance with the agreement of all the persons that signed the record.

(c) On filing by the [Secretary of State] of a statement of withdrawal, the action or transaction evidenced by the original record does not take effect.

SECTION 209. CORRECTING FILED RECORD.

(a) A person on whose behalf a filed record was delivered to the [Secretary of State] for filing may correct the record if:

- (1) the record at the time of filing was inaccurate;
- (2) the record was defectively signed; or
- (3) the electronic transmission of the record to the [Secretary of State] was

defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the [Secretary of State] must deliver to the [Secretary of State] for filing a statement of correction.

(c) A statement of correction:

- (1) may not state a delayed effective date;
- (2) must be signed by the person correcting the filed record;
- (3) must identify the filed record to be corrected;
- (4) must specify the inaccuracy or defect to be corrected; and
- (5) must correct the inaccuracy or defect.

(d) A statement of correction is effective as of the effective date of the filed record that it corrects except for purposes of Section 103(d) and as to persons relying on the uncorrected filed record and adversely affected by the correction. For those purposes and as to those persons, the statement of correction is effective when filed.

SECTION 210. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE; DELIVERY OF RECORD BY [SECRETARY OF STATE].

(a) The [Secretary of State] shall file a record delivered to the [Secretary of State] for filing which satisfies this [act]. The duty of the [Secretary of State] under this section is ministerial.

(b) When the [Secretary of State] files a record, the [Secretary of State] shall record it as filed on the date and at the time of its delivery. After filing a record, the [Secretary of State] shall deliver to the person that submitted the record a copy of the record with an acknowledgment of the date and time of filing and, in the case of a statement of denial, also to the limited liability company to which the statement pertains.

(c) If the [Secretary of State] refuses to file a record, the [Secretary of State] shall, not later than [15] business days after the record is delivered:

(1) return the record or notify the person that submitted the record of the refusal;
and

(2) provide a brief explanation in a record of the reason for the refusal.

(d) If the [Secretary of State] refuses to file a record, the person that submitted the record may petition [the appropriate court] to compel filing of the record. The record and the explanation of the [Secretary of State] of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding.

(e) The filing of or refusal to file a record does not:

(1) affect the validity or invalidity of the record in whole or in part; or
(2) create a presumption that the information contained in the record is correct or incorrect.

(f) Except as otherwise provided by Section 119 or by law other than this [act], the

[Secretary of State] may deliver any record to a person by delivering it:

- (1) in person to the person that submitted it;
- (2) to the address of the person's registered agent;
- (3) to the principal office of the person; or
- (4) to another address the person provides to the [Secretary of State] for delivery.

SECTION 211. CERTIFICATE OF GOOD STANDING OR REGISTRATION.

(a) On request of any person, the [Secretary of State] shall issue a certificate of good standing for a limited liability company or a certificate of registration for a registered foreign limited liability company.

(b) A certificate under subsection (a) must state:

(1) the limited liability company's name or the registered foreign limited liability company's name used in this state;

(2) in the case of a limited liability company:

(A) that a certificate of organization has been filed and has taken effect;

(B) the date the certificate became effective;

(C) the period of the company's duration if the records of the [Secretary of State] reflect that its period of duration is less than perpetual; and

(D) that:

(i) no statement of dissolution, statement of administrative dissolution, or statement of termination has been filed;

(ii) the records of the [Secretary to State] do not otherwise reflect that the company has been dissolved or terminated; and

(iii) a proceeding is not pending under Section 708;

(3) in the case of a registered foreign limited liability company, that it is registered

to do business in this state;

(4) that all fees, taxes, interest, and penalties owed to this state by the limited liability company or foreign limited liability company and collected through the [Secretary of State] have been paid, if:

(A) payment is reflected in the records of the [Secretary of State]; and

(B) nonpayment affects the good standing or registration of the company or foreign company;

(5) that the most recent [annual] [biennial] report required by Section 212 has been delivered to the [Secretary of State] for filing; and

(6) other facts reflected in the records of the [Secretary of State] pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated in the certificate, a certificate issued by the [Secretary of State] under subsection (a) may be relied on as conclusive evidence of the facts stated in the certificate.

SECTION 212. [ANNUAL] [BIENNIAL] REPORT FOR [SECRETARY OF STATE].

(a) A limited liability company or registered foreign limited liability company shall deliver to the [Secretary of State] for filing [an annual] [a biennial] report that states:

(1) the name of the company or foreign company;

(2) the name and street and mailing addresses of its registered agent in this state;

(3) the street and mailing addresses of its principal office;

(4) if the company is member managed, the name of at least one member;

(5) if the company is manager managed, the name of at least one manager; and

(6) in the case of a foreign company, its jurisdiction of formation and any alternate name adopted under Section 906(a).

(b) Information in the [annual] [biennial] report must be current as of the date the report is signed by the limited liability company or registered foreign limited liability company.

(c) The first [annual] [biennial] report must be delivered to the [Secretary of State] for filing after [January 1] and before [April 1] of the year following the calendar year in which the limited liability company's certificate of organization became effective or the registered foreign limited liability company registered to do business in this state. Subsequent [annual] [biennial] reports must be delivered to the [Secretary of State] for filing after [January 1] and before [April 1] of each [second] calendar year thereafter.

(d) If [an annual] [a biennial] report does not contain the information required by this section, the [Secretary of State] promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.

(e) If [an annual] [a biennial] report contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the report becomes effective, the differing information in the report is considered a statement of change under Section 116.

[ARTICLE] 3

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.

(a) A member is not an agent of a limited liability company solely by reason of being a member.

(b) A person's status as a member does not prevent or restrict law other than this [act]

from imposing liability on a limited liability company because of the person's conduct.

SECTION 302. STATEMENT OF LIMITED LIABILITY COMPANY

AUTHORITY.

(a) A limited liability company may deliver to the [Secretary of State] for filing a statement of authority. The statement:

(1) must include the name of the company and the name and street and mailing addresses of its registered agent;

(2) with respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

(A) sign an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company; and

(3) may state the authority, or limitations on the authority, of a specific person to:

(A) sign an instrument transferring real property held in the name of the company; or

(B) enter into other transactions on behalf of, or otherwise act for or bind, the company.

(b) To amend or cancel a statement of authority filed by the [Secretary of State], a limited liability company must deliver to the [Secretary of State] for filing an amendment or cancellation stating:

(1) the name of the company;

(2) the name and street and mailing addresses of the company's registered agent;

(3) the date the statement being affected became effective; and

(4) the contents of the amendment or a declaration that the statement is canceled.

(c) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(d) Subject to subsection (c) and Section 103(d), and except as otherwise provided in subsections (f), (g), and (h), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of any person's knowledge or notice of the limitation.

(e) Subject to subsection (c), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(1) the person has knowledge to the contrary;

(2) the statement has been canceled or restrictively amended under subsection (b);

or

(3) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, a certified copy of which statement is recorded in the office for recording transfers of the real property, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(1) the statement has been canceled or restrictively amended under subsection (b), and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(2) a limitation on the grant is contained in another statement of authority that

became effective after the statement containing the grant became effective, and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

(g) Subject to subsection (c), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(h) Subject to subsection (i), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of subsection (f) and is a limitation on authority for the purposes of subsection (g).

(i) After a statement of dissolution becomes effective, a limited liability company may deliver to the [Secretary of State] for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections (f) and (g).

(j) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection (f) or (g).

(k) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for purposes of subsection (f)(1).

SECTION 303. STATEMENT OF DENIAL. A person named in a filed statement of authority granting that person authority may deliver to the [Secretary of State] for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.

(a) A debt, obligation, or other liability of a limited liability company is solely the debt, obligation, or other liability of the company. A member or manager is not personally liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company solely by reason of being or acting as a member or manager. This subsection applies regardless of the dissolution of the company.

(b) The failure of a limited liability company to observe formalities relating to the exercise of its powers or management of its activities and affairs is not a ground for imposing liability on a member or manager for a debt, obligation, or other liability of the company.

[ARTICLE] 4

**RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY
COMPANY**

SECTION 401. BECOMING MEMBER.

(a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(b) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

(c) After formation of a limited liability company, a person becomes a member:

(1) as provided in the operating agreement;

- (2) as the result of a transaction effective under [Article] 10;
- (3) with the affirmative vote or consent of all the members; or
- (4) as provided in Section 701(a)(3).

(d) A person may become a member without:

- (1) acquiring a transferable interest; or
- (2) making or being obligated to make a contribution to the limited liability

company.

SECTION 402. FORM OF CONTRIBUTION. A contribution may consist of property transferred to, services performed for, or another benefit provided to the limited liability company or an agreement to transfer property to, perform services for, or provide another benefit to the company.

SECTION 403. LIABILITY FOR CONTRIBUTIONS.

(a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, termination, or other inability to perform personally.

(b) If a person does not fulfill an obligation to make a contribution other than money, the person is obligated at the option of the limited liability company to contribute money equal to the value of the part of the contribution which has not been made.

(c) The obligation of a person to make a contribution may be compromised only by the affirmative vote or consent of all the members. If a creditor of a limited liability company extends credit or otherwise acts in reliance on an obligation described in subsection (a) without knowledge or notice of a compromise under this subsection, the creditor may enforce the obligation.

SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE DISSOLUTION.

(a) Any distribution made by a limited liability company before its dissolution and winding up must be in equal shares among members and persons dissociated as members, except to the extent necessary to comply with a transfer effective under Section 502 or charging order in effect under Section 503.

(b) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(c) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Section 707(d), a company may distribute an asset in kind only if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(d) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. However, the company's obligation to make a distribution is subject to offset for any amount owed to the company by the member or a person dissociated as a member on whose account the distribution is made.

SECTION 405. LIMITATIONS ON DISTRIBUTIONS.

(a) A limited liability company may not make a distribution, including a distribution under Section 707, if after the distribution:

(1) the company would not be able to pay its debts as they become due in the ordinary course of the company's activities and affairs; or

(2) the company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members and transferees whose preferential rights are superior to the rights of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on:

(1) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(2) a fair valuation or other method that is reasonable under the circumstances.

(c) Except as otherwise provided in subsection (e), the effect of a distribution under subsection (a) is measured:

(1) in the case of a distribution as defined in Section 102(4)(A), as of the earlier of:

(A) the date money or other property is transferred or debt is incurred by the limited liability company; or

(B) the date the person entitled to the distribution ceases to own the interest or right being acquired by the company in return for the distribution;

(2) in the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and

(3) in all other cases, as of the date:

(A) the distribution is authorized, if the payment occurs not later than 120 days after that date; or

(B) the payment is made, if the payment occurs more than 120 days after

the distribution is authorized.

(d) A limited liability company's indebtedness to a member or transferee incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

(e) A limited liability company's indebtedness, including indebtedness issued as a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest is made only if and to the extent that payment of a distribution could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is made.

(f) In measuring the effect of a distribution under Section 707, the liabilities of a dissolved limited liability company do not include any claim that has been disposed of under Section 704, 705, or 706.

SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS.

(a) Except as otherwise provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 405 and in consenting to the distribution fails to comply with Section 409, the member or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 405.

(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the

operating agreement relieves of the authority and responsibility.

(c) A person that receives a distribution knowing that the distribution violated Section 405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 405.

(d) A person against which an action is commenced because the person is liable under subsection (a) may:

(1) implead any other person that is liable under subsection (a) and seek to enforce a right of contribution from the person; and

(2) implead any person that received a distribution in violation of subsection (c) and seek to enforce a right of contribution from the person in the amount the person received in violation of subsection (c).

(e) An action under this section is barred unless commenced not later than two years after the distribution.

SECTION 407. MANAGEMENT OF LIMITED LIABILITY COMPANY.

(a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) expressly provides that:

(A) the company is or will be “manager-managed”;

(B) the company is or will be “managed by managers”; or

(C) management of the company is or will be “vested in managers”; or

(2) includes words of similar import.

(b) In a member-managed limited liability company, the following rules apply:

(1) Except as expressly provided in this [act], the management and conduct of the

company are vested in the members.

(2) Each member has equal rights in the management and conduct of the company's activities and affairs.

(3) A difference arising among members as to a matter in the ordinary course of the activities and affairs of the company may be decided by a majority of the members.

(4) The affirmative vote or consent of all the members is required to:

(A) undertake an act outside the ordinary course of the activities and affairs of the company; or

(B) amend the operating agreement.

(c) In a manager-managed limited liability company, the following rules apply:

(1) Except as expressly provided in this [act], any matter relating to the activities and affairs of the company is decided exclusively by the manager, or, if there is more than one manager, by a majority of the managers.

(2) Each manager has equal rights in the management and conduct of the company's activities and affairs.

(3) The affirmative vote or consent of all members is required to:

(A) undertake an act outside the ordinary course of the company's activities and affairs; or

(B) amend the operating agreement.

(4) A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

(5) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(6) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(d) An action requiring the vote or consent of members under this [act] may be taken without a meeting, and a member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

(f) A limited liability company shall reimburse a member for an advance to the company beyond the amount of capital the member agreed to contribute.

(g) A payment or advance made by a member which gives rise to a limited liability company obligation under subsection (f) or Section 408(a) constitutes a loan to the company which accrues interest from the date of the payment or advance.

(h) A member is not entitled to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

**SECTION 408. REIMBURSEMENT; INDEMNIFICATION; ADVANCEMENT;
AND INSURANCE.**

(a) A limited liability company shall reimburse a member of a member-managed company or the manager of a manager-managed company for any payment made by the member or manager in the course of the member's or manager's activities on behalf of the company, if the member or manager complied with Sections 405, 407, and 409 in making the payment.

(b) A limited liability company shall indemnify and hold harmless a person with respect to any claim or demand against the person and any debt, obligation, or other liability incurred by the person by reason of the person's former or present capacity as a member or manager, if the claim, demand, debt, obligation, or other liability does not arise from the person's breach of Section 405, 407, or 409.

(c) In the ordinary course of its activities and affairs, a limited liability company may advance reasonable expenses, including attorney's fees and costs, incurred by a person in connection with a claim or demand against the person by reason of the person's former or present capacity as a member or manager, if the person promises to repay the company if the person ultimately is determined not to be entitled to be indemnified under subsection (b).

(d) A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 105(c)(7), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

**SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND
MANAGERS.**

(a) A member of a member-managed limited liability company owes to the company and,

subject to Section 801, the other members the duties of loyalty and care stated in subsections (b) and (c).

(b) The fiduciary duty of loyalty of a member in a member-managed limited liability company includes the duties:

(1) to account to the company and hold as trustee for it any property, profit, or benefit derived by the member:

(A) in the conduct or winding up of the company's activities and affairs;

(B) from a use by the member of the company's property; or

(C) from the appropriation of a company opportunity;

(2) to refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company; and

(3) to refrain from competing with the company in the conduct of the company's activities and affairs before the dissolution of the company.

(c) The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

(d) A member shall discharge the duties and obligations under this [act] or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(e) A member does not violate a duty or obligation under this [act] or under the operating agreement solely because the member's conduct furthers the member's own interest.

(f) All the members of a member-managed limited liability company or a manager-

managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(g) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(h) If, as permitted by subsection (f) or (i)(6) or the operating agreement, a member enters into a transaction with the limited liability company which otherwise would be prohibited by subsection (b)(2), the member's rights and obligations arising from the transaction are the same as those of a person that is not a member.

(i) In a manager-managed limited liability company, the following rules apply:

(1) Subsections (a), (b), (c), and (g) apply to the manager or managers and not the members.

(2) The duty stated under subsection (b)(3) continues until winding up is completed.

(3) Subsection (d) applies to managers and members.

(4) Subsection (e) applies only to members.

(5) The power to ratify under subsection (f) applies only to the members.

(6) Subject to subsection (d), a member does not have any duty to the company or to any other member solely by reason of being a member.

SECTION 410. RIGHTS TO INFORMATION OF MEMBER, MANAGER, AND PERSON DISSOCIATED AS MEMBER.

(a) In a member-managed limited liability company, the following rules apply:

(1) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, affairs, financial condition, and other circumstances, to the

extent the information is material to the member's rights and duties under the operating agreement or this [act].

(2) The company shall furnish to each member:

(A) without demand, any information concerning the company's activities, affairs, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this [act], except to the extent the company can establish that it reasonably believes the member already knows the information; and

(B) on demand, any other information concerning the company's activities, affairs, financial condition, and other circumstances, except to the extent the demand for the information demanded is unreasonable or otherwise improper under the circumstances.

(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).

(b) In a manager-managed limited liability company, the following rules apply:

(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.

(2) During regular business hours and at a reasonable location specified by the company, a member may inspect and copy information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:

(A) the member seeks the information for a purpose reasonably related to the member's interest as a member;

(B) the member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(C) the information sought is directly connected to the member's purpose.

(3) Not later than 10 days after receiving a demand pursuant to paragraph (2)(B), the company shall inform in a record the member that made the demand of:

(A) what information the company will provide in response to the demand and when and where the company will provide the information; and

(B) the company's reasons for declining, if the company declines to provide any demanded information.

(4) Whenever this [act] or an operating agreement provides for a member to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

(c) Subject to subsection (h), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to the information to which the person was entitled while a member if:

(1) the information pertains to the period during which the person was a member;

(2) the person seeks the information in good faith; and

(3) the person satisfies the requirements imposed on a member by subsection

(b)(2).

(d) A limited liability company shall respond to a demand made pursuant to subsection (c) in the manner provided in subsection (b)(3).

(e) A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

(f) A member or person dissociated as a member may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal

representative. Any restriction or condition imposed by the operating agreement or under subsection (h) applies both to the agent or legal representative and to the member or person dissociated as a member.

(g) Subject to Section 504, the rights under this section do not extend to a person as transferee.

(h) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities and affairs, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

[ARTICLE] 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

SECTION 501. NATURE OF TRANSFERABLE INTEREST. A transferable interest is personal property.

SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.

(a) Subject to Section 503(f), a transfer, in whole or in part, of a transferable interest:

(1) is permissible;

(2) does not by itself cause a person's dissociation as a member or a dissolution and winding up of the limited liability company's activities and affairs; and

(3) subject to Section 504, does not entitle the transferee to:

(A) participate in the management or conduct of the company's activities and affairs; or

(B) except as otherwise provided in subsection (c), have access to records

or other information concerning the company's activities and affairs.

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(c) In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(d) A transferable interest may be evidenced by a certificate of the interest issued by a limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(e) A limited liability company need not give effect to a transferee's rights under this section until the company knows or has notice of the transfer.

(f) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective if the intended transferee has knowledge or notice of the restriction at the time of transfer.

(g) Except as otherwise provided in Section 602(5)(B), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

(h) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 403 and 406 known to the transferee when the transferee becomes a member.

SECTION 503. CHARGING ORDER.

(a) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. Except as otherwise provided in subsection (f), a charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay

over to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

(b) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection (a), the court may:

(1) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(2) make all other orders necessary to give effect to the charging order.

(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in subsection (f), the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to Section 502.

(d) At any time before foreclosure under subsection (c), the member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(e) At any time before foreclosure under subsection (c), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(f) If a court orders foreclosure of a charging order lien against the sole member of a limited liability company:

(1) the court shall confirm the sale;

(2) the purchaser at the sale obtains the member's entire interest, not only the

member's transferable interest;

(3) the purchaser thereby becomes a member; and

(4) the person whose interest was subject to the foreclosed charging order is dissociated as a member.

(g) This [act] does not deprive any member or transferee of the benefit of any exemption law applicable to the transferable interest of the member or transferee.

(h) This section provides the exclusive remedy by which a person seeking in the capacity of judgment creditor to enforce a judgment against a member or transferee may satisfy the judgment from the judgment debtor's transferable interest.

SECTION 504. POWER OF LEGAL REPRESENTATIVE OF DECEASED MEMBER. If a member dies, the deceased member's legal representative may exercise:

(1) the rights of a transferee provided in Section 502(c); and

(2) for the purposes of settling the estate, the rights the deceased member had under Section 410.

[ARTICLE] 6

DISSOCIATION

SECTION 601. POWER TO DISSOCIATE AS MEMBER; WRONGFUL DISSOCIATION.

(a) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Section 602(1).

(b) A person's dissociation as a member is wrongful only if the dissociation:

(1) is in breach of an express provision of the operating agreement; or

(2) occurs before the completion of the winding up of the limited liability company and:

(A) the person withdraws as a member by express will;

(B) the person is expelled as a member by judicial order under Section 602(6);

(C) the person is dissociated under Section 602(8); or

(D) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 801, to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the company or the other members.

SECTION 602. EVENTS CAUSING DISSOCIATION. A person is dissociated as a member when:

(1) the limited liability company knows or has notice of the person's express will to withdraw as a member, but, if the person has specified a withdrawal date later than the date the company knew or had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person's entire interest is transferred in a foreclosure sale under Section 503(f);

(4) the person is expelled as a member pursuant to the operating agreement;

(5) the person is expelled as a member by the affirmative vote or consent of all the other members if:

(A) it is unlawful to carry on the limited liability company's activities and affairs with the person as a member;

(B) there has been a transfer of all the person's transferable interest in the

company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 503 which has not been foreclosed;

(C) the person is an entity and:

(i) the company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct business has been suspended by the person's jurisdiction of formation; and

(ii) not later than 90 days after the notification, the statement of dissolution or the equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or the person's charter or the equivalent or right to conduct business has not been reinstated; or

(D) the person is an unincorporated entity that has been dissolved and whose activities and affairs are being wound up;

(6) on application by the limited liability company or a member in a direct action under Section 801, the person is expelled as a member by judicial order because the person:

(A) has engaged or is engaging in wrongful conduct that has affected adversely and materially, or will affect adversely and materially, the company's activities and affairs;

(B) has committed willfully or persistently, or is committing willfully or persistently, a material breach of the operating agreement or a duty or obligation under Section 409; or

(C) has engaged or is engaging in conduct relating to the company's activities and

affairs which makes it not reasonably practicable to carry on the activities and affairs with the person as a member;

(7) in the case of an individual:

(A) the individual dies; or

(B) in a member-managed limited liability company:

(i) a guardian or general conservator for the individual is appointed; or

(ii) a court orders that the individual has otherwise become incapable of

performing the individual's duties as a member under this [act] or the operating agreement;

(8) in a member-managed limited liability company, the person:

(A) becomes a debtor in bankruptcy;

(B) signs an assignment for the benefit of creditors; or

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or

liquidator of the person or of all or substantially all the person's property;

(9) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;

(10) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed;

(11) in the case of a person that is not an individual, the existence of the person terminates;

(12) the limited liability company participates in a merger under [Article] 10 and:

(A) the company is not the surviving entity; or

(B) otherwise as a result of the merger, the person ceases to be a member;

(13) the limited liability company participates in an interest exchange under [Article] 10 and, as a result of the interest exchange, the person ceases to be a member;

(14) the limited liability company participates in a conversion under [Article] 10;

(15) the limited liability company participates in a domestication under [Article] 10 and, as a result of the domestication, the person ceases to be a member; or

(16) the limited liability company dissolves and completes winding up.

SECTION 603. EFFECT OF DISSOCIATION.

(a) If a person is dissociated as a member:

(1) the person's right to participate as a member in the management and conduct of the limited liability company's activities and affairs terminates;

(2) the person's duties and obligations under Section 409 as a member end with regard to matters arising and events occurring after the person's dissociation; and

(3) subject to Section 504 and [Article] 10, any transferable interest owned by the person in the person's capacity as a member immediately before dissociation is owned by the person solely as a transferee.

(b) A person's dissociation as a member does not of itself discharge the person from any debt, obligation, or other liability to the limited liability company or the other members which the person incurred while a member.

[ARTICLE] 7

DISSOLUTION AND WINDING UP

SECTION 701. EVENTS CAUSING DISSOLUTION.

(a) A limited liability company is dissolved, and its activities and affairs must be wound up, upon the occurrence of any of the following:

(1) an event or circumstance that the operating agreement states causes

dissolution;

(2) the affirmative vote or consent of all the members;

(3) the passage of 90 consecutive days during which the company has no members unless before the end of the period:

(A) consent to admit at least one specified person as a member is given by transferees owning the rights to receive a majority of distributions as transferees at the time the consent is to be effective; and

(B) at least one person becomes a member in accordance with the consent;

(4) on application by a member, the entry by [the appropriate court] of an order dissolving the company on the grounds that:

(A) the conduct of all or substantially all the company's activities and affairs is unlawful;

(B) it is not reasonably practicable to carry on the company's activities and affairs in conformity with the certificate of organization and the operating agreement; or

(C) the managers or those members in control of the company:

(i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or

(5) the signing and filing of a statement of administrative dissolution by the [Secretary of State] under Section 708.

(b) In a proceeding brought under subsection (a)(4)(C), the court may order a remedy other than dissolution.

SECTION 702. WINDING UP.

(a) A dissolved limited liability company shall wind up its activities and affairs and, except as otherwise provided in Section 703, the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities and affairs, a limited liability company:

(1) shall discharge the company's debts, obligations, and other liabilities, settle and close the company's activities and affairs, and marshal and distribute the assets of the company; and

(2) may:

(A) deliver to the [Secretary of State] for filing a statement of dissolution stating the name of the company and that the company is dissolved;

(B) preserve the company activities, affairs, and property as a going concern for a reasonable time;

(C) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration;

(F) deliver to the [Secretary of State] for filing a statement of termination stating the name of the company and that the company is terminated; and

(G) perform other acts necessary or appropriate to the winding up.

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities and affairs of the company. If the person does so, the person has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a).

(d) If the legal representative under subsection (c) declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

(1) has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section 304(a); and

(2) shall deliver promptly to the [Secretary of State] for filing an amendment to the company's certificate of organization stating:

(A) that the company has no members;

(B) the name and street and mailing addresses of the person; and

(C) that the person has been appointed pursuant to this subsection to wind up the company.

(e) [The appropriate court] may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities and affairs:

(1) on the application of a member, if the applicant establishes good cause;

(2) on the application of a transferee, if:

(A) the company does not have any members;

(B) the legal representative of the last person to have been a member declines or fails to wind up the company's activities; and

(C) within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (c); or

(3) in connection with a proceeding under Section 701(a)(4).

SECTION 703. RESCINDING DISSOLUTION.

(a) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the company has become effective, [the appropriate court] has entered an order under Section 701(a)(4) dissolving the company, or the [Secretary of State] has dissolved the company under Section 708.

(b) Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each member; and

(2) if the limited liability company has delivered to the [Secretary of State] for filing a statement of dissolution and:

(A) the statement has not become effective, delivery to the [Secretary of State] for filing of a statement of withdrawal under Section 208 applicable to the statement of dissolution; or

(B) if the statement of dissolution has become effective, delivery to the [Secretary of State] for filing of a statement of rescission stating the name of the company and that dissolution has been rescinded under this section.

(c) If a limited liability company rescinds its dissolution:

(1) the company resumes carrying on its activities and affairs as if dissolution had never occurred;

(2) subject to paragraph (3), any liability incurred by the company after the dissolution and before the rescission has become effective is determined as if dissolution had never occurred; and

(3) the rights of a third party arising out of conduct in reliance on the dissolution before the third party knew or had notice of the rescission may not be adversely affected.

SECTION 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED

LIABILITY COMPANY.

(a) Except as otherwise provided in subsection (d), a dissolved limited liability company may give notice of a known claim under subsection (b), which has the effect provided in subsection (c).

(b) A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

(1) specify the information required to be included in a claim;

(2) state that a claim must be in writing and provide a mailing address to which the claim is to be sent;

(3) state the deadline for receipt of a claim, which may not be less than 120 days after the date the notice is received by the claimant; and

(4) state that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) are met and:

(1) the claim is not received by the specified deadline; or

(2) if the claim is timely received but rejected by the company:

(A) the company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim not later than 90 days after the claimant receives the notice; and

(B) the claimant does not commence the required action not later than 90 days after the claimant receives the notice.

(d) This section does not apply to a claim based on an event occurring after the date of dissolution or a liability that on that date is contingent.

SECTION 705. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.

(a) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them in accordance with the notice.

(b) A notice under subsection (a) must:

(1) be published at least once in a newspaper of general circulation in the [county] in this state in which the dissolved limited liability company's principal office is located or, if the principal office is not located in this state, in the [county] in which the office of the company's registered agent is or was last located;

(2) describe the information required to be contained in a claim, state that the claim must be in writing, and provide a mailing address to which the claim is to be sent; and

(3) state that a claim against the company is barred unless an action to enforce the claim is commenced not later than three years after publication of the notice.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the company not later than three years after the publication date of the notice:

(1) a claimant that did not receive notice in a record under Section 704;

(2) a claimant whose claim was timely sent to the company but not acted on; and

(3) a claimant whose claim is contingent at, or based on an event occurring after, the date of dissolution.

(d) A claim not barred under this section or Section 704 may be enforced:

(1) against a dissolved limited liability company, to the extent of its undistributed assets; and

(2) except as otherwise provided in Section 706, if assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the company's assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph may not exceed the total amount of assets distributed to the person after dissolution.

SECTION 706. COURT PROCEEDINGS.

(a) A dissolved limited liability company that has published a notice under Section 705 may file an application with [the appropriate court] in the [county] where the company's principal office is located or, if the principal office is not located in this state, where the office of its registered agent is or was last located, for a determination of the amount and form of security to be provided for payment of claims that are reasonably expected to arise after the date of dissolution based on facts known to the company and:

(1) at the time of application:

(A) are contingent; or

(B) have not been made known to the company; or

(2) are based on an event occurring after the date of dissolution.

(b) Security is not required for any claim that is or is reasonably anticipated to be barred under Section 705.

(c) Not later than 10 days after the filing of an application under subsection (a), the dissolved limited liability company shall give notice of the proceeding to each claimant holding a contingent claim known to the company.

(d) In a proceeding under this section, the court may appoint a guardian ad litem to represent all claimants whose identities are unknown. The reasonable fees and expenses of the

guardian, including all reasonable expert witness fees, must be paid by the dissolved limited liability company.

(e) A dissolved limited liability company that provides security in the amount and form ordered by the court under subsection (a) satisfies the company's obligations with respect to claims that are contingent, have not been made known to the company, or are based on an event occurring after the date of dissolution, and such claims may not be enforced against a member or transferee on account of assets received in liquidation.

SECTION 707. DISPOSITION OF ASSETS IN WINDING UP.

(a) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge the company's obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under Section 503:

(1) to each person owning a transferable interest that reflects contributions made and not previously returned, an amount equal to the value of the unreturned contributions; and

(2) among persons owning transferable interests in proportion to their respective rights to share in distributions immediately before the dissolution of the company.

(c) If a limited liability company does not have sufficient surplus to comply with subsection (b)(1), any surplus must be distributed among the owners of transferable interests in proportion to the value of the respective unreturned contributions.

(d) All distributions made under subsections (b) and (c) must be paid in money.

SECTION 708. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may commence a proceeding under subsection (b) to dissolve a limited liability company administratively if the company does not:

(1) pay any fee, tax, interest, or penalty required to be paid to the [Secretary of

State] not later than [six months] after it is due;

(2) deliver [an annual] [a biennial] report to the [Secretary of State] not later than [six months] after it is due; or

(3) have a registered agent in this state for [60] consecutive days.

(b) If the [Secretary of State] determines that one or more grounds exist for administratively dissolving a limited liability company, the [Secretary of State] shall serve the company with notice in a record of the [Secretary of State's] determination.

(c) If a limited liability company, not later than [60] days after service of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the [Secretary of State] the nonexistence of each ground determined by the [Secretary of State], the [Secretary of State] shall administratively dissolve the company by signing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The [Secretary of State] shall file the statement and serve a copy on the company pursuant to Section 210.

(d) A limited liability company that is administratively dissolved continues in existence as an entity but may not carry on any activities except as necessary to wind up its activities and affairs and liquidate its assets under Sections 702, 704, 705, 706, and 707, or to apply for reinstatement under Section 709.

(e) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

SECTION 709. REINSTATEMENT.

(a) A limited liability company that is administratively dissolved under Section 708 may apply to the [Secretary of State] for reinstatement [not later than [two] years after the effective date of dissolution]. The application must state:

(1) the name of the company at the time of its administrative dissolution and, if

needed, a different name that satisfies Section 112;

(2) the address of the principal office of the company and the name and street and mailing addresses of its registered agent;

(3) the effective date of the company's administrative dissolution; and

(4) that the grounds for dissolution did not exist or have been cured.

(b) To be reinstated, a limited liability company must pay all fees, taxes, interest, and penalties that were due to the [Secretary of State] at the time of the company's administrative dissolution and all fees, taxes, interest, and penalties that would have been due to the [Secretary of State] while the company was administratively dissolved.

(c) If the [Secretary of State] determines that an application under subsection (a) contains the required information, is satisfied that the information is correct, and determines that all payments required to be made to the [Secretary of State] by subsection (b) have been made, the [Secretary of State] shall:

(1) cancel the statement of administrative dissolution and prepare a statement of reinstatement that states the [Secretary of State's] determination and the effective date of reinstatement; and

(2) file the statement of reinstatement and serve a copy on the limited liability company.

(d) When reinstatement under this section has become effective, the following rules apply:

(1) The reinstatement relates back to and takes effect as of the effective date of the administrative dissolution.

(2) The limited liability company resumes carrying on its activities and affairs as if the administrative dissolution had not occurred.

(3) The rights of a person arising out of an act or omission in reliance on the dissolution before the person knew or had notice of the reinstatement are not affected.

SECTION 710. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.

(a) If the [Secretary of State] denies a limited liability company's application for reinstatement following administrative dissolution, the [Secretary of State] shall serve the company with a notice in a record that explains the reasons for the denial.

(b) A limited liability company may seek judicial review of denial of reinstatement in [the appropriate court] not later than [30] days after service of the notice of denial.

[ARTICLE] 8

ACTIONS BY MEMBERS

SECTION 801. DIRECT ACTION BY MEMBER.

(a) Subject to subsection (b), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this [act] or arising independently of the membership relationship.

(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

SECTION 802. DERIVATIVE ACTION. A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under paragraph (1) would be futile.

SECTION 803. PROPER PLAINTIFF. A derivative action to enforce a right of a limited liability company may be maintained only by a person that is a member at the time the action is commenced and:

(1) was a member when the conduct giving rise to the action occurred; or

(2) whose status as a member devolved on the person by operation of law or pursuant to the terms of the operating agreement from a person that was a member at the time of the conduct.

SECTION 804. PLEADING. In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the response to the demand by the managers or other members; or

(2) why demand should be excused as futile.

SECTION 805. SPECIAL LITIGATION COMMITTEE.

(a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from:

(1) enforcing a person's right to information under Section 410; or

(2) granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(b) A special litigation committee must be composed of one or more disinterested and

independent individuals, who may be members.

(c) A special litigation committee may be appointed:

(1) in a member-managed limited liability company:

(A) by the affirmative vote or consent of a majority of the members not named as parties in the proceeding; or

(B) if all members are named as parties in the proceeding, by a majority of the members named as defendants; or

(2) in a manager-managed limited liability company:

(A) by a majority of the managers not named as parties in the proceeding;
or

(B) if all managers are named as parties in the proceeding, by a majority of the managers named as defendants.

(d) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

(3) be settled on terms approved by the committee; or

(4) be dismissed.

(e) After making a determination under subsection (d), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination and shall serve each party with a copy of the determination and report. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the

court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) and allow the action to continue under the control of the plaintiff.

SECTION 806. PROCEEDS AND EXPENSES.

(a) Except as otherwise provided in subsection (b):

(1) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(2) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs, from the recovery of the limited liability company.

(c) A derivative action on behalf of a limited liability company may not be voluntarily dismissed or settled without the court's approval.

[ARTICLE] 9

FOREIGN LIMITED LIABILITY COMPANIES

SECTION 901. GOVERNING LAW.

(a) The law of the jurisdiction of formation of a foreign limited liability company governs:

(1) the internal affairs of the company;

(2) the liability of a member as member and a manager as manager for a debt, obligation, or other liability of the company; and

(3) the liability of a series of the company.

(b) A foreign limited liability company is not precluded from registering to do business in this state because of any difference between the law of its jurisdiction of formation and the law of this state.

(c) Registration of a foreign limited liability company to do business in this state does not authorize the foreign company to engage in any activities and affairs or exercise any power that a limited liability company may not engage in or exercise in this state.

SECTION 902. REGISTRATION TO DO BUSINESS IN THIS STATE.

(a) A foreign limited liability company may not do business in this state until it registers with the [Secretary of State] under this [article].

(b) A foreign limited liability company doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state.

(c) The failure of a foreign limited liability company to register to do business in this state does not impair the validity of a contract or act of the company or preclude it from defending an action or proceeding in this state.

(d) A limitation on the liability of a member or manager of a foreign limited liability company is not waived solely because the company does business in this state without registering to do business in this state.

(e) Section 901(a) and (b) applies even if a foreign limited liability company fails to register under this [article].

SECTION 903. FOREIGN REGISTRATION STATEMENT. To register to do business in this state, a foreign limited liability company must deliver a foreign registration statement to the [Secretary of State] for filing. The statement must state:

(1) the name of the company and, if the name does not comply with Section 112, an alternate name adopted pursuant to Section 906(a);

- (2) that the company is a foreign limited liability company;
- (3) the company's jurisdiction of formation;
- (4) the street and mailing addresses of the company's principal office and, if the law of the company's jurisdiction of formation requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
- (5) the name and street and mailing addresses of the company's registered agent in this state.

SECTION 904. AMENDMENT OF FOREIGN REGISTRATION STATEMENT. A registered foreign limited liability company shall deliver to the [Secretary of State] for filing an amendment to its foreign registration statement if there is a change in:

- (1) the name of the company;
- (2) the company's jurisdiction of formation;
- (3) an address required by Section 903(4); or
- (4) the information required by Section 903(5).

SECTION 905. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.

(a) Activities of a foreign limited liability company which do not constitute doing business in this state under this [article] include:

- (1) maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
- (2) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;
- (3) maintaining accounts in financial institutions;
- (4) maintaining offices or agencies for the transfer, exchange, and registration of securities of the company or maintaining trustees or depositories with respect to those securities;

(5) selling through independent contractors;

(6) soliciting or obtaining orders by any means if the orders require acceptance outside this state before they become contracts;

(7) creating or acquiring indebtedness, mortgages, or security interests in property;

(8) securing or collecting debts or enforcing mortgages or security interests in property securing the debts and holding, protecting, or maintaining property;

(9) conducting an isolated transaction that is not in the course of similar transactions;

(10) owning, without more, property; and

(11) doing business in interstate commerce.

(b) A person does not do business in this state solely by being a member or manager of a foreign limited liability company that does business in this state.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this [act].

SECTION 906. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.

(a) A foreign limited liability company whose name does not comply with Section 112 may not register to do business in this state until it adopts, for the purpose of doing business in this state, an alternate name that complies with Section 112. A company that registers under an alternate name under this subsection need not comply with [this state's assumed or fictitious name statute]. After registering to do business in this state with an alternate name, a company shall do business in this state under:

- (1) the alternate name;
- (2) the company's name, with the addition of its jurisdiction of formation; or
- (3) a name the company is authorized to use under [this state's assumed or

fictitious name statute].

(b) If a registered foreign limited liability company changes its name to one that does not comply with Section 112, it may not do business in this state until it complies with subsection (a) by amending its registration to adopt an alternate name that complies with Section 112.

SECTION 907. WITHDRAWAL DEEMED ON CONVERSION TO DOMESTIC FILING ENTITY OR DOMESTIC LIMITED LIABILITY PARTNERSHIP. A registered foreign limited liability company that converts to a domestic limited liability partnership or to a domestic entity whose formation requires delivery of a record to the [Secretary of State] for filing is deemed to have withdrawn its registration on the effective date of the conversion.

SECTION 908. WITHDRAWAL ON DISSOLUTION OR CONVERSION TO NONFILING ENTITY OTHER THAN LIMITED LIABILITY PARTNERSHIP.

(a) A registered foreign limited liability company that has dissolved and completed winding up or has converted to a domestic or foreign entity whose formation does not require the public filing of a record, other than a limited liability partnership, shall deliver a statement of withdrawal to the [Secretary of State] for filing. The statement must state:

(1) in the case of a company that has completed winding up:

(A) its name and jurisdiction of formation;

(B) that the company surrenders its registration to do business in this state;

and

(2) in the case of a company that has converted:

(A) the name of the converting company and its jurisdiction of formation;

(B) the type of entity to which the company has converted and its jurisdiction of formation;

(C) that the converted entity surrenders the converting company's registration to do business in this state and revokes the authority of the converting company's registered agent to act as registered agent in this state on behalf of the company or the converted entity; and

(D) a mailing address to which service of process may be made under subsection (b).

(b) After a withdrawal under this section has become effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was registered to do business in this state may be made pursuant to Section 119.

SECTION 909. TRANSFER OF REGISTRATION.

(a) When a registered foreign limited liability company has merged into a foreign entity that is not registered to do business in this state or has converted to a foreign entity required to register with the [Secretary of State] to do business in this state, the foreign entity shall deliver to the [Secretary of State] for filing an application for transfer of registration. The application must state:

(1) the name of the registered foreign limited liability company before the merger or conversion;

(2) that before the merger or conversion the registration pertained to a foreign limited liability company;

(3) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted and, if the name does not comply with

Section 112, an alternate name adopted pursuant to Section 906(a);

(4) the type of entity of the applicant foreign entity and its jurisdiction of formation;

(5) the street and mailing addresses of the principal office of the applicant foreign entity and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in that jurisdiction, the street and mailing addresses of that office; and

(6) the name and street and mailing addresses of the applicant foreign entity's registered agent in this state.

(b) When an application for transfer of registration takes effect, the registration of the foreign limited liability company to do business in this state is transferred without interruption to the foreign entity into which the company has merged or to which it has been converted.

SECTION 910. TERMINATION OF REGISTRATION.

(a) The [Secretary of State] may terminate the registration of a registered foreign limited liability company in the manner provided in subsections (b) and (c) if the company does not:

(1) pay, not later than [60] days after the due date, any fee, tax, interest, or penalty required to be paid to the [Secretary of State] under this [act] or law other than this [act];

(2) deliver to the [Secretary of State] for filing, not later than [60] days after the due date, [an annual] [a biennial] report required under Section 212;

(3) have a registered agent as required by Section 115; or

(4) deliver to the [Secretary of State] for filing a statement of a change under Section 116 not later than [30] days after a change has occurred in the name or address of the registered agent.

(b) The [Secretary of State] may terminate the registration of a registered foreign limited liability company by:

(1) filing a notice of termination or noting the termination in the records of the [Secretary of State]; and

(2) delivering a copy of the notice or the information in the notation to the company's registered agent or, if the company does not have a registered agent, to the company's principal office.

(c) The notice must state or the information in the notation must include:

(1) the effective date of the termination, which must be at least [60] days after the date the [Secretary of State] delivers the copy; and

(2) the grounds for termination under subsection (a).

(d) The authority of a registered foreign limited liability company to do business in this state ceases on the effective date of the notice of termination or notation under subsection (b), unless before that date the company cures each ground for termination stated in the notice or notation. If the company cures each ground, the [Secretary of State] shall file a record so stating.

SECTION 911. WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN LIMITED LIABILITY COMPANY.

(a) A registered foreign limited liability company may withdraw its registration by delivering a statement of withdrawal to the [Secretary of State] for filing. The statement of withdrawal must state:

(1) the name of the company and its jurisdiction of formation;

(2) that the company is not doing business in this state and that it withdraws its registration to do business in this state;

(3) that the company revokes the authority of its registered agent to accept service on its behalf in this state; and

(4) an address to which service of process may be made under subsection (b).

(b) After the withdrawal of the registration of a foreign limited liability company, service of process in any action or proceeding based on a cause of action arising during the time the company was registered to do business in this state may be made pursuant to Section 119.

SECTION 912. ACTION BY [ATTORNEY GENERAL]. The [Attorney General] may maintain an action to enjoin a foreign limited liability company from doing business in this state in violation of this [article].

[ARTICLE] 10

MERGER, INTEREST EXCHANGE, CONVERSION, AND DOMESTICATION

[PART] 1

GENERAL PROVISIONS

SECTION 1001. DEFINITIONS. In this [article]:

(1) “Acquired entity” means the entity, all of one or more classes or series of interests of which are acquired in an interest exchange.

(2) “Acquiring entity” means the entity that acquires all of one or more classes or series of interests of the acquired entity in an interest exchange.

(3) “Conversion” means a transaction authorized by [Part] 4.

(4) “Converted entity” means the converting entity as it continues in existence after a conversion.

(5) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 1043 or the foreign entity that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) “Distributional interest” means the right under an unincorporated entity’s organic law and organic rules to receive distributions from the entity.

(7) “Domestic”, with respect to an entity, means governed as to its internal affairs by the

law of this state.

(8) “Domesticated limited liability company” means the domesticating limited liability company as it continues in existence after a domestication.

(9) “Domesticating limited liability company” means the domestic limited liability company that approves a plan of domestication pursuant to Section 1053 or the foreign limited liability company that approves a domestication pursuant to the law of its jurisdiction of formation.

(10) “Domestication” means a transaction authorized by [Part] 5.

(11) “Entity”:

(A) means:

(i) a business corporation;

(ii) a nonprofit corporation;

(iii) a general partnership, including a limited liability partnership;

(iv) a limited partnership, including a limited liability limited partnership;

(v) a limited liability company;

[(vi) a general cooperative association;]

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

(ix) a statutory trust, business trust, or common-law business trust; or

(x) any other person that has:

(I) a legal existence separate from any interest holder of that

person; or

(II) the power to acquire an interest in real property in its own

name; and

(B) does not include:

(i) an individual;

(ii) a trust with a predominantly donative purpose or a charitable trust;

(iii) an association or relationship that is not an entity listed in

subparagraph A and is not a partnership under the rules stated in [Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2013)] [Section 7 of the Uniform Partnership Act (1914)] or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

(v) a government or a governmental subdivision, agency, or

instrumentality.

(12) "Filing entity" means an entity whose formation requires the filing of a public organic record. The term does not include a limited liability partnership.

(13) "Foreign", with respect to an entity, means an entity governed as to its internal affairs by the law of a jurisdiction other than this state.

(14) "Governance interest" means a right under the organic law or organic rules of an unincorporated entity, other than as a governor, agent, assignee, or proxy, to:

(A) receive or demand access to information concerning, or the books and records of, the entity;

(B) vote for or consent to the election of the governors of the entity; or

(C) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.

(15) "Governor" means:

(A) a director of a business corporation;

(B) a director or trustee of a nonprofit corporation;

- (C) a general partner of a general partnership;
- (D) a general partner of a limited partnership;
- (E) a manager of a manager-managed limited liability company;
- (F) a member of a member-managed limited liability company;
- [(G) a director of a general cooperative association;]
- (H) a director of a limited cooperative association;
- (I) a manager of an unincorporated nonprofit association;
- (J) a trustee of a statutory trust, business trust, or common-law business trust; or
- (K) any other person under whose authority the powers of an entity are exercised

and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(16) “Interest” means:

- (A) a share in a business corporation;
- (B) a membership in a nonprofit corporation;
- (C) a partnership interest in a general partnership;
- (D) a partnership interest in a limited partnership;
- (E) a membership interest in a limited liability company;
- [(F) a share in a general cooperative association;]
- (G) a member’s interest in a limited cooperative association;
- (H) a membership in an unincorporated nonprofit association;
- (I) a beneficial interest in a statutory trust, business trust, or common-law business

trust; or

(J) a governance interest or distributional interest in any other type of unincorporated entity.

(17) “Interest exchange” means a transaction authorized by [Part] 3.

(18) “Interest holder” means:

(A) a shareholder of a business corporation;

(B) a member of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a limited partner of a limited partnership;

(F) a member of a limited liability company;

[(G) a shareholder of a general cooperative association;]

(H) a member of a limited cooperative association;

(I) a member of an unincorporated nonprofit association;

(J) a beneficiary or beneficial owner of a statutory trust, business trust, or

common-law business trust; or

(K) any other direct holder of an interest.

(19) “Interest holder liability” means:

(A) personal liability for a liability of an entity which is imposed on a person:

(i) solely by reason of the status of the person as an interest holder; or

(ii) by the organic rules of the entity which make one or more specified

interest holders or categories of interest holders liable in their capacity as interest holders for all

or specified liabilities of the entity; or

(B) an obligation of an interest holder under the organic rules of an entity to

contribute to the entity.

(20) “Merger” means a transaction authorized by [Part] 2.

(21) “Merging entity” means an entity that is a party to a merger and exists immediately

before the merger becomes effective.

(22) “Organic law” means the law of an entity’s jurisdiction of formation governing the internal affairs of the entity.

(23) “Organic rules” means the public organic record and private organic rules of an entity.

(24) “Plan” means a plan of merger, plan of interest exchange, plan of conversion, or plan of domestication.

(25) “Plan of conversion” means a plan under Section 1042.

(26) “Plan of domestication” means a plan under Section 1052.

(27) “Plan of interest exchange” means a plan under Section 1032.

(28) “Plan of merger” means a plan under Section 1022.

(29) “Private organic rules” means the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. The term includes:

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

(C) the partnership agreement of a general partnership;

(D) the partnership agreement of a limited partnership;

(E) the operating agreement of a limited liability company;

[(F) the bylaws of a general cooperative association;]

(G) the bylaws of a limited cooperative association;

(H) the governing principles of an unincorporated nonprofit association; and

(I) the trust instrument of a statutory trust or similar rules of a business trust or

common-law business trust.

(30) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on [the effective date of this [act]];

(B) an agreement that is binding on an entity on [the effective date of this [act]];

(C) the organic rules of an entity in effect on [the effective date of this [act]]; or

(D) an agreement that is binding on any of the governors or interest holders of an entity on [the effective date of this [act]].

(31) “Public organic record” means the record the filing of which by the [Secretary of State] is required to form an entity and any amendment to or restatement of that record. The term includes:

(A) the articles of incorporation of a business corporation;

(B) the articles of incorporation of a nonprofit corporation;

(C) the certificate of limited partnership of a limited partnership;

(D) the certificate of organization of a limited liability company;

[(E) the articles of incorporation of a general cooperative association;]

(F) the articles of organization of a limited cooperative association; and

(G) the certificate of trust of a statutory trust or similar record of a business trust.

(32) “Registered foreign entity” means a foreign entity that is registered to do business in this state pursuant to a record filed by the [Secretary of State].

(33) “Statement of conversion” means a statement under Section 1045.

(34) “Statement of domestication” means a statement under Section 1055.

(35) “Statement of interest exchange” means a statement under Section 1035.

(36) “Statement of merger” means a statement under Section 1025.

(37) “Surviving entity” means the entity that continues in existence after or is created by

a merger.

(38) “Type of entity” means a generic form of entity:

(A) recognized at common law; or

(B) formed under an organic law, whether or not some entities formed under that organic law are subject to provisions of that law that create different categories of the form of entity.

SECTION 1002. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS.

(a) This [article] does not authorize an act prohibited by, and does not affect the application or requirements of, law other than this [article].

(b) A transaction effected under this [article] may not create or impair a right, duty or obligation of a person under the statutory law of this state other than this [article] relating to a change in control, takeover, business combination, control-share acquisition, or similar transaction involving a domestic merging, acquired, converting, or domesticating business corporation unless:

(1) if the corporation does not survive the transaction, the transaction satisfies any requirements of the law; or

(2) if the corporation survives the transaction, the approval of the plan is by a vote of the shareholders or directors which would be sufficient to create or impair the right, duty, or obligation directly under the law.

SECTION 1003. REQUIRED NOTICE OR APPROVAL.

(a) A domestic or foreign entity that is required to give notice to, or obtain the approval of, a governmental agency or officer of this state to be a party to a merger must give the notice or obtain the approval to be a party to an interest exchange, conversion, or domestication.

(b) Property held for a charitable purpose under the law of this state by a domestic or

foreign entity immediately before a transaction under this [article] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains an appropriate order of [the appropriate court] [the Attorney General] specifying the disposition of the property.

(c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to a merging entity that is not the surviving entity and which takes effect or remains payable after the merger inures to the surviving entity.

(d) A trust obligation that would govern property if transferred to a nonsurviving entity applies to property that is transferred to the surviving entity under this section.

Legislative Note: *As an alternative to enacting Subsection (a), a state may identify each of its regulatory laws that requires prior approval for a merger of a regulated entity, decide whether regulatory approval should be required for an interest exchange, conversion, or domestication, and make amendments as appropriate to those laws.*

As with Subsection (a), an adopting state may choose to amend its various laws with respect to the nondiversion of charitable property to cover the various transactions authorized by this act as an alternative to enacting Subsection (b).

SECTION 1004. NONEXCLUSIVITY. The fact that a transaction under this [article] produces a certain result does not preclude the same result from being accomplished in any other manner permitted by law other than this [article].

SECTION 1005. REFERENCE TO EXTERNAL FACTS. A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.

SECTION 1006. APPRAISAL RIGHTS. An interest holder of a domestic merging, acquired, converting, or domesticating limited liability company is entitled to contractual appraisal rights in connection with a transaction under this [article] to the extent provided in:

- (1) the operating agreement; or
- (2) the plan.

[SECTION 1007. EXCLUDED ENTITIES AND TRANSACTIONS.

(a) The following entities may not participate in a transaction under this [article]:

- (1)
- (2).

(b) This [article] may not be used to effect a transaction that:

- (1)
- (2).]

***Legislative Note:** Subsection (a) may be used by states that have special statutes restricted to the organization of certain types of entities. A common example is banking statutes that prohibit banks from engaging in transactions other than pursuant to those statutes.*

Nonprofit entities may participate in transactions under this act with for-profit entities, subject to compliance with Section 1003. If a state desires, however, to exclude entities with a charitable purpose or to exclude other types of entities from the scope of this article, that may be done by referring to those entities in Subsection (a).

Subsection (b) may be used to exclude certain types of transactions governed by more specific statutes. A common example is the conversion of an insurance company from mutual to stock form. There may be other types of transactions that vary greatly among the states.

[PART] 2

MERGER

SECTION 1021. MERGER AUTHORIZED.

(a) By complying with this [part]:

- (1) one or more domestic limited liability companies may merge with one or more

domestic or foreign entities into a domestic or foreign surviving entity; and

(2) two or more foreign entities may merge into a domestic limited liability company.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity may be a party to a merger under this [part] or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

SECTION 1022. PLAN OF MERGER.

(a) A domestic limited liability company may become a party to a merger under this [part] by approving a plan of merger. The plan must be in a record and contain:

(1) as to each merging entity, its name, jurisdiction of formation, and type of entity;

(2) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;

(3) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) if the surviving entity exists before the merger, any proposed amendments to:

(A) its public organic record, if any; and

(B) its private organic rules that are, or are proposed to be, in a record;

(5) if the surviving entity is to be created in the merger:

(A) its proposed public organic record, if any; and

(B) the full text of its private organic rules that are proposed to be in a record;

(6) the other terms and conditions of the merger; and

(7) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.

(b) In addition to the requirements of subsection (a), a plan of merger may contain any other provision not prohibited by law.

SECTION 1023. APPROVAL OF MERGER.

(a) A plan of merger is not effective unless it has been approved:

(1) by a domestic merging limited liability company, by all the members of the company entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic merging limited liability company which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the merger becomes effective, unless:

(A) the operating agreement of the company provides in a record for the approval of a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(b) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.

(c) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

SECTION 1024. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.

(a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic merging limited liability company may approve an amendment of a plan of merger:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;

(B) the public organic record, if any, or private organic rules of the surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(c) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.

(d) If a plan of merger is abandoned after a statement of merger has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the [Secretary of State] for filing before the statement of merger becomes effective. The statement of abandonment takes

effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of each party to the plan of merger;
- (2) the date on which the statement of merger was filed by the [Secretary of State]; and
- (3) a statement that the merger has been abandoned in accordance with this section.

SECTION 1025. STATEMENT OF MERGER; EFFECTIVE DATE OF MERGER.

(a) A statement of merger must be signed by each merging entity and delivered to the [Secretary of State] for filing.

(b) A statement of merger must contain:

- (1) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;
- (2) the name, jurisdiction of formation, and type of entity of the surviving entity;
- (3) a statement that the merger was approved by each domestic merging entity, if any, in accordance with this [part] and by each foreign merging entity, if any, in accordance with the law of its jurisdiction of formation;
- (4) if the surviving entity exists before the merger and is a domestic filing entity, any amendment to its public organic record approved as part of the plan of merger;
- (5) if the surviving entity is created by the merger and is a domestic filing entity, its public organic record, as an attachment; and
- (6) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of merger may contain

any other provision not prohibited by law.

(d) If the surviving entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(e) A plan of merger that is signed by all the merging entities and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this subsection, references in this [article] to a statement of merger refer to the plan of merger filed under this subsection.

(f) If the surviving entity is a domestic limited liability company, the merger becomes effective when the statement of merger is effective. In all other cases, the merger becomes effective on the later of:

- (1) the date and time provided by the organic law of the surviving entity; and
- (2) when the statement is effective.

SECTION 1026. EFFECT OF MERGER.

(a) When a merger becomes effective:

- (1) the surviving entity continues or comes into existence;
- (2) each merging entity that is not the surviving entity ceases to exist;
- (3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;
- (4) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;
- (5) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

(6) if the surviving entity exists before the merger:

(A) all its property continues to be vested in it without transfer, reversion, or impairment;

(B) it remains subject to all its debts, obligations, and other liabilities; and

(C) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;

(7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;

(8) if the surviving entity exists before the merger:

(A) its public organic record, if any, is amended to the extent provided in the statement of merger; and

(B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;

(9) if the surviving entity is created by the merger, its private organic rules are effective and:

(A) if it is a filing entity, its public organic record becomes effective; and

(B) if it is a limited liability partnership, its statement of qualification becomes effective; and

(10) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 1006 and the merging entity's organic law.

(b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would

have upon a dissolution, liquidation, or winding up of the merging entity.

(c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.

(d) When a merger becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic merging limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The merger does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the merger became effective.

(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that is incurred after the merger becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the operating agreement of the domestic merging limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the merger had not occurred.

(e) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging limited liability company as provided in Section 119.

(f) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.

[PART] 3

INTEREST EXCHANGE

SECTION 1031. INTEREST EXCHANGE AUTHORIZED.

(a) By complying with this [part]:

(1) a domestic limited liability company may acquire all of one or more classes or series of interests of another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or

(2) all of one or more classes or series of interests of a domestic limited liability company may be acquired by another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under this [part] if the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to an interest exchange, the provision applies to an interest exchange in which the domestic limited liability company is the acquired entity as if the interest exchange were a merger until the provision is amended after [the effective date of this [act]].

SECTION 1032. PLAN OF INTEREST EXCHANGE.

(a) A domestic limited liability company may be the acquired entity in an interest exchange under this [part] by approving a plan of interest exchange. The plan must be in a record and contain:

- (1) the name of the acquired entity;
- (2) the name, jurisdiction of formation, and type of entity of the acquiring entity;
- (3) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
- (4) any proposed amendments to:
 - (A) the certificate of organization of the acquired entity; and
 - (B) the operating agreement of the acquired entity that are, or are proposed to be, in a record;
- (5) the other terms and conditions of the interest exchange; and
- (6) any other provision required by the law of this state or the operating agreement of the acquired entity.

(b) In addition to the requirements of subsection (a), a plan of interest exchange may contain any other provision not prohibited by law.

SECTION 1033. APPROVAL OF INTEREST EXCHANGE.

- (a) A plan of interest exchange is not effective unless it has been approved:
- (1) by all the members of a domestic acquired limited liability company entitled to vote on or consent to any matter; and
 - (2) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the interest exchange becomes effective, unless:
 - (A) the operating agreement of the company provides in a record for the approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member consented in a record to or voted for that provision of the operating agreement or became a member after the adoption of that provision.

(b) An interest exchange involving a domestic acquired entity that is not a limited liability company is not effective unless it is approved by the domestic entity in accordance with its organic law.

(c) An interest exchange involving a foreign acquired entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

(d) Except as otherwise provided in its organic law or organic rules, the interest holders of the acquiring entity are not required to approve the interest exchange.

SECTION 1034. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.

(a) A plan of interest exchange may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.

(b) A domestic acquired limited liability company may approve an amendment of a plan of interest exchange:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the acquired company under the plan;

(B) the certificate of organization or operating agreement of the acquired company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired company under this [act] or the operating agreement; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(c) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner as the plan was approved.

(d) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the [Secretary of State] for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the acquired company;

(2) the date on which the statement of interest exchange was filed by the [Secretary of State]; and

(3) a statement that the interest exchange has been abandoned in accordance with this section.

SECTION 1035. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE OF INTEREST EXCHANGE.

(a) A statement of interest exchange must be signed by a domestic acquired limited

liability company and delivered to the [Secretary of State] for filing.

(b) A statement of interest exchange must contain:

(1) the name of the acquired limited liability company;

(2) the name, jurisdiction of formation, and type of entity of the acquiring entity;

(3) a statement that the plan of interest exchange was approved by the acquired company in accordance with this [part]; and

(4) any amendments to the acquired company's certificate of organization approved as part of the plan of interest exchange.

(c) In addition to the requirements of subsection (b), a statement of interest exchange may contain any other provision not prohibited by law.

(d) A plan of interest exchange that is signed by a domestic acquired limited liability company and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of interest exchange and on filing has the same effect. If a plan of interest exchange is filed as provided in this subsection, references in this [article] to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

(e) An interest exchange becomes effective when the statement of interest exchange is effective.

SECTION 1036. EFFECT OF INTEREST EXCHANGE.

(a) When an interest exchange in which the acquired entity is a domestic limited liability company becomes effective:

(1) the interests in the acquired company which are the subject of the interest exchange are converted, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 1006;

(2) the acquiring entity becomes the interest holder of the interests in the acquired company stated in the plan of interest exchange to be acquired by the acquiring entity;

(3) the certificate of organization of the acquired company is amended to the extent provided in the statement of interest exchange; and

(4) the provisions of the operating agreement of the acquired company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.

(b) Except as otherwise provided in the operating agreement of a domestic acquired limited liability company, the interest exchange does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the acquired company.

(c) When an interest exchange becomes effective, a person that did not have interest holder liability with respect to a domestic acquired limited liability company and becomes subject to interest holder liability with respect to a domestic entity as a result of the interest exchange has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the interest exchange becomes effective.

(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The interest exchange does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the interest exchange became effective.

(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that is incurred after the interest exchange becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the operating agreement of the acquired company with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

[PART] 4

CONVERSION

SECTION 1041. CONVERSION AUTHORIZED.

(a) By complying with this [part], a domestic limited liability company may become:

(1) a domestic entity that is a different type of entity; or

(2) a foreign entity that is a different type of entity, if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the provision applies to a conversion of the company as if the conversion were a merger until the provision is amended after [the effective date of this [act]].

SECTION 1042. PLAN OF CONVERSION.

(a) A domestic limited liability company may convert to a different type of entity under

this [part] by approving a plan of conversion. The plan must be in a record and contain:

- (1) the name of the converting limited liability company;
- (2) the name, jurisdiction of formation, and type of entity of the converted entity;
- (3) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;
- (4) the proposed public organic record of the converted entity if it will be a filing entity;
- (5) the full text of the private organic rules of the converted entity which are proposed to be in a record;
- (6) the other terms and conditions of the conversion; and
- (7) any other provision required by the law of this state or the operating agreement of the converting limited liability company.

(b) In addition to the requirements of subsection (a), a plan of conversion may contain any other provision not prohibited by law.

SECTION 1043. APPROVAL OF CONVERSION.

- (a) A plan of conversion is not effective unless it has been approved:
- (1) by a domestic converting limited liability company, by all the members of the limited liability company entitled to vote on or consent to any matter; and
 - (2) in a record, by each member of a domestic converting limited liability company which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:
 - (A) the operating agreement of the company provides in a record for the approval of a conversion or a merger in which some or all of its members become subject to

interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(b) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.

(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

SECTION 1044. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.

(a) A plan of conversion of a domestic converting limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the converting company under the plan;

(B) the public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(b) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(c) If a plan of conversion is abandoned after a statement of conversion has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the converting entity, must be delivered to the [Secretary of State] for filing before the statement of conversion becomes effective. The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective. The statement of abandonment must contain:

- (1) the name of the converting limited liability company;
- (2) the date on which the statement of conversion was filed by the [Secretary of State]; and
- (3) a statement that the conversion has been abandoned in accordance with this section.

SECTION 1045. STATEMENT OF CONVERSION; EFFECTIVE DATE OF CONVERSION.

(a) A statement of conversion must be signed by the converting entity and delivered to the [Secretary of State] for filing.

(b) A statement of conversion must contain:

- (1) the name, jurisdiction of formation, and type of entity of the converting entity;
- (2) the name, jurisdiction of formation, and type of entity of the converted entity;

(3) if the converting entity is a domestic limited liability company, a statement that the plan of conversion was approved in accordance with this [part] or, if the converting entity is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance with the law of its jurisdiction of formation;

(4) if the converted entity is a domestic filing entity, its public organic record, as an attachment; and

(5) if the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, except that the public organic record does not need to be signed.

(e) A plan of conversion that is signed by a domestic converting limited liability company and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [article] to a statement of conversion refer to the plan of conversion filed under this subsection.

(f) If the converted entity is a domestic limited liability company, the conversion becomes effective when the statement of conversion is effective. In all other cases, the conversion becomes effective on the later of:

- (1) the date and time provided by the organic law of the converted entity; and
- (2) when the statement is effective.

SECTION 1046. EFFECT OF CONVERSION.

(a) When a conversion becomes effective:

(1) the converted entity is:

(A) organized under and subject to the organic law of the converted entity;

and

(B) the same entity without interruption as the converting entity;

(2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;

(5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;

(6) the certificate of organization of the converted entity becomes effective;

(7) the provisions of the operating agreement of the converted entity which are to be in a record, if any, approved as part of the plan of conversion become effective; and

(8) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 1006.

(b) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the

converting entity.

(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The conversion does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the conversion became effective;

(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that arises after the conversion becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the organic rules of the converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 119.

(f) If the converting entity is a registered foreign entity, its registration to do business in this state is canceled when the conversion becomes effective.

(g) A conversion does not require the entity to wind up its affairs and does not constitute or cause the dissolution of the entity.

[PART] 5

DOMESTICATION

SECTION 1051. DOMESTICATION AUTHORIZED.

(a) By complying with this [part], a domestic limited liability company may become a foreign limited liability company if the domestication is authorized by the law of the foreign jurisdiction.

(b) By complying with the provisions of this [part] applicable to foreign limited liability companies, a foreign limited liability company may become a domestic limited liability company if the domestication is authorized by the law of the foreign limited liability company's jurisdiction of formation.

(c) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a domestication, the provision applies to a domestication of the limited liability company as if the domestication were a merger until the provision is amended after [the effective date of this [act]].

SECTION 1052. PLAN OF DOMESTICATION.

(a) A domestic limited liability company may become a foreign limited liability company in a domestication by approving a plan of domestication. The plan must be in a record and contain:

- (1) the name of the domesticating limited liability company;
- (2) the name and jurisdiction of formation of the domesticated limited liability company;
- (3) the manner of converting the interests in the domesticating limited liability

company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed certificate of organization of the domesticated limited liability company;

(5) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;

(6) the other terms and conditions of the domestication; and

(7) any other provision required by the law of this state or the operating agreement of the domesticating limited liability company.

(b) In addition to the requirements of subsection (a), a plan of domestication may contain any other provision not prohibited by law.

SECTION 1053. APPROVAL OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating limited liability company is not effective unless it has been approved:

(1) by all the members entitled to vote on or consent to any matter; and

(2) in a record, by each member that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the domestication becomes effective, unless:

(A) the operating agreement of the domesticating company in a record provides for the approval of a domestication or merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and

(B) the member voted for or consented in a record to that provision of the operating agreement or became a member after the adoption of that provision.

(b) A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.

SECTION 1054. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.

(a) A plan of domestication of a domestic domesticating limited liability company may be amended:

(1) in the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:

(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the domesticating limited liability company under the plan;

(B) the certificate of organization or operating agreement of the domesticated limited liability company that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the members of the domesticated limited liability company under its organic law or operating agreement; or

(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.

(b) After a plan of domestication has been approved by a domestic domesticating limited liability company and before a statement of domestication becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating

limited liability company may abandon the plan in the same manner as the plan was approved.

(c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the domesticating limited liability company, must be delivered to the [Secretary of State] for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:

(1) the name of the domesticating limited liability company;

(2) the date on which the statement of domestication was filed by the [Secretary of State]; and

(3) a statement that the domestication has been abandoned in accordance with this section.

SECTION 1055. STATEMENT OF DOMESTICATION; EFFECTIVE DATE OF DOMESTICATION.

(a) A statement of domestication must be signed by the domesticating limited liability company and delivered to the [Secretary of State] for filing.

(b) A statement of domestication must contain:

(1) the name and jurisdiction of formation of the domesticating limited liability company;

(2) the name and jurisdiction of formation of the domesticated limited liability company;

(3) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with this [part] or, if the domesticating limited liability company is a foreign limited liability company, a

statement that the domestication was approved in accordance with the law of its jurisdiction of formation; and

(4) the certificate of organization of the domesticated limited liability company, as an attachment.

(c) In addition to the requirements of subsection (b), a statement of domestication may contain any other provision not prohibited by law.

(d) The certificate of organization of a domestic domesticated limited liability company must satisfy the requirements of this [act], but the certificate does not need to be signed.

(e) A plan of domestication that is signed by a domesticating domestic limited liability company and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of domestication and on filing has the same effect. If a plan of domestication is filed as provided in this subsection, references in this [article] to a statement of domestication refer to the plan of domestication filed under this subsection.

(f) If the domesticated entity is a domestic limited liability company, the domestication becomes effective when the statement of domestication is effective. If the domesticated entity is a foreign limited liability company, the domestication becomes effective on the later of:

(1) the date and time provided by the organic law of the domesticated entity; and

(2) when the statement is effective.

SECTION 1056. EFFECT OF DOMESTICATION.

(a) When a domestication becomes effective:

(1) the domesticated entity is:

(A) organized under and subject to the organic law of the domesticated entity; and

(B) the same entity without interruption as the domesticating entity;

(2) all property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;

(4) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating entity remain in the domesticated entity;

(5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;

(6) the certificate of organization of the domesticated entity becomes effective;

(7) the provisions of the operating agreement of the domesticated entity that are to be in a record, if any, approved as part of the plan of domestication become effective; and

(8) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the members of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 1006.

(b) Except as otherwise provided in the organic law or operating agreement of the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager, or third party would otherwise have upon a dissolution, liquidation, or winding up of the domesticating company.

(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and becomes subject to interest holder liability with respect to a domestic company as a result of the domestication has interest holder liability only to the extent provided by this [act] and only for those debts,

obligations, and other liabilities that are incurred after the domestication becomes effective.

(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating limited liability company with respect to which the person had interest holder liability is subject to the following rules:

(1) The domestication does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the domestication became effective.

(2) A person does not have interest holder liability under this [act] for any debt, obligation, or other liability that is incurred after the domestication becomes effective.

(3) This [act] continues to apply to the release, collection, or discharge of any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(4) A person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the operating agreement of the domestic domesticating limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.

(e) When a domestication becomes effective, a foreign limited liability company that is the domesticated company may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 119.

(f) If the domesticating limited liability company is a registered foreign entity, the registration of the company is canceled when the domestication becomes effective.

(g) A domestication does not require a domestic domesticating limited liability company to wind up its affairs and does not constitute or cause the dissolution of the company.

[ARTICLE] 11

MISCELLANEOUS PROVISIONS

SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 1103. SAVINGS CLAUSE. This [act] does not affect an action commenced, proceeding brought, or right accrued before [the effective date of this [act]].

[SECTION 1104. SEVERABILITY CLAUSE. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] which can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

Legislative Note: Include this section only if this state lacks a general severability statute or decision by the highest court of this state stating a general rule of severability.

SECTION 1105. REPEALS. The following are repealed:

(1) [the state limited liability company act, as [amended, and as] in effect immediately before [the effective date of this [act]]];

(2)

(3)

SECTION 1106. EFFECTIVE DATE. This [act] takes effect