

UNIFORM LIMITED LIABILITY COMPANY ACT

- Comparison draft showing changes from AM 2011 binder draft (clean, stripped, and resequenced) to the latest version of the draft final act

~~HARMONIZED-REVISED~~ UNIFORM LIMITED LIABILITY COMPANY ACT (2006)
(Last Amended 2011)

[ARTICLE] 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [act] may be cited as the ~~Revised~~ Uniform Limited Liability Company Act. ([year of enactment]).

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

1 and affairs; and

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

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

8 (6) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a
9 foreign country, or a political subdivision of a foreign country.

10 (7) “Jurisdiction of formation” means, ~~with respect to an entity,~~ the jurisdiction: whose
11 law governs the internal affairs of an entity.

12 ~~—————(A) under whose law the entity is formed; or~~

13 ~~—————(B) in the case of a limited liability partnership or foreign limited liability~~
14 ~~partnership, in which the partnership’s statement of qualification is filed.~~

15 (8) “Limited liability company”, except in the phrase “foreign limited liability company”
16 and in Section 1001, means an entity formed under this [act] or which becomes subject to this
17 [act] under [Article] 10 or Section ~~1105~~110.

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

21 (10) “Manager-managed limited liability company” means a limited liability company
22 that qualifies under Section 407(a).

23 (11) “Member” means a person that:

24 (A) has become a member of a limited liability company under Section 401 or

1 was a member in a company when the company became subject to this [act] under Section
2 ~~1106~~110; and

3 (B) has not dissociated under Section 602.

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

6 (13) “Operating agreement” means the agreement, whether or not referred to as an
7 operating agreement and whether oral, implied, in a record, or in any combination thereof, of all
8 the members of a limited liability company, including a sole member, concerning the matters
9 described in Section ~~111~~105(a). The term includes the agreement as amended or restated.

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

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

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

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

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

24 (19) “Registered agent” means an agent of a limited liability company or foreign limited

1 liability company which is authorized to receive service of any process, notice, or demand
2 required or permitted by law to be served on the company.

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

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

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

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

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

13 (23) “Transfer” includes:

14 (A) an assignment;

15 (B) a conveyance;

16 (C) a sale;

17 (D) a lease;

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

19 (F) a gift; and

20 (G) a transfer by operation of law.

21 (24) “Transferable interest” means the right, as initially owned by a person in the
22 person’s capacity as a member, to receive distributions from a limited liability company in
23 accordance with the operating agreement, whether or not the person remains a member or
24 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 ~~209~~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

1 domestication 90 days after articles of merger, interest exchange, conversion, or domestication
2 under [Article] 10 become effective.

3 **SECTION ~~106~~104. GOVERNING LAW.** The law of this state governs:

4 (1) the internal affairs of a limited liability company; and

5 (2) the liability of a member as member and a manager as manager for the debts,
6 obligations, or other liabilities of a limited liability company.

7 **SECTION ~~111~~105. OPERATING AGREEMENT; SCOPE, FUNCTION, AND**
8 **LIMITATIONS.**

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

11 (1) relations among the members as members and between the members and the
12 limited liability company;

13 (2) the rights and duties under this [act] of a person in the capacity of manager;

14 (3) the activities and affairs of the company and the conduct of those activities
15 and affairs; and

16 (4) the means and conditions for amending the operating agreement.

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

19 (c) An operating agreement may not:

20 (1) vary the law applicable under Section 104;

21 (2) vary a limited liability company's capacity under Section ~~105~~109 to sue and
22 be sued in its own name;

23 ~~(2) vary the law applicable under Section 106;~~

24 (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 ~~care~~loyalty or the duty of ~~loyalty; 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 ~~recklessness; 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 power of a person to dissociate under Section 601(a) except to require that the notice under Section 602(1) be in a record;

(10) vary the causes of dissolution specified in Section 701(a)(4)(A) and (5);

~~(11)~~ vary the requirement to wind up the company's activities and affairs as specified in Section 702(a), (b)(1), and (e);

~~(12)~~ unreasonably restrict the right of a member to maintain an action under [Article] 98;

~~(13)~~ vary the provisions of Section 905805, but the operating agreement may provide that the company may not have a special litigation committee;

~~(13)~~ (14) 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);
(15) 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
(16) except as otherwise provided in Sections ~~442~~106 and ~~443~~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 stated in Section 405(a)(2) so that the prohibition requires solely 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 would otherwise have under this [act] and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

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

(A) restrict ~~alter~~ or eliminate the aspects of the duty of loyalty stated in Section 409(b) and ~~(h)(4)~~;

(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 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 ~~any claim under subsection (c)(6) or (d)(3)~~ that 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 provision's~~ its objective.

SECTION ~~112~~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 of a limited liability company 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

1 agreement will become the operating agreement. One person intending to become the initial
2 member of a limited liability company may assent to terms providing that upon the formation of
3 the company the terms will become the operating agreement.

4 **SECTION ~~413~~107. OPERATING AGREEMENT; EFFECT ON THIRD**
5 **PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF**
6 **LIMITED LIABILITY COMPANY.**

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

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

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

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

21 (c) If a record delivered by a limited liability company to the [Secretary of State] for
22 filing becomes effective and contains a provision that would be ineffective under Section
23 ~~414~~105(c) or (d)(3) if contained in the operating agreement, the provision is ineffective in the
24 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 ~~104~~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 ~~105~~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~~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

(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 ~~the~~ 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 ~~the~~ purposes of applying Section 102(10) and subject to Section ~~112107~~(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: ~~It is recommended~~

~~For states that the "all inclusive" have previously enacted ULLCA (2006): For such states this section is unnecessary. There is no need for a delayed effective date should be at least one year after the date of enactment but no longer than two years, even with regard to pre-existing limited liability companies.~~

For other states:

Each enacting jurisdiction should consider whether: (i) this act makes material changes to the "default" (or "gap filler") rules of jurisdiction's 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."

~~For an example of this type of analysis in the context of another business entity act, see the Uniform Limited Partnership Act (2001), § 1206(c).~~

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 unnecessary to expand subsection (c) of this Act if the state's predecessor act is the~~

1 ~~original Uniform Limited Liability Company Act, revised to provide for perpetual duration.~~

2
3 It is recommended that the “all-inclusive” date should be at least one year after the date
4 of enactment but no longer than two years.

5
6 **SECTION ~~107~~111. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced
7 by particular provisions of this [act], the principles of law and equity supplement this [act].

8 **SECTION ~~108~~112. PERMITTED NAMES.**

9 (a) The name of a limited liability company must contain the ~~words~~phrase “limited
10 liability company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”.
11 “Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”.

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

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

17 (2) the name of a limited liability partnership;

18 (3) the name ~~of~~under which a person is registered to do business in this state by
19 the filing of a record by the [Secretary of State];

20 (4) ~~each~~a name reserved under Section ~~109~~113 or other law of this state providing
21 for the reservation of a name by the filing of a record by the [Secretary of State];

22 (5) ~~each~~a name registered under Section ~~110~~114 or other law of this state
23 providing for the registration of a name by the filing of a record by the [Secretary of State]; and

24 (6) ~~an assumed~~a name registered under [this state’s assumed or fictitious name
25 statute]~~—~~.

26 (c) If a person consents in a record to the use of its name and submits an undertaking in a
27 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 ~~entity~~person, words, phrases, or abbreviations indicating ~~the~~ type of entity, 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.”, “LLLP”, “registered limited liability limited partnership”, “R.L.L.L.P.”, “RLLLP”, “limited liability company”, ~~or~~ “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~~entity as provided in subsection (d). In such a case, the person need not change its name pursuant to subsection (b).

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

SECTION ~~109~~113. RESERVATION OF NAME.

(a) A person may reserve the exclusive use of a name that complies with Section ~~108~~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

1 that the name is available, the [Secretary of State] shall reserve the name for the applicant's
2 exclusive use for [120] days.

3 (b) The owner of a reserved name may transfer the reservation to another person that is
4 not an individual by delivering to the [Secretary of State] a signed notice in a record of the
5 transfer which states the name and address of the transferee.

6 **SECTION ~~110~~114. REGISTRATION OF NAME.**

7 (a) A foreign limited liability company not registered to do business in this state under
8 [Article] 89 may register its name, or an alternate name adopted pursuant to Section ~~806~~906, if
9 the name is distinguishable on the records of the [Secretary of State] from the names that are not
10 available under Section ~~108~~112.

11 (b) To register its name or an alternate name adopted pursuant to Section ~~806~~906, a
12 foreign limited liability company must deliver to the [Secretary of State] for filing an application
13 stating the company's name, the jurisdiction and date of its formation, and any alternate name
14 adopted pursuant to Section ~~806~~906. If the [Secretary of State] finds that the name applied for is
15 available, the [Secretary of State] shall register the name for the applicant's exclusive use.

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

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

23 (e) A foreign limited liability company whose name registration is effective may register
24 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 ~~114.115.~~ REGISTERED AGENT~~7.~~

(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 116(c) to the company at the address most recently supplied to the agent by the company; and~~

~~—————(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 formation.

SECTION ~~115~~116. CHANGE OF REGISTERED AGENT OR ADDRESS FOR REGISTERED AGENT~~7.~~ 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 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 ~~or registered foreign limited liability company~~ may amend its certificate of organization.

SECTION ~~116~~117. RESIGNATION OF REGISTERED AGENT~~-.:~~

(a) A registered agent may resign as 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 ~~117~~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 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.

SECTION ~~118~~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 ~~119~~120. DELIVERY OF RECORD.

(a) Except as otherwise provided in this [act], permissible means of delivery of a record include delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission.

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

SECTION ~~120~~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 domestic 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

~~108~~112;

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

(3) the name and street and mailing addresses ~~within~~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~~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 company's certificate of organization becomes effective and at least one person becomes 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~~-of organization~~; and

(3) the ~~changes the amendment makes to the certificate as most recently amended~~
~~or restated~~.

(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 ~~144~~116 or a statement of correction under Section ~~208~~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 ~~on~~ behalf of 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) Any record filed 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 thereby 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 ~~210~~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 the 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 ~~445~~116 or a statement of correction under Section ~~208~~209.

(b) To the extent that 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 ~~205~~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 ~~the individual's behalf or 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 ~~accept~~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 entity 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 an entity filing and [an annual] [a biennial] report be on forms prescribed by the [Secretary of State].

SECTION ~~206~~207. EFFECTIVE ~~TIME~~DATE AND ~~DATE~~TIME. Except as otherwise provided in Section ~~207~~208 and subject to Section ~~208~~209(c), 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 ~~209~~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 ~~time~~date and ~~date~~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 ~~207~~208. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.

(a) Except as otherwise provided in ~~[Article] 10~~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 ~~208~~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 ~~209~~210. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF REFUSAL TO FILE; ~~TRANSMISSION~~DELIVERY OF ~~INFORMATION~~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]

1 shall deliver to the person that submitted the record a copy of the record with an
2 acknowledgment of the date and time of filing and, in the case of a statement of denial, also to
3 the limited liability company to which the statement pertains.

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

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

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

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

13 (e) The filing of or refusal to file a record does not create a presumption that the
14 information contained in the record is correct or incorrect.

15 (f) Except as otherwise provided by Section ~~48119~~ or by law other than this [act], the
16 [Secretary of State] may deliver any record to a person by delivering it:

17 (1) in person to the person that submitted it;

18 (2) to the address of the person's registered agent;

19 (3) to the principal office of the person; or

20 (4) to another address the person provides to the [Secretary of State] for delivery.

21 **SECTION 211. CERTIFICATE OF GOOD STANDING OR REGISTRATION.**

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

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

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

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

5 (A) that a certificate of ~~formation~~organization has been filed and has taken
6 effect;

7 (B) the date the certificate became effective;

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

10 (D) that:

11 (i) ~~an~~o statement of dissolution, statement of administrative
12 dissolution, or statement of termination has ~~not~~ been filed;

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

15 (iii) a proceeding is not pending under Section ~~707~~708;

16 (3) in the case of a registered foreign limited liability company, that it is
17 registered to do business in this state;

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

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

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

24 (5) that the most recent [annual] [biennial] report required by Section 212 has

1 been delivered to the [Secretary of State] for filing; and

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

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

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

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

- 12 (1) the name of the company; ~~or foreign company;~~
13 (2) the name and street and mailing addresses of its registered agent in this state;
14 (3) the street and mailing addresses of its principal office;
15 (4) if the company is member managed, the name of at least one member;
16 (5) if the company is manager managed, the name of at least one manager; and
17 (6) in the case of a foreign company, ~~its~~ jurisdiction of formation and any
18 alternate name adopted under Section ~~806~~906(a).

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

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

1 reports must be delivered to the [Secretary of State] after [January 1] and before [April 1] of each
2 [second] calendar year thereafter.

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

6 (e) If [an annual] [a biennial] report contains the name or address of a registered agent
7 which differs from the information shown in the records of the [Secretary of State] immediately
8 before the [annual] [biennial] report becomes effective, the differing information in the [annual]
9 [biennial] report is considered a statement of change under Section ~~445~~116.

10 [ARTICLE] 3

11 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH 12 LIMITED LIABILITY COMPANY

13 SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.

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

16 (b) A person's status as a member does not prevent or restrict law other than this [act]
17 from imposing liability on a limited liability company because of the person's conduct.

18 SECTION 302. STATEMENT OF AUTHORITY.

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

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

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

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

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

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

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

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

10 (b) To amend or cancel a statement of authority filed by the [Secretary of State]~~under~~
11 ~~Section 205(a);~~ a limited liability company must deliver to the [Secretary of State] for filing an
12 amendment or cancellation stating:

13 (1) the name of the company;

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

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

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

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

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

23 (e) Subject to subsection (c), a grant of authority not pertaining to transfers of real
24 property and contained in an effective statement of authority is conclusive in favor of a person

1 that gives value in reliance on the grant, except to the extent that when the person gives value:

2 (1) the person has knowledge to the contrary;

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

4 or

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

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

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

15 (2) a limitation on the grant is contained in another statement of authority that
16 became effective after the statement containing the grant became effective, and a certified copy
17 of the later-effective statement is recorded in the office for recording transfers of the real
18 property.

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

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

1 limitation on authority for the purposes of subsection (g).

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

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

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

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

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

16 (2) denies the grant of authority.

17 **SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.**

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

23 (b) The failure of a limited liability company to observe formalities relating to the
24 exercise of its powers or management of its activities and affairs is not a ground for imposing

1 liability on a member or manager ~~of the company~~ for a debt, obligation, or other liability of the
2 company.

3 **[ARTICLE] 4**

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

6 **SECTION 401. BECOMING MEMBER.**

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

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

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

16 (1) as provided in the operating agreement;

17 (2) as the result of a transaction effective under [Article] 10;

18 (3) with the affirmative vote or consent of all the members; or

19 (4) as provided in Section 701(a)(3).

20 (d) A person may become a member without:

21 (1) acquiring a transferable interest; or

22 (2) making or being obligated to make a contribution to the limited liability
23 company.

1 **SECTION 402. FORM OF CONTRIBUTION.**

2 A contribution may consist of
3 property transferred to, services performed, ~~for~~, or ~~other~~another benefit provided to the limited
4 liability company or an agreement to transfer property, ~~to~~, perform services for, or provide
5 another benefit to the company.

6 **SECTION 403. LIABILITY FOR CONTRIBUTIONS.**

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

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

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

17 **SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE**
18 **DISSOLUTION.**

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

23 (b) A person has a right to a distribution before the dissolution and winding up of a
24 limited liability company only if the company decides to make an interim distribution. A
25 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 ~~710, a~~ ~~limited liability~~ 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 ~~710~~ 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, ~~unless the operating agreement permits otherwise,~~ 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 those 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

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

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

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

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

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

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

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

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

15 (B) the payment is made, if the payment occurs more than 120 days after
16 the distribution is authorized.

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

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

1 on the date the payment is made.

2 (f) In measuring the effect of a distribution under Section ~~710~~707, the liabilities of a
3 dissolved limited liability company do not include any claim that has been disposed of under
4 Section 704, 705, or 706.

5 **SECTION 406. LIABILITY FOR IMPROPER DISTRIBUTIONS.**

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

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

17 (c) A person that receives a distribution knowing that the distribution violated Section
18 405 is personally liable to the limited liability company but only to the extent that the distribution
19 received by the person exceeded the amount that could have been properly paid under Section
20 405.

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

23 (1) implead any other person that is ~~subject to liability~~liable under subsection (a)
24 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) (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 ~~may be undertaken only with the consent of all members.; or~~

~~—————(5) The consent of all members is required to approve a transaction under~~

1 ~~[Article] 10.~~

2 ~~_____ (6) _____~~ (B) amend the operating agreement ~~may be amended only~~
3 ~~with the consent of all members.~~

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

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

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

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

11 (A) ~~approve a transaction under [Article] 10;~~

12 ~~_____ (B) undertake any an~~ act outside the ordinary course of the company's
13 activities and affairs; or

14 ~~(C)(B)~~ amend the operating agreement.

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

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

24 (6) A person's ceasing to be a manager does not discharge any debt, obligation, or

1 other liability to the limited liability company or members which the person incurred while a
2 manager.

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

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

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

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

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

18 **SECTION 408. REIMBURSEMENT, INDEMNIFICATION, ADVANCEMENT,**
19 **AND INSURANCE.**

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

24 (b) A limited liability company shall indemnify and hold harmless a person with respect

1 to any claim or demand against the person and any debt, obligation, or other liability incurred by
2 the person by reason of the person's former or present capacity as a member or manager, if the
3 claim, demand, debt, obligation, or other liability does not arise from the person's breach of
4 Section 405, 407, or 409.

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

10 (d) A limited liability company may purchase and maintain insurance on behalf of a
11 member or manager ~~of the company~~ against liability asserted against or incurred by the member
12 or manager in that capacity or arising from that status even if, under Section ~~441~~105(c)(7), the
13 operating agreement could not eliminate or limit the person's liability to the company for the
14 conduct giving rise to the liability.

15 **SECTION 409. STANDARDS OF CONDUCT FOR MEMBERS AND**
16 **MANAGERS~~-.:~~**

17 (a) A member of a member-managed limited liability company owes to the company and,
18 subject to Section ~~901(b),~~801, the other members the duties of loyalty and care stated in
19 subsections (b) and (c).

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

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

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

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

2 (C) from the appropriation of a company opportunity;

3 (2) to refrain from dealing with the company in the conduct or winding up of the

4 company's activities and affairs as or on behalf of a person having an interest adverse to the

5 company; and

6 (3) to refrain from competing with the company in the conduct of the company's

7 activities and affairs before the dissolution of the company.

8 (c) The duty of care of a member of a member-managed limited liability company in the

9 conduct or winding up of the company's activities and affairs is to refrain from engaging in

10 grossly negligent or reckless conduct, willful or intentional misconduct, or ~~a~~-knowing violation

11 of law.

12 (d) A member shall discharge the duties and obligations under this [act] or under the

13 operating agreement and exercise any rights consistently with the contractual obligation of good

14 faith and fair dealing.

15 (e) A member does not violate a duty or obligation under this [act] or under the operating

16 agreement solely because the member's conduct furthers the member's own interest.

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

18 managed limited liability company may authorize or ratify, after full disclosure of all material

19 facts, a specific act or transaction that otherwise would violate the duty of loyalty.

20 (g) It is a defense to a claim under subsection (b)(2) and any comparable claim in equity

21 or at common law that the transaction was fair to the limited liability company.

22 (h) If, as permitted by subsection (f) or (i)(6) or the operating agreement, a member

23 enters into a transaction with the limited liability company which otherwise would be prohibited

24 by subsection (b)(2), the member's rights and obligations arising from the transaction are the

1 same as those of a person that is not a member.

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

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

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

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

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

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

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

12 **SECTION 410. RIGHTS TO INFORMATION OF MEMBER, MANAGER, AND**
13 **PERSON DISSOCIATED AS MEMBER ~~TO INFORMATION.~~**

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

15 (1) On reasonable notice, a member may inspect and copy during regular business
16 hours, at a reasonable location specified by the company, any record maintained by the company
17 regarding the company's activities, affairs, financial condition, and other circumstances, to the
18 extent the information is material to the member's rights and duties under the operating
19 agreement or this [act].

20 (2) The company shall furnish to each member:

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

1 knows the information; and

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

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

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

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

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

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

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

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

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

21 (A) ~~of~~ the information that the company will provide in response to the
22 demand and when and where the company will provide the information; and

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

(4) Whenever this [act] or an operating agreement provides for a member to give or withhold consent to a matter, before the 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 (i), on 10 days' demand made in a record received by a limited liability company, a person dissociated as a member may have access to information to which the person was entitled while a member if:

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

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

(iii) 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 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 ~~(i)(h)~~ applies both to the agent or legal representative and the member or person dissociated as a member.

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

~~(h) If a member dies, Section 504 applies.~~

~~(i)~~ (h) In addition to any restriction or condition stated in the operating agreement, a

1 limited liability company, as a matter within the ordinary course of its activities and affairs, may
2 impose reasonable restrictions and conditions on access to and use of information to be furnished
3 under this section, including designating information confidential and imposing nondisclosure
4 and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a
5 restriction under this subsection, the company has the burden of proving reasonableness.

6 [ARTICLE] 5

7 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

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

10 **SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.**

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

12 (1) is permissible;

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

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

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

18 (B) except as otherwise provided in subsection (c), have access to records
19 or other information concerning the company's activities and affairs.

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

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

24 (d) A transferable interest may be evidenced by a certificate of the interest issued by ~~thea~~

1 limited liability company in a record, and, subject to this section, the interest represented by the
2 certificate may be transferred by a transfer of the certificate.

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

5 (f) A transfer of a transferable interest in violation of a restriction on transfer contained in
6 the operating agreement is ineffective as to a person having knowledge or notice of the
7 restriction at the time of transfer.

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

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

15 **SECTION 503. CHARGING ORDER.**

16 (a) On application by a judgment creditor of a member or transferee, a court may enter a
17 charging order against the transferable interest of the judgment debtor for the unsatisfied amount
18 of the judgment. Except as otherwise provided in subsection (f), a charging order constitutes a
19 lien on a judgment debtor's transferable interest and requires the limited liability company to pay
20 over to the person to which the charging order was issued any distribution that otherwise would
21 be paid to the judgment debtor.

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

24 (1) appoint a receiver of the distributions subject to the charging order, with the

1 power to make all inquiries the judgment debtor might have made; and

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

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

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

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

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

18 (1) the court shall confirm the sale;

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

21 (3) the purchaser thereby becomes a member; and

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

24 (g) This [act] does not deprive any member or transferee of the benefit of any exemption

1 ~~law~~law applicable to the transferable interest of the member or transferee.

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

5 **SECTION 504. POWER OF LEGAL REPRESENTATIVE OF DECEASED**

6 **MEMBER.** If a member dies, the deceased member's legal representative may exercise:

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

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

10 **[ARTICLE] 6**

11 **DISSOCIATION**

12 **SECTION 601. POWER TO DISSOCIATE AS MEMBER; WRONGFUL**

13 **DISSOCIATION.**

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

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

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

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

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

20 (B) the person is expelled as a member by judicial order under Section
21 602(6);

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

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

1 willfully dissolved or terminated.

2 (c) A person that wrongfully dissociates as a member is liable to the limited liability
3 company and, subject to Section ~~901~~801, to the other members for damages caused by the
4 dissociation. The liability is in addition to any debt, obligation, or other liability of the member
5 to the company or the other members.

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

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

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

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

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

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

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

18 (B) there has been a transfer of all the person's transferable interest in the
19 company, other than:

20 (i) a transfer for security purposes; or

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

23 (C) the person is ~~a corporation~~ an entity and:

24 (i) the company notifies the person that it will be expelled as a member

1 because the person has filed a ~~certificate~~statement of dissolution or the equivalent, the person has
2 been administratively dissolved, its charter or the equivalent has been revoked, or ~~its~~the person's
3 right to conduct business has been suspended by the person's jurisdiction of ~~its~~
4 ~~incorporation~~information; and

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

9 ~~—————(D) the person is an unincorporated entity that has been dissolved and~~
10 ~~whose business is being wound up;~~

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

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

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

19 (C) has engaged or is engaging in conduct relating to the company's activities and
20 affairs which makes it not reasonably practicable to carry on the activities and affairs with the
21 person as a member;

22 (7) in the case of an individual:

23 (A) the individual dies; or

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

1 (i) a guardian or general conservator for the individual is appointed; or
2 (ii) a court orders that the individual has otherwise become incapable of
3 performing the individual's duties as a member under this [act] or the operating agreement;
4 (8) in a member-managed limited liability company, the person:
5 (A) becomes a debtor in bankruptcy;
6 (B) executes an assignment for the benefit of creditors; or
7 (C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or
8 liquidator of the person or of all or substantially all the person's property;
9 (9) in the case of a person that is a testamentary or inter vivos trust or is acting as a
10 member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the
11 company is distributed;
12 (10) in the case of a person that is an estate or is acting as a member by virtue of being a
13 personal representative of an estate, the estate's entire transferable interest in the company is
14 distributed;
15 (11) in the case of a person that is not an individual, ~~corporation, unincorporated entity,~~
16 ~~trust, or estate,~~ the existence of the person terminates;
17 (12) the limited liability company participates in a merger under [Article] 10 and:
18 (A) the company is not the surviving entity; or
19 (B) otherwise as a result of the merger, the person ceases to be a member;
20 (13) the limited liability company participates in an interest exchange under [Article] 10
21 and, as a result of the interest exchange, the person ceases to be a member;
22 (14) the limited liability company participates in a conversion under [Article] 10;
23 (15) the limited liability company participates in a domestication under [Article] 10 and,
24 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 company's activities and affairs terminates;

(2) ~~if the company is member managed,~~ 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 ~~as a member~~ 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; ~~or~~

(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

~~(5) on application by a member, the entry by [the appropriate court] of an order dissolving the company on the grounds that~~ (C) the managers or those members in control of the company:

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

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

~~(6)~~ the signing and filing of a statement of ~~administrative~~ administrative dissolution by the [Secretary of State] under Section ~~707(e)-708.~~

(b) In a proceeding brought under subsection (a) ~~(54)~~ (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

1 the purpose of winding up.

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

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

6 (2) may:

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

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

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

13 (D) transfer the company's property;

14 (E) settle disputes by mediation or arbitration;

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

17 and

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

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

23 (d) If the legal representative under subsection (c) declines or fails to wind up the limited
24 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 ~~deliver~~ 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 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) ~~or (5)~~.

SECTION 703. RESCINDING DISSOLUTION.

(a) A limited liability company may rescind its dissolution, unless a statement of termination applicable to the company is effective, [the appropriate court] has entered an order

1 under Section 701(a)(4) ~~or (5)~~ dissolving the company, or the [Secretary of State] has dissolved
2 the company under Section ~~707~~708.

3 (b) Rescinding dissolution under this section requires:

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

5 (2) if a statement of dissolution applicable to the limited liability company has
6 been filed by the [Secretary of State] but has not become effective, the delivery to the [Secretary
7 of State] for filing of a statement of withdrawal under Section ~~207~~208 applicable to the statement
8 of dissolution; and

9 (3) if a statement of dissolution applicable to the limited liability company is
10 effective, the delivery to the [Secretary of State] for filing of a statement of ~~correction under~~
11 ~~Section 208~~rescission stating the name of the company and that dissolution has been rescinded
12 under this section.

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

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

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

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

21 **SECTION 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
22 **LIABILITY COMPANY.**~~;~~

23 (a) Except as otherwise provided in subsection (d), a dissolved limited liability company
24 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 complainant receives the notice.

(d) This section does not apply to a claim based on an event occurring after the ~~effective~~ 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

1 notice.

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

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

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

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

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

15 (1) a claimant that did not receive notice in a record under Section 704;
16 (2) a claimant whose claim was timely sent to the company but not acted on; and
17 (3) a claimant whose claim is contingent at, or based on an event occurring after,
18 the ~~effective~~-date of dissolution.

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

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

22 (2) except as otherwise provided in Section 706, if assets of the company have
23 been distributed after dissolution, against a member or transferee to the extent of that person's
24 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 ~~dissolved~~ 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 contingent, have not been made known to the company, or are based on an event occurring after the ~~effective~~ date of dissolution but which, based on the facts known to the ~~dissolved~~ company, are reasonably expected to arise after the ~~effective~~ date of dissolution. Security is not required for any claim that is or is reasonably anticipated to be barred under Section 705~~(e)~~.

(b) 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.

(c) In any 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.

(d) 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 ~~effective~~ date of dissolution, and such claims may not be enforced against a

member or transferee that received assets in liquidation.

SECTION ~~710-707~~. DISPOSITION OF ASSETS IN WINDING UP.

(a) In winding up its activities and affairs, a limited liability company shall apply its assets to discharge its 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) ~~in equal shares~~ among members and persons dissociated as members in proportion to their respective rights to share in distributions immediately before the dissolution of the company, except to the extent necessary to comply with any transfer effective under Section 502.

(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 ~~707708~~. ADMINISTRATIVE DISSOLUTION.

(a) The [Secretary of State] may commence a proceeding under subsections (b) and (c) 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 ~~each ground for dissolution~~ or demonstrate to the satisfaction of the [Secretary of State] ~~that the nonexistence of~~ each ground determined by the [Secretary of State] ~~does not exist,~~ 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 ~~209.210~~.

(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 ~~710~~707, or to apply for reinstatement under Section ~~708~~709.

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

SECTION ~~708~~709. REINSTATEMENT

(a) A limited liability company that is administratively dissolved under Section ~~707~~708 may apply to the [Secretary of State] for reinstatement ~~+~~[not later than ~~1~~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 ~~408~~112;

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

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

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

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

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

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

14 (2) file the statement; ~~of reinstatement~~ and
15 ~~— (3) serve a copy of the statement~~ on the limited liability company.

16 (d) When reinstatement under this section is effective, following rules apply:

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

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

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

23 **SECTION ~~709-710~~. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.**

24 (a) If the [Secretary of State] denies a limited liability company's application for

1 reinstatement following administrative dissolution, the [Secretary of State] shall serve the
2 company with a notice in a record that explains the reasons for the denial.

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

5 **[ARTICLE] 9**

6 **8**

7 **ACTIONS BY MEMBERS**

8 **SECTION ~~901801~~. DIRECT ACTION BY MEMBER.**

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

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

16 **SECTION ~~902802~~. DERIVATIVE ACTION.** A member may maintain a derivative
17 action to enforce a right of a limited liability company if:

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

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

1 **SECTION ~~903803~~ 904803. PROPER PLAINTIFF.** A derivative action to enforce a right of a
2 limited liability company may be maintained only by a person that is a member at the time the
3 action is commenced and:

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

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

7 **SECTION ~~904804~~ 904804. PLEADING.** In a derivative action, the complaint must state with
8 particularity:

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

11 (2) why the demand should be excused as futile.

12 **SECTION ~~905805~~ 905805. SPECIAL LITIGATION COMMITTEE.**

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

20 _____ (1) enforcing a person's right to information under Section 410; or, ~~for good cause~~
21 ~~shown,~~

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

24 (b) A special litigation committee ~~may~~must be composed of one or more disinterested

1 and independent individuals, who may be members.

2 (c) A special litigation committee may be appointed:

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

4 (A) by the consent of a majority of the members not named as ~~defendants~~
5 ~~or plaintiffs~~parties in the proceeding; ~~and~~or

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

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

9 (A) by a majority of the managers not named as ~~defendants or~~
10 ~~plaintiffs~~parties in the proceeding; ~~and~~or

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

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

15 (1) continue under the control of the plaintiff;

16 (2) continue under the control of the committee;

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

18 (4) be dismissed.

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

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

6 **SECTION ~~906~~806. PROCEEDS AND EXPENSES.**

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

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

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

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

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

17 **[ARTICLE] 8**

18 **2**

19 **FOREIGN LIMITED LIABILITY COMPANIES**

20 **SECTION ~~801~~901. GOVERNING LAW.**

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

23 (1) the internal affairs of the company; ~~and~~

24 (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 the 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 ~~limited liability~~ company to engage in any activities ~~or~~and affairs or exercise any power that a ~~domestic~~limited liability company may not engage in or exercise in this state.

SECTION ~~802~~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 ~~801~~901(a) and (b) applies even if a foreign limited liability company fails to register under this [article].

1 **SECTION ~~803-903~~. FOREIGN REGISTRATION STATEMENT.** To register to

2 do business in this state, a foreign limited liability company must deliver a foreign registration
3 statement to the [Secretary of State] for filing. The statement must state:

4 (1) the name of the company and, if the name does not comply with Section ~~408112~~, an
5 alternate name adopted pursuant to Section ~~806906~~(a);

6 (2) that the company is a foreign limited liability company;

7 (3) the ~~name of the~~ company's jurisdiction of formation;

8 (4) the street and mailing addresses of the company's principal office and, if the law of
9 the company's jurisdiction of formation requires the company to maintain an office in that
10 jurisdiction, the street and mailing addresses of the required office; and

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

13 **SECTION ~~804904~~. AMENDMENT OF FOREIGN REGISTRATION**

14 **STATEMENT.** A registered foreign limited liability company shall deliver to the [Secretary of
15 State] for filing an amendment to its foreign registration statement if there is a change in:

16 (1) the name of the company;

17 (2) the company's jurisdiction of formation;

18 (3) an address required by Section ~~803903~~(4); or

19 (4) the information required by Section ~~803903~~(5).

20 **SECTION ~~805905~~. ACTIVITIES NOT CONSTITUTING DOING BUSINESS.**

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

23 (1) maintaining, defending, mediating, arbitrating, or settling an action or
24 proceeding;

- 1 (2) carrying on any activity concerning its internal affairs, including holding
2 meetings of its members or managers;
- 3 (3) maintaining accounts in financial institutions;
- 4 (4) maintaining offices or agencies for the transfer, exchange, and registration of
5 ~~the~~ securities of the company or maintaining trustees or depositories with respect to those
6 securities;
- 7 (5) selling through independent contractors;
- 8 (6) soliciting or obtaining orders by any means; if the orders require acceptance
9 outside this state before they become contracts;
- 10 (7) creating or acquiring indebtedness, mortgages, or security interests in
11 property;
- 12 (8) securing or collecting debts or enforcing mortgages or security interests in
13 property securing the debts and holding, protecting, or maintaining property;
- 14 (9) conducting an isolated transaction that is not in the course of similar
15 transactions;
- 16 (10) owning, without more, property; and
- 17 (11) doing business in interstate commerce.

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

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

23 **SECTION ~~806~~906. NONCOMPLYING NAME OF FOREIGN LIMITED**
24 **LIABILITY COMPANY.**

(a) A foreign limited liability company whose name does not comply with Section ~~408112~~ 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 ~~408112~~. A registered foreign limited liability 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 registered foreign limited liability 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) ~~an assumed or fictitious~~ name the company is authorized to use under [this state's assumed or fictitious name statute~~1~~].

(b) If a registered foreign limited liability company changes its name to one that does not comply with Section ~~408112~~, 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 ~~408112~~.

SECTION ~~807907~~. 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 ~~that is organized, incorporated, or otherwise formed through~~ ~~the~~ whose formation requires a 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 ~~808908~~. 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 ~~that is not organized, incorporated, or otherwise formed through 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 foreign 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 foreign 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 ~~the~~ 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 ~~of a foreign entity that has converted to another type of entity~~ is 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 ~~117~~119.

SECTION ~~809909~~. TRANSFER OF REGISTRATION.

(a) When a registered foreign limited liability company has merged into a foreign entity

1 that is not registered to do business in this state or has converted to a foreign entity required to
2 register with the [Secretary of State] to do business in this state, the foreign entity shall deliver to
3 the [Secretary of State] for filing an application for transfer of registration. The application must
4 state:

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

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

9 (3) the name of the applicant foreign entity into which the foreign limited liability
10 company has merged or to which it has been converted; and, if the name does not comply with
11 Section ~~108112~~, an alternate name adopted pursuant to Section ~~806906~~(a);

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

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

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

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

22 **SECTION ~~810.910~~. TERMINATION OF REGISTRATION.**

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

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

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

7 (3) have a registered agent as required by Section ~~114~~115; or

8 (4) deliver to the [Secretary of State] for filing a statement of a change under
9 Section ~~115~~116 not later than [30] days after a change has occurred in the name or address of
10 the registered agent.

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

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

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

18 (c) A notice must state or the information in at the notation ~~under subsection (b)~~ must
19 include:

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

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

23 (d) The authority of a registered foreign limited liability company to do business in this
24 state ceases on the effective date of the notice of termination or notation under subsection (b),

1 unless before that date the company cures each ground for termination stated in the notice or
2 notation. If the company cures each ground, the [Secretary of State] shall file a record so stating.

3 **SECTION ~~811.911~~. WITHDRAWAL OF REGISTRATION OF REGISTERED**
4 **FOREIGN LIMITED LIABILITY COMPANY.**

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

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

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

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

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

14 (b) After the withdrawal of the registration of a foreign limited liability company, service
15 of process in any action or proceeding based on a cause of action arising during the time the
16 company was registered to do business in this state may be made pursuant to Section ~~447.119~~.

17 **SECTION ~~812.912~~. ACTION BY [ATTORNEY GENERAL].** The [Attorney
18 General] may maintain an action to enjoin a foreign limited liability company from doing
19 business in this state in violation of this [article].

20 **[ARTICLE] 10**

21 **MERGER, CONVERSION, INTEREST EXCHANGE, CONVERSION, AND**
22 **DOMESTICATION**

23 **[PART] 1**

24 **GENERAL PROVISIONS**

1 **SECTION 1001. DEFINITIONS.** In this [article]:

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

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

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

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

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

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

14 (7) “Domestic”, with respect to an entity, means governed as to its internal affairs by the
15 law of this state.

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

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

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

23 (11) “Entity”:

24 (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 ~~testamentary or inter vivos~~ 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 ~~solely by reason of~~under the rules stated in [Section 202(c) of the ~~Revised~~ Uniform Partnership Act~~](1997) (Last Amended 2011)]~~ [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

1 instrumentality~~[-or]~~.

2 ~~_____ [(vi) a person excluded under Section 1009].~~

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

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

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

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

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

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

14 (15) “Governor” means:

15 (A) a director of a business corporation;

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

17 (C) a general partner of a general partnership;

18 (D) a general partner of a limited partnership;

19 (E) a manager of a manager-managed limited liability company;

20 (F) a member of a member-managed limited liability company;

21 [(G) a director of a general cooperative association;]

22 (H) a director of a limited cooperative association;

23 (I) a manager of an unincorporated nonprofit association;

24 (J) a trustee of a statutory trust, business trust, or common-law business trust; or

(K) any other person ~~by or~~ 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;

1 [(G) a shareholder of a general cooperative association;]
2 (H) a member of a limited cooperative association;
3 (I) a member of an unincorporated nonprofit association;
4 (J) a beneficiary or beneficial owner of a statutory trust, business trust, or
5 common-law business trust; or
6 (K) any other direct holder of an interest.

7 (19) “Interest holder liability” means:

8 (A) personal liability for a liability of an entity ~~that~~which is imposed on a person:
9 (i) solely by reason of the status of the person as an interest holder; or
10 (ii) by the organic rules of the entity which make one or more specified
11 interest holders or categories of interest holders liable in their capacity as interest holders for all
12 or specified liabilities of the entity; or
13 (B) an obligation of an interest holder under the organic rules of an entity to
14 contribute to the entity.

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

16 (21) “Merging entity” means an entity that is a party to a merger and exists immediately
17 before the merger becomes effective.

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

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

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

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

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

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

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

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

7 (A) the bylaws of a business corporation;

8 (B) the bylaws of a nonprofit corporation;

9 (C) the partnership agreement of a general partnership;

10 (D) the partnership agreement of a limited partnership;

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

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

13 (G) the bylaws of a limited cooperative association;

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

15 (I) the trust instrument of a statutory trust or similar rules of a business trust or
16 common-law business trust.

17 (30) “Protected agreement” means:

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

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

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

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

24 (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.

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

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

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

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

13 **SECTION 1003. REQUIRED NOTICE OR APPROVAL.**

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

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

24 (c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of

donation, subscription, or conveyance that is made to a merging entity that is not the surviving entity and that takes effect or remains payable after the merger inures to the surviving entity. A trust obligation that would govern property if transferred to the 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 require 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. STATUS OF FILINGS. A filing under this [article] signed by a domestic entity becomes part of the public organic record of the entity if the entity's organic law provides that similar filings under that law become part of the public organic record of the entity.

SECTION 1005. 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 1006. 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 1007. ~~ALTERNATIVE MEANS OF APPROVAL OF TRANSACTIONS.~~
~~Except as otherwise provided in the organic law or organic rules of a domestic entity, approval of a transaction under this [article] by the unanimous vote or consent of its interest holders satisfies the requirements of this [article] for approval of the transaction.~~

~~**SECTION 1008. APPRAISAL RIGHTS.**~~

(a) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to appraisal rights in connection with the transaction if the interest holder would have been entitled to appraisal rights under the entity's organic law in connection with a merger in which the interest of the interest holder was changed, converted, or exchanged unless:

(1) the organic law permits the organic rules to limit or eliminate the availability of appraisal rights; and

(2) the organic rules provide such a limit or elimination.

(b) An interest holder of a domestic merging, acquired, converting, or domesticating entity is entitled to contractual appraisal rights in connection with a transaction under this [article] to the extent provided in:

(1) the entity's organic rules; or

(2) the plan.

Legislative Note: Subsection (a) preserves appraisal rights (sometimes referred to as "dissenters' rights") granted by other laws. As an alternative to enacting subsection (a), a state may amend the appraisal rights provisions of its organic laws to specify which transactions under this act will give rise to appraisal rights. If that alternative approach is adopted, subsections (b) and (c) should be designated as subsections (a) and (b).

[SECTION ~~1009~~1008. 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(b). If a state desires, however, to exclude entities with a charitable purpose or to exclude other types of entities from the scope of the act, 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, ~~or to; 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 ~~that~~which will have interest holder liability for debts, obligations, and other liabilities that arise after the merger becomes effective, unless:

(A) the operating agreement of the company provides in a record ~~provides~~ 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 the 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~~filed by the [Secretary of State] for filing before the statement of merger becomes effective. The statement of abandonment takes effect ~~upon~~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 ~~delivered to~~filed by the [Secretary of State] ~~for filing~~; 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;

1 (3) a statement that the merger was approved by each domestic merging entity, if
2 any, in accordance with this [part] and by each foreign merging entity, if any, in accordance with
3 the law of its jurisdiction of formation;

4 (4) if the surviving entity exists before the merger and is a domestic filing entity,
5 any amendment to its public organic record approved as part of the plan of merger;

6 (5) if the surviving entity is created by the merger and is a domestic filing entity,
7 its public organic record, as an attachment;

8 (6) if the surviving entity is created by the merger and is a domestic limited
9 liability partnership, its statement of qualification, as an attachment; and

10 (7) if the surviving entity is a foreign entity that is not a registered foreign entity,
11 a mailing address to which the [Secretary of State] may send any process served on the
12 [Secretary of State] pursuant to Section 1026(e).

13 (c) In addition to the requirements of subsection (b), a statement of merger may contain
14 any other provision not prohibited by law.

15 (d) If the surviving entity is a domestic entity, its public organic record, if any, must
16 satisfy the requirements of the law of this state, ~~but~~except that the public organic record does not
17 need to be signed.

18 (e) A plan of merger that is signed by all the merging entities and meets all the
19 requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a
20 statement of merger and ~~upon~~on filing has the same effect. If a plan of merger is filed as
21 provided in this subsection, references in this [article] to a statement of merger refer to the plan
22 of merger filed under this subsection.

23 (f) If the surviving entity is a domestic limited liability company, the merger becomes
24 effective when the statement of merger is effective. In all other cases, the merger becomes

effective as provided by the organic law of the surviving entity.

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 asto 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, ~~if any,~~ is effective; and
~~_____ (B) its private organic rules are~~
_____ (B) if it is a limited liability partnership, its statement of qualifications is
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 ~~1008~~1007 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 ~~otherwise~~ 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 ~~that~~ 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 arise 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 ~~entity~~limited liability company with respect to which the person had interest holder liability is as follows:

(1) The merger does not discharge any interest holder liability under ~~the organic law of the domestic merging entity~~this [act] to the extent the interest holder liability arose before the merger became effective.

(2) The person does not have interest holder liability under ~~the organic law of the domestic merging entity~~this [act] for any debt, obligation, or other liability that arises after the merger becomes effective.

~~_____ (3) The organic law of the domestic merging entity _____~~ (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 and the surviving entity were the domestic merging entity limited liability company.

(4) The person has whatever rights of contribution from any other person as are provided by this act, law other than this [act], ~~this [act]~~, or the ~~organic rules~~operating agreement of the domestic merging entity 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 entity as provided in Section ~~448~~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

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

1 combination of the foregoing; or

2 (2) all of one or more classes or series of interests of a domestic limited liability
3 company may be acquired by another domestic entity or a foreign entity in exchange for
4 interests, securities, obligations, money, other property, rights to acquire interests or securities, or
5 any combination of the foregoing.

6 (b) By complying with the provisions of this [part] applicable to foreign entities, a
7 foreign entity may be the acquiring or acquired entity in an interest exchange under this [part] if
8 the interest exchange is authorized by the law of the foreign entity's jurisdiction of formation.

9 (c) If a protected agreement contains a provision that applies to a merger of a domestic
10 limited liability company but does not refer to an interest exchange, the provision applies to an
11 interest exchange in which the domestic limited liability company is the acquired entity as if the
12 interest exchange were a merger until the provision is amended after [the effective date of this
13 [act]].

14 **SECTION 1032. PLAN OF INTEREST EXCHANGE.**

15 (a) A domestic limited liability company may be the acquired entity in an interest
16 exchange under this [part] by approving a plan of interest exchange. The plan must be in a
17 record and contain:

- 18 (1) the name of the acquired entity;
- 19 (2) the name, jurisdiction of formation, and type of entity of the acquiring entity;
- 20 (3) the manner of converting the interests in the acquired entity into interests,
21 securities, obligations, money, other property, rights to acquire interests or securities, or any
22 combination of the foregoing;
- 23 (4) any proposed amendments to ~~the certificate of organization or operating~~
24 ~~agreement that are, or are proposed to be, in a record of the acquired entity.;~~

1 (A) the certificate of organization of the acquired entity; or
2 (B) the operating agreement of the acquired entity that are, or are proposed
3 to be, in a record;

4 (5) the other terms and conditions of the interest exchange; and
5 (6) any other provision required by the law of this state or the operating
6 agreement of the acquired entity.

7 (b) In addition to the requirements of subsection (a), a plan of interest exchange may
8 contain any other provision not prohibited by law.

9 **SECTION 1033. APPROVAL OF INTEREST EXCHANGE.**

10 (a) A plan of interest exchange is not effective unless it has been approved:

11 (1) by all the members of a domestic acquired limited liability company entitled
12 to vote on or consent to any matter; and

13 (2) in a record, by each member of the domestic acquired limited liability
14 company that will have interest holder liability for debts, obligations, and other liabilities that
15 arise after the interest exchange becomes effective, unless:

16 (A) the operating agreement of the limited liability company provides in a
17 record ~~provides~~ for the approval of an interest exchange or a merger in which some or all of its
18 members become subject to interest holder liability by the affirmative vote or consent of fewer
19 than all the members; and

20 (B) the member consented in a record to or voted for that provision of the
21 operating agreement or became a member after the adoption of that provision.

22 (b) An interest exchange involving a domestic acquired entity that is not a limited
23 liability company is not effective unless it is approved by the domestic entity in accordance with
24 its organic law.

1 (c) An interest exchange involving a foreign acquired entity is not effective unless it is
2 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
3 formation.

4 (d) Except as otherwise provided in its organic law or organic rules, the interest holders
5 of the acquiring entity are not required to approve the interest exchange.

6 **SECTION 1034. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**
7 **EXCHANGE.**

8 (a) A plan of interest exchange may be amended only with the consent of each party to
9 the plan, except as otherwise provided in the plan.

10 (b) A domestic acquired limited liability company may approve an amendment of a plan
11 of interest exchange:

12 (1) in the same manner as the plan was approved, if the plan does not provide for
13 the manner in which it may be amended; or

14 (2) by the managers or members of the company in the manner provided in the
15 plan, but ~~an interest holder~~a member that was entitled to vote on or consent to approval of the
16 interest exchange is entitled to vote on or consent to any amendment of the plan that will change:

17 (A) the amount or kind of interests, securities, obligations, money, other
18 property, rights to acquire interests or securities, or any combination of the foregoing, to be
19 received by any of the members of the acquired company under the plan;

20 (B) the certificate of organization or operating agreement of the acquired
21 company that will be in effect immediately after the interest exchange becomes effective, except
22 for changes that do not require approval of the members of the acquired company under this [act]
23 or the operating agreement; or

24 (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 ~~upon~~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 ~~delivered to~~filed by the [Secretary of State] ~~for filing~~; 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

1 limited liability entity in accordance with this [part]; and

2 (4) any amendments to the acquired limited liability company's certificate of
3 organization approved as part of the plan of interest exchange.

4 (c) In addition to the requirements of subsection (b), a statement of interest exchange may
5 contain any other provision not prohibited by law.

6 (d) A plan of interest exchange that is signed by a domestic acquired limited liability
7 company and meets all the requirements of subsection (b) may be delivered to the [Secretary of
8 State] for filing instead of a statement of interest exchange and ~~upon~~on filing has the same effect.
9 If a plan of interest exchange is filed as provided in this subsection, references in this [article] to
10 a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

11 (e) An interest exchange under this section becomes effective when the statement of
12 interest exchange is effective.

13 **SECTION 1036. EFFECT OF INTEREST EXCHANGE.**

14 (a) When an interest exchange in which the acquired entity is a domestic limited liability
15 company becomes effective:

16 (1) the interests in a domestic acquired company ~~that~~which are the subject of the
17 interest exchange ~~cease to exist or~~ are converted ~~or exchanged~~, and the members holding those
18 interests are entitled only to the rights provided to them under the plan of interest exchange and
19 to any appraisal rights they have under Section ~~1008~~1007;

20 (2) the acquiring entity becomes the interest holder of the interests in the acquired
21 company stated in the plan of interest exchange to be acquired by the acquiring entity;

22 (3) the certificate of organization of the acquired company is amended ~~as to the~~
23 extent provided in the statement of interest exchange; and

24 (4) the provisions of the operating agreement of the acquired company that are to

1 be in a record, if any, are amended to the extent provided in the plan of interest exchange.

2 (b) Except as otherwise provided in the operating agreement of a domestic acquired
3 limited liability company, the interest exchange does not give rise to any rights that a member,
4 manager, or third party would ~~otherwise~~ have upon a dissolution, liquidation, or winding up of
5 the acquired company.

6 (c) When an interest exchange becomes effective, a person that did not have interest
7 holder liability with respect to a domestic acquired limited liability company and ~~that~~ becomes
8 subject to interest holder liability with respect to a domestic entity as a result of the interest
9 exchange has interest holder liability only to the extent provided by the organic law of the entity
10 and only for those debts, obligations, and other liabilities that arise after the interest exchange
11 becomes effective.

12 (d) When an interest exchange becomes effective, the interest holder liability of a person
13 that ceases to hold an interest in a domestic acquired limited liability company with respect to
14 which the person had interest holder liability is as follows:

15 (1) The interest exchange does not discharge any interest holder liability under
16 this [act] to the extent the interest holder liability arose before the interest exchange became
17 effective.

18 (2) The person does not have interest holder liability for any debt, obligation, or
19 other liability that arises after the interest exchange becomes effective.

20 ~~_____ (3) _____~~ (3) This [act] continues to apply to the release, collection, or
21 discharge of any interest holder liability preserved under paragraph (1) as if the interest exchange
22 had not occurred.

23 ~~_____ (4) _____~~ (4) The person has whatever rights of contribution from any other person as are
24 provided by this [act], law other than this [act], ~~this [act],~~ or the operating agreement of the

domestic acquired limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.

[PART] 4

CONVERSION

CONVERSION

SECTION 1041. CONVERSION AUTHORIZED.

(a) By complying with this [part], a domestic limited liability company may become:

(1) a domestic entity ~~of~~that is a different type of entity; or

(2) a foreign entity ~~of~~that is a different type of entity, if the conversion is authorized by the law of the foreign jurisdiction.

(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 entity 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

1 company into interests, securities, obligations, money, other property, rights to acquire interests
2 or securities, or any combination of the foregoing;

3 (4) the proposed public organic record of the converted entity if it will be a filing
4 entity;

5 (5) the full text of the private organic rules of the converted entity ~~that~~which are
6 proposed to be in a record;

7 (6) the other terms and conditions of the conversion; and

8 (7) any other provision required by the law of this state or the operating
9 agreement of the converting limited liability company.

10 (b) In addition to the requirements of subsection (a)~~)~~, a plan of conversion may contain
11 any other provision not prohibited by law.

12 **SECTION 1043. APPROVAL OF CONVERSION~~.~~**

13 (a) A plan of conversion is not effective unless it has been approved:

14 (1) by a domestic converting limited liability company~~.~~ by all the members of the
15 limited liability company entitled to vote on or consent to any matter; and

16 (2) in a record, by each member of a domestic converting limited liability
17 company ~~that~~which will have interest holder liability for debts, obligations~~.~~ and other liabilities
18 that arise after the conversion becomes effective:

19 (A) the operating agreement of the ~~limited liability~~ company provides in a
20 record for the approval of a conversion or a merger in which some or all of its interest holders
21 become subject to interest holder liability by the affirmative vote or consent of fewer than all the
22 interest holders; and

23 (B) the member voted for or consented in a record to that provision of the
24 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 the managers or members of the entity 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 interest holders of the converting entity under the plan;

(B) the public organic record, if any, or private organic rules of the converted entity ~~that~~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 ~~interest holder~~member in any material respect.

(b) After a plan of conversion has been approved by a domestic converting limited

1 liability company and before a statement of conversion becomes effective, the plan may be
2 abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited
3 liability company may abandon the plan in the same manner as the plan was approved.

4 (c) If a plan of conversion is abandoned after a statement of conversion has been
5 delivered to the [Secretary of State] for filing and before the ~~filing~~statement becomes effective, a
6 statement of abandonment, signed by the converting entity, must be delivered to the [Secretary of
7 State] for filing before the ~~time the~~ statement of conversion becomes effective. The statement of
8 abandonment takes effect ~~upon~~on filing, and the conversion is abandoned and does not become
9 effective. The statement of abandonment must contain:

10 (1) the name of the converting limited liability company;

11 (2) the date on which the statement of conversion was ~~delivered to~~filed by the
12 [Secretary of State] ~~for filing~~; and

13 (3) a statement that the conversion has been abandoned in accordance with this
14 section.

15 **SECTION 1045. STATEMENT OF CONVERSION.**

16 (a) A statement of conversion must be signed by the converting entity and delivered to
17 the [Secretary of State] for filing.

18 (b) A statement of conversion must contain:

19 (1) the name, jurisdiction of formation, and type of entity of the converting entity;

20 (2) the name, jurisdiction of formation, and type of entity of the converted entity;

21 (3) if the converting entity is a domestic ~~entity~~limited liability company, a
22 statement that the plan of conversion was approved in accordance with this [part] or, if the
23 converting entity is a foreign entity, a statement that the conversion was approved by the foreign
24 ~~converting~~ entity in accordance with the law of its jurisdiction of formation;

(4) if the converted entity is a domestic filing entity, ~~the text of~~ its public organic record, as an attachment;

(5) if the converted entity is a domestic limited liability partnership, ~~the text of~~ its statement of qualification, as an attachment; and

(6) if the converted entity is a foreign entity that is not a registered foreign entity, a mailing address to which the [Secretary of State] may send any process served on the [Secretary of State] pursuant to Section 1046(e).

(c) In addition to the requirements of subsection (b), a statement of conversion may contain any other provision not prohibited by law.

(d) If ~~at~~the converted entity is a domestic entity, its public organic record, if any, must satisfy the requirements of the law of this state, ~~but~~except that the public organic record does not need to be signed.

(e) A plan of conversion that is signed by a domestic converting entity 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 ~~upon~~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 as provided by the organic law of the converted entity.

SECTION 1046. EFFECT OF CONVERSION.

(a) When a conversion in which the converted entity is a domestic limited liability company becomes effective:

(1) the converted entity is:

(A) organized under and subject to this [act]; 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 is effective;

(7) the provisions of the operating agreement of the converted entity ~~that~~which are to be in a record, if any, approved as part of the plan of conversion are effective; and

~~(7)~~ 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 ~~1008~~1007 and the converting entity's organic law.

(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 ~~otherwise~~ 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 ~~that~~ becomes subject to interest holder liability

1 with respect to a domestic entity as a result of ~~athe~~ conversion has interest holder liability only to
2 the extent provided by the organic law of the entity and only for those debts, obligations, and
3 ~~other~~ liabilities that arise after the conversion becomes effective.

4 (d) When a conversion becomes effective, the interest holder liability of a person that
5 ceases to hold an interest in a domestic limited liability company with respect to which the
6 person had interest holder liability is as follows:

7 (1) The conversion does not discharge any interest holder liability to the extent
8 the interest holder liability arose before the conversion became effective;~~;~~

9 (2) The person does not have interest holder liability for any ~~debt, obligation, or~~
10 ~~other~~ liability that arises after the conversion becomes effective;~~and.~~

11 ~~_____ (3) This [act] continues to apply to the release, collection, or~~
12 ~~discharge of any interest holder liability preserved under paragraph (1) as if the conversion had~~
13 ~~not occurred.~~

14 ~~_____ (4) The person has whatever rights of contribution from any other person as are~~
15 ~~provided by this [act], law other than this [act], this [act], or the operating agreement of the~~
16 ~~domestic converting entity limited liability company~~ with respect to any interest holder liability
17 preserved under paragraph (1) as if the conversion had not occurred.

18 (e) When a conversion becomes effective, a foreign entity that is the converted entity
19 may be served with process in this state for the collection and enforcement of any of its debts,
20 obligations, and liabilities as provided in Section ~~H8119~~.

21 (f) If the converting entity is a registered foreign entity, the registration to do business in
22 this state of the converting entity is canceled when the conversion becomes effective.

23 (g) A conversion does not require the entity to wind up its affairs and does not constitute
24 or cause the dissolution of the entity.

1 [PART] 5

2 **DOMESTICATION**

3 **DOMESTICATION**

4 **SECTION 1051. DOMESTICATION AUTHORIZED.**

5 (a) By complying with this [part], a domestic limited liability company may become a
6 foreign limited liability company if the domestication is authorized by the law of the foreign
7 jurisdiction.

8 (b) By complying with the provisions of this [part] applicable to foreign limited liability
9 companies, a foreign limited liability company may become a domestic limited liability company
10 if the domestication is authorized by the law of the foreign limited liability company's
11 jurisdiction of formation.

12 (c) If a protected agreement contains a provision that applies to a merger of a domestic
13 limited liability company but does not refer to a domestication, the provision applies to a
14 domestication of the limited liability company as if the domestication were a merger until the
15 provision is amended after [the effective date of this [act]].

16 **SECTION 1052. PLAN OF DOMESTICATION.**

17 (a) A domestic limited liability company may become a foreign limited liability company
18 in a domestication by approving a plan of domestication. The plan must be in a record and
19 contain:

- 20 (1) the name of the domesticating limited liability company;
- 21 (2) the name and jurisdiction of formation of the domesticated limited liability
22 company;
- 23 (3) the manner of converting the interests in the domesticating limited liability
24 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 arise after the domestication becomes effective, unless:

(A) the operating agreement of the entity 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 an interest holder 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.

1 **SECTION 1054. AMENDMENT OR ABANDONMENT OF PLAN OF**
2 **DOMESTICATION.**

3 (a) A plan of domestication of a domestic domesticating limited liability company may
4 be amended:

5 (1) in the same manner as the plan was approved, if the plan does not provide for
6 the manner in which it may be amended; or

7 (2) by the managers or members of the limited liability company in the manner
8 provided in the plan, but a member that was entitled to vote on or consent to approval of the
9 domestication is entitled to vote on or consent to any amendment of the plan that will change:

10 (A) the amount or kind of interests, securities, obligations, money, other
11 property, rights to acquire interests or securities, or any combination of the foregoing, to be
12 received by any of the interest holders of the domesticating limited liability company under the
13 plan;

14 (B) the certificate of organization or operating agreement of the
15 domesticated limited liability company that will be in effect immediately after the domestication
16 becomes effective, except for changes that do not require approval of the members of the
17 domesticated limited liability company under its organic law or operating agreement; or

18 (C) any other terms or conditions of the plan, if the change would
19 adversely affect the interest holder in any material respect.

20 (b) After a plan of domestication has been approved by a domestic domesticating limited
21 liability company and before a statement of domestication becomes effective, the plan may be
22 abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating
23 limited liability company may abandon the plan in the same manner as the plan was approved.

24 (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 ~~filing~~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 time the statement of domestication becomes effective. The statement of abandonment takes effect ~~upon~~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 delivered to the [Secretary of State] for filing; and
- (3) a statement that the domestication has been abandoned in accordance with this section.

SECTION 1055. STATEMENT 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;

1 (4) the certificate of organization of the domesticated limited liability company, as
2 an attachment; and

3 (5) if the domesticated foreign limited liability company is not a registered foreign
4 limited liability company, a mailing address to which the [Secretary of State] may send any
5 process served on the [Secretary of State] pursuant to Section 1056(e).

6 (c) In addition to the requirements of subsection (b), a statement of domestication may
7 contain any other provision not prohibited by law.

8 (d) The certificate of organization of a domesticated domestic limited liability company
9 must satisfy the requirements of the law of this state, but the certificate does not need to be
10 signed.

11 (e) A plan of domestication that is signed by a domesticating domestic limited liability
12 company and meets all the requirements of subsection (b) may be delivered to the [Secretary of
13 State] for filing instead of a statement of domestication and ~~upon~~ filing has the same effect. If
14 a plan of domestication is filed as provided in this subsection, references in this [article] to a
15 statement of domestication refer to the plan of domestication filed under this subsection.

16 (f) A domestication becomes effective when the statement of domestication is effective.

17 **SECTION 1056. EFFECT OF DOMESTICATION.**

18 (a) When a domestication becomes effective:

19 (1) the domesticated limited liability company is:

20 (A) organized under and subject to the organic law of the domesticated
21 company; and

22 (B) the same entity without interruption as the domesticating company;

23 (2) all property of the domesticating company continues to be vested in the
24 domesticated company without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the domesticating company continue as debts, obligations, and other liabilities of the domesticated company;

(4) except as otherwise provided by law or the plan of domestication, all the rights, privileges, immunities, powers, and purposes of the domesticating company remain in the domesticated company;

(5) the name of the domesticated company may be substituted for the name of the domesticating company in any pending action or proceeding;

(6) the certificate of organization of the domesticated company is effective;

(7) the provisions of operating agreement of the domesticated company that are to be in a record, if any, approved as part of the plan of domestication are effective; and

(8) the interests in the domesticating company are converted to the extent and as approved in connection with the domestication, and the members of the domesticating company are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section ~~1008~~1007.

(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 ~~that~~ 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 the organic law of the domestic company and only for those debts, obligations, and other liabilities that arise after the domestication becomes effective.

(d) When a domestication becomes effective:

(1) The domestication does not discharge any interest holder liability under this [act] to the extent the interest holder liability arose before the domestication became effective.

(2) A person does not have interest holder liability under this ~~[article]~~act for any ~~debts, obligations, and debt, obligation, or~~ other ~~liabilities~~liability that ~~arise~~arises after the domestication becomes effective.

(3) A person has whatever rights of contribution from any other person as are provided by law other than this [act], this [act], or the operating agreement of a 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 liabilities as provided in Section ~~448~~119.

(f) If the domesticating limited liability company is a registered foreign limited liability company, the registration of the company is canceled when the domestication becomes effective.

(g) A domestication does not require the 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 ~~1103~~1102. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, ~~or~~and

1 supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section
2 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C.
3 Section 7001(c), or authorize electronic delivery of any of the notices described in Section
4 103(b) of that act, 15 U.S.C. Section 7003(b).

5 **SECTION ~~1104~~1103. SAVINGS CLAUSE~~;~~.** This [act] does not affect an action
6 commenced, proceeding brought, or right accrued before [the effective date of this [act]~~11-1~~].

7 **[SECTION ~~1102~~1104. SEVERABILITY CLAUSE~~;~~.** If any provision of this [act] or
8 its application to any person or circumstance is held invalid, the invalidity does not affect other
9 provisions or applications of this [act] which can be given effect without the invalid provision or
10 application, and to this end the provisions of this [act] are severable~~;~~.]

11 ***Legislative Note:** Include this section only if this state lacks a general severability statute or*
12 *decision by the highest court of this state stating a general rule of severability.*

13 **SECTION ~~1106~~1105. REPEALS~~;~~.** The following are repealed:

14 (1) [the state limited liability company act, as [amended, and as] in effect immediately
15 before [the effective date of this [act]]];

16 (2)

17 (3)

18 **SECTION ~~1107~~1106. EFFECTIVE DATE~~;~~.** This [act] takes effect