

D R A F T

FOR APPROVAL

**HARMONIZED REVISED UNIFORM LIMITED
LIABILITY COMPANY ACT**
*(Amendments to Revised Uniform Limited Liability
Company Act)*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

AMERICAN BAR ASSOCIATION

MEETING IN ITS ONE-HUNDRED-AND-TWENTIETH YEAR
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LIABILITY COMPANY ACT**
*(Amendments to Revised Uniform Limited Liability
Company Act)*

WITHOUT PREFATORY NOTES OR COMMENTS, BUT WITH REPORTERS' NOTES

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Jointly By

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
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AMERICAN BAR ASSOCIATION

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May 31, 2011

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HARMONIZED REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

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HARMONIZED REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

Introductory Reporters' Note

The proposed revisions to the text of the act set forth in this document have been prepared as part of a project that has two purposes: (i) to harmonize the language of all of the unincorporated entity laws, and (ii) to revise the language of each of those acts in a manner that permits their integration into a single code of entity laws.

The Comments to the act have been omitted from this document to reduce its length. Following the approval of the changes in this document by the Conference, the Comments will be restored with appropriate changes.

The harmonization process has involved the revision of the following acts, some of which are referred to in the Reporters' Notes by the abbreviations listed below:

Business Organizations Act ("HUB")
Model Entity Transactions Act ("META")
Model Registered Agents Act
Uniform Partnership Act (1997)
Uniform Limited Partnership Act (2001)
Uniform Limited Liability Company Act (2006)
Uniform Statutory Trust Entity Act
Uniform Limited Cooperative Association Act
Uniform Unincorporated Nonprofit Association Act (2008)

Changes to the currently effective text of the act are shown by ~~striking through text to be deleted~~ and underlining text to be added. Regular type is used to show changes that (i) adopt language from the HUB or META, (ii) are merely relocations of current language, or (iii) are corrections for the sake of internal consistency within an act. *Changes that adopt language from other unincorporated entity acts are shown in italics.* CHANGES THAT DO NOT HAVE A SOURCE IN ONE OF THE EXISTING UNINCORPORATED ENTITY ACT ARE SHOWN IN SMALL CAPS. The changes shown in SMALL CAPS in this act are shown in *italics* in other acts.

1 ~~(A) THE OFFICE THAT A LIMITED LIABILITY COMPANY IS REQUIRED TO DESIGNATE~~
2 ~~AND MAINTAIN UNDER SECTION 113; OR~~

3 ~~(B) THE PRINCIPAL OFFICE OF A FOREIGN LIMITED LIABILITY COMPANY.~~

4 ~~(5)~~ (4) “Distribution”, ~~except as otherwise provided in Section 405(g)~~, means a transfer of
5 money or other property from a limited liability company to ~~another~~ a person on account of a
6 transferable interest OR IN THE PERSON’S CAPACITY AS A MEMBER. THE TERM:

7 (A) INCLUDES:

8 (I) A REDEMPTION OR OTHER PURCHASE BY A LIMITED LIABILITY COMPANY
9 OF A TRANSFERABLE INTEREST; AND

10 (II) A TRANSFER TO A MEMBER IN RETURN FOR THE MEMBER’S
11 RELINQUISHMENT OF ANY RIGHT TO PARTICIPATE AS A MEMBER IN THE MANAGEMENT OR CONDUCT
12 OF THE COMPANY’S ACTIVITIES AND AFFAIRS OR TO HAVE ACCESS TO RECORDS OR OTHER
13 INFORMATION CONCERNING THE COMPANY’S ACTIVITIES AND AFFAIRS; AND

14 (B) DOES NOT INCLUDE AMOUNTS CONSTITUTING REASONABLE COMPENSATION FOR
15 PRESENT OR PAST SERVICE OR PAYMENTS MADE IN THE ORDINARY COURSE OF BUSINESS UNDER A
16 BONA FIDE RETIREMENT PLAN OR OTHER BONA FIDE BENEFITS PROGRAM.

17 ~~(6) “EFFECTIVE”, WITH RESPECT TO A RECORD REQUIRED OR PERMITTED TO BE DELIVERED~~
18 ~~TO THE [SECRETARY OF STATE] FOR FILING UNDER THIS [ACT], MEANS EFFECTIVE UNDER SECTION~~
19 ~~205(c).~~

20 ~~(7)~~ (5) “Foreign limited liability company” means an unincorporated entity formed under
21 the law of a jurisdiction other than this state ~~and denominated by that law as~~ which would be a
22 limited liability company if formed under the law of this state.

23 (6) “Jurisdiction”, used to refer to a political entity, means the United States, a state, a

1 foreign county, or a political subdivision of a foreign country.

2 (7) “Jurisdiction of formation” means, with respect to an entity, the jurisdiction:

3 (A) under whose law the entity is formed; or

4 (B) in the case of a limited liability partnership or foreign limited liability
5 partnership, in which the partnership’s statement of qualification is filed.

6 (8) “Limited liability company”, except in the phrase “foreign limited liability company”
7 means an entity formed under this [act] or which becomes subject to this [act] under [Article] 10
8 or Section 1105.

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

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

14 (11) “Member” means a person that:

15 (A) has become a member of a limited liability company under Section 401 or
16 was a member in a company when the company became subject to this [act] under Section 1106;
17 and

18 (B) has not dissociated under Section 602.

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

21 (13) “Operating agreement” means the agreement, whether or not referred to as an
22 operating agreement and whether oral, implied, in a record, ~~implied~~, or in any combination
23 thereof, of all the members of a limited liability company, including a sole member, concerning

1 the matters described in Section ~~110(a)~~ 111(a). The term includes the agreement as amended or
2 restated.

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

5 (15) ~~“Person” means an individual, corporation, business trust, estate, trust, partnership,~~
6 ~~limited liability company, association, joint venture, public corporation, government or~~
7 ~~governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.~~

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

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

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

17 ~~(17)~~ (18) “Record”, used as a noun, means information that is inscribed on a tangible
18 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

22 (20) “Registered foreign limited liability company” means a foreign limited liability
23 company that is registered to do business in this state pursuant to a statement of registration filed

1 by the [Secretary of State].

2 ~~(18)~~ (21) “Sign” means, with the present intent to authenticate or adopt a record:

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

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

6 ~~(19)~~ (22) “State” means a state of the United States, the District of Columbia, Puerto
7 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
8 jurisdiction of the United States.

9 ~~(20)~~ (23) “Transfer” includes:

10 (A) an assignment;

11 (B) a conveyance, ~~deed, bill of;~~

12 (C) a sale;

13 (D) a lease, ~~mortgage, security interest;~~

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

15 (F) a gift; and

16 (G) ~~and~~ a transfer by operation of law.

17 ~~(21)~~ (24) “Transferable interest” means the right, as ~~originally~~ initially owned by
18 ~~associated with a~~ person in the person’s capacity as a member, to receive distributions from a
19 limited liability company in accordance with the operating agreement, whether or not the person
20 remains a member or continues to own any part of the right. THE TERM APPLIES TO ANY
21 FRACTION OF THE INTEREST, BY WHOMEVER OWNED.

22 ~~(22)~~ (25) “Transferee” means a person to which all or part of a transferable interest has
23 been transferred, whether or not the transferor is a member. THE TERM INCLUDES A PERSON THAT

1 OWNS A TRANSFERABLE INTEREST UNDER SECTION 603(A)(3).

2 **Reporters' Notes**

3
4 *Contribution* – conformed to ULP A.

5
6 *Distribution* – The new language in subparagraph (A) is to make explicit that
7 redemptions constitute distributions. The phrase “participate in the management or conduct of
8 the company’s activities or have access to records or other information concerning the
9 company’s activities” is taken from Section 502(a)(3) (describing the realm of governance rights
10 not available to a transferee).

11
12 The new language in subparagraph (B) formerly appeared in Section 405 (limitations on
13 distributions). Relocating the language here broadens the effect of the exclusion. For example,
14 the exclusion now applies to exclude payments that would otherwise be subject to a charging
15 order.

16
17 *Limited liability company* –The language conforms to ULP A (2001), taking into account
18 LLCs that come within this statute through an organic transaction and pre-existing LLCs that are
19 “dragged in” under this statute.

20
21 **SECTION 103. KNOWLEDGE; NOTICE.**

22 (a) A person knows a fact ~~when~~ if the person:

23 (1) has actual knowledge of it; or

24 (2) is deemed to know it under subsection (d)(1) or law other than this [act].

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

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

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

29 (c) ~~A~~ Subject to Section 209(f), a person notifies another person of a fact by taking steps
30 reasonably required to inform the other person in ordinary course, whether or not those steps
31 cause the other person ~~knows~~ to know the fact.

32 (d) A person ~~that is~~ not a member is deemed:

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

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

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

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

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

SECTION 104. 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.

Reporters' Notes

Subsection (a) – “Member or” added to emphasize that the separate entity concept applies to single member LLCs as well as to multiple member LLCs

SECTION 105. 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 106. GOVERNING LAW. The law of this state governs:

- 1 (1) the internal affairs of a limited liability company; and
- 2 (2) the liability of a member as member and a manager as manager for the debts,
- 3 obligations, or other liabilities of a limited liability company.

4 **SECTION 107. SUPPLEMENTAL PRINCIPLES OF LAW.** Unless displaced by

5 particular provisions of this [act], the principles of law and equity supplement this [act].

6 **SECTION 108. ~~NAME~~ PERMITTED NAMES.**

7 (a) The name of a limited liability company must contain the words “limited liability

8 company” or “limited company” or the abbreviation “L.L.C.”, “LLC”, “L.C.”, or “LC”.

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

10 (b) ~~Unless authorized~~ Except as otherwise provided in by subsection (e) subsection (d),

11 the name of a limited liability company, and the name under which a foreign limited liability

12 company may register to do business in this state, must be distinguishable ~~in~~ on the records of

13 the [Secretary of State] from:

14 (1) the name of ~~each~~ an existing person that is not an individual and that is

15 ~~incorporated, organized, or authorized to transact business in this state~~ whose formation required

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

17 ~~(2) THE LIMITED LIABILITY COMPANY NAME STATED IN EACH CERTIFICATE OF~~

18 ~~ORGANIZATION THAT CONTAINS THE STATEMENT AS PROVIDED IN SECTION 201(B)(3) AND THAT~~

19 ~~HAS NOT LAPSED; AND~~

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

21 (3) the name of a person registered to do business in this state by the filing of a

22 record by the [Secretary of State];

23 ~~(3)~~ (4) each name reserved under Section 109 or other law of this state providing

1 for the reservation of a name by the filing of a record by the [Secretary of State];

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

4 ~~(4) (6) an assumed name registered under [this state's assumed or fictitious name~~
5 ~~statute] [cite other state laws allowing the reservation or registration of business names,~~
6 ~~including fictitious or assumed name statutes].~~

7 ~~(c) A limited liability company may apply to the [Secretary of State] for authorization to~~
8 ~~use a name that does not comply with subsection (b). The [Secretary of State] shall authorize use~~
9 ~~of the name applied for if, as to each noncomplying name:~~

10 ~~(1) the present user, registrant, or owner of the noncomplying name consents in a~~
11 ~~signed record to the use and submits an undertaking in a form satisfactory to the [Secretary of~~
12 ~~State] to change the noncomplying name to a name that complies with subsection (b) and is~~
13 ~~distinguishable in the records of the [Secretary of State] from the name applied for; or~~

14 ~~(2) the applicant delivers to the [Secretary of State] a certified copy of the final~~
15 ~~judgment of a court establishing the applicant's right to use in this state the name applied for.~~

16 ~~(d) Subject to Section 805, this section applies to a foreign limited liability company~~
17 ~~transacting business in this state which has a certificate of authority to transact business in this~~
18 ~~state or which has applied for a certificate of authority.~~

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

1 (d) Except as otherwise provided in subsection (e), in determining whether a name is the
2 same as or not distinguishable on the records of the [Secretary of State] from the name of another
3 entity, words, phrases, or abbreviations indicating the type of entity, such as “corporation”,
4 “corp.”, “incorporated”, “Inc.”, “professional corporation”, “PC”, “professional association”,
5 “PA”, “Limited”, “Ltd.”, “limited partnership”, “LP”, “limited liability partnership”, “LLP”,
6 “registered limited liability partnership”, “RLLP”, “limited liability limited partnership”,
7 “LLLLP”, “registered limited liability limited partnership”, “RLLLLP”, “limited liability
8 company”, or “LLC”, may not be taken into account.

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

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

16 **SECTION 109. RESERVATION OF NAME.**

17 (a) A person may reserve the exclusive use of ~~the~~ a name of a limited liability company,
18 ~~including a fictitious or assumed name for a foreign limited liability company whose name is not~~
19 ~~available,~~ that complies with Section 108 by delivering an application to the [Secretary of State]
20 for filing. The application must state the name and address of the applicant and the name
21 ~~proposed~~ to be reserved. If the [Secretary of State] finds that the name ~~applied for~~ is available, it
22 ~~must be reserved~~ the [Secretary of State] shall reserve the name for the applicant’s exclusive use
23 ~~for a 120-day period~~ 120 days.

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

5 **SECTION 110. REGISTRATION OF NAME.**

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

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

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

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

22 (e) A foreign limited liability company whose name registration is effective may register
23 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 ~~110~~ 111. OPERATING AGREEMENT; SCOPE, FUNCTION, AND LIMITATIONS.

(a) Except as otherwise provided in subsections ~~(B) AND (C) AND (D)~~, the operating agreement governs:

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

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

(3) the activities AND AFFAIRS of the company and the conduct of those activities AND AFFAIRS; and

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

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

(c) An operating agreement may not:

(1) vary a limited liability company's capacity under Section 105 to sue and be sued in its own name;

(2) vary the law applicable under Section 106;

(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];

(3) (4) vary the ~~power provisions~~ of the court under Section 204;

(4) (5) ~~SUBJECT TO SUBSECTIONS (D) THROUGH (G);~~ ELIMINATE THE DUTY OF CARE OR THE DUTY OF LOYALTY;

(5) (6) ~~subject to subsections (d) through (g);~~ 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;

(6) (7) relieve or exonerate a person from liability for conduct involving bad faith, willful misconduct, or recklessness;

(6) (8) ~~unreasonably restrict the duties and rights stated in~~ 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;

(7) (9) vary the ~~power of a court to decree~~ causes of dissolution in the circumstances specified in Section 701(a)(4)(A) and (5);

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

(9) (11) ~~unreasonably restrict the right of a member to maintain an action under~~ [Article] 9;

(12) vary the provisions of Section 905, but the operating agreement may provide that the company may not have a special litigation committee;

(10) (13) ~~restrict the right to approve a merger, conversion, or domestication under Section 1014 to a member that will have personal liability with respect to a surviving,~~

~~converted, or domesticated organization 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); or~~

~~(11) (14) except as otherwise provided in Section 112(b) Sections 112 and 113(b),~~
restrict the rights under this [act] of a person other than a member or manager.

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

~~(1) restrict or eliminate the duty:~~

~~(A) as required in Section 409(b)(1) and (g), to account to the limited~~
~~liability company and to hold as trustee for it any property, profit, or benefit derived by the~~
~~member in the conduct or winding up of the company's business, from a use by the member of~~
~~the company's property, or from the appropriation of a limited liability company opportunity;~~

~~(B) as required in Section 409(b)(2) and (g), to refrain from dealing with~~
~~the company in the conduct or winding up of the company's business as or on behalf of a party~~
~~having an interest adverse to the company; and~~

~~(C) as required by Section 409(b)(3) and (g), to refrain from competing~~
~~with the company in the conduct of the company's business before the dissolution of the~~
~~company;~~

~~(2) identify specific types or categories of activities that do not violate the duty of~~
~~loyalty;~~

~~(3) alter the duty of care, except to authorize intentional misconduct or knowing~~
~~violation of law;~~

~~(4) alter any other fiduciary duty, including eliminating particular aspects of that~~
~~duty; and~~

~~(5) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under Section 409(d).~~

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

(1) The operating agreement may 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.

~~(f)~~ (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.

~~(g) The operating agreement may alter or eliminate the indemnification for a member or manager provided by Section 408(a) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:~~

~~(1) breach of the duty of loyalty;~~

~~(2) a financial benefit received by the member or manager to which the member or manager is not entitled;~~

~~(3) a breach of a duty under Section 406;~~

~~(4) intentional infliction of harm on the company or a member; or~~

~~(5) an intentional violation of criminal law.~~

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

1 (A) restrict or eliminate the aspects of the duty of loyalty stated in Section
2 409(b) and (h)(1);

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

5 (C) alter the duty of care, but may not authorize intentional misconduct or
6 knowing violation of law; and

7 (D) alter or eliminate any other fiduciary duty.

8 ~~(h)~~ (e) The court shall decide as a matter of law any claim under subsection (c)(6) or
9 (d)(3) that a term of an operating agreement is manifestly unreasonable. The court:

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

12 (2) may invalidate the term only if, in light of the purposes, ~~AND~~ activities, AND
13 AFFAIRS of the limited liability company, it is readily apparent that:

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

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

17 **Reporters' Notes**

18
19 Most changes in this section are intended to improve readability. Subsection (d) takes
20 advantage of an approach first approved for USTEA, § 103(e) ("without limiting the terms that
21 may be included in a governing instrument, the governing instrument may").
22

23 **SECTION ~~111~~ 112. OPERATING AGREEMENT; EFFECT ON LIMITED** 24 **LIABILITY COMPANY AND PERSONS PERSON BECOMING MEMBERS MEMBER;** 25 **PREFORMATION AGREEMENT.**

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

SECTION ~~112~~ 113. OPERATING AGREEMENT; EFFECT ON THIRD PARTIES AND RELATIONSHIP TO RECORDS EFFECTIVE ON BEHALF OF LIMITED LIABILITY COMPANY.

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

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

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

1 (2) IS NOT EFFECTIVE TO THE EXTENT THE AMENDMENT IMPOSES A NEW DEBT,
2 OBLIGATION, OR OTHER LIABILITY ON THE TRANSFEREE OR PERSON DISSOCIATED AS A MEMBER.

3 (c) If a record ~~that has been~~ delivered by a limited liability company to the [Secretary of
4 State] for filing ~~and has become~~ becomes effective ~~under this [act]~~ and contains a provision that
5 would be ineffective under Section ~~110(e)~~ 111(c) or (d)(3) if contained in the operating
6 agreement, the provision is ~~likewise~~ ineffective in the record.

7 (d) Subject to subsection (c), if a record ~~that has been~~ delivered by a limited liability
8 company to the [Secretary of State] for filing ~~and has become~~ becomes effective ~~under this [act]~~
9 and conflicts with a provision of the operating agreement:

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

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

14 **SECTION 113 114. OFFICE AND REGISTERED AGENT FOR SERVICE OF**
15 **PROCESS.**

16 (a) ~~A~~ Each limited liability company and each registered foreign limited liability
17 company shall designate and ~~continuously~~ maintain a registered agent in this state:-

18 ~~(1) an office, which need not be a place of its activity in this state; and~~

19 ~~(2) an agent for service of process.~~

20 (b) ~~A foreign limited liability company that has a certificate of authority under Section~~
21 ~~802 shall designate and continuously maintain in this state an agent for service of process. The~~
22 designation of a registered agent is an affirmation of fact by the limited liability company or
23 registered foreign limited liability company that the agent has consented to serve.

1 ~~(e) (b) An agent for service of process of~~ A registered agent for a limited liability
2 company or registered foreign limited liability company must ~~be an individual who is a resident~~
3 ~~of this state or other person with authority to transact~~ have a place of business in this state.

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

6 (1) to forward to the limited liability company or registered foreign limited
7 liability company at the address most recently supplied to the agent by the company any process,
8 notice, or demand pertaining to the company which is served on or received by the agent;

9 (2) if the registered agent resigns, to provide the notice required by Section 116(c)
10 to the company at the address most recently supplied to the agent by the company; and

11 (3) to keep current the information with respect to the agent in the certificate of
12 formation.

13 **SECTION ~~114~~ 115. CHANGE OF ~~DESIGNATED OFFICE OR~~ REGISTERED**
14 **AGENT ~~FOR SERVICE OF PROCESS~~ OR ADDRESS FOR REGISTERED AGENT.**

15 (a) A limited liability company or registered foreign limited liability company may
16 change ~~its designated office,~~ its registered agent ~~for service of process,~~ or the address of its
17 registered agent ~~for service of process~~ by delivering to the [Secretary of State] for filing a
18 statement of change ~~containing~~ that states:

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

20 ~~(2) the street and mailing addresses of its current designated office; the~~
21 information that is to be in effect as a result of the filing of the statement of change.

22 ~~(3) if the current designated office is to be changed, the street and mailing~~
23 addresses of the new designated office;

1 ~~(4) the name and street and mailing addresses of its current agent for service of~~
2 ~~process; and~~

3 ~~(5) if the current agent for service of process or an address of the agent is to be~~
4 ~~changed, the new information.~~

5 ~~(b) Subject to Section 205(c), a statement of change is effective when filed by the~~
6 ~~[Secretary of State].~~

7 (b) The members or managers of a limited liability company need not approve the filing
8 of:

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

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

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

15 (d) As an alternative to using the procedure in this section, a limited liability company or
16 registered foreign limited liability company may amend its certificate of organization.

17 **~~SECTION 115~~ 116. RESIGNATION OF REGISTERED AGENT FOR SERVICE**
18 **~~OF PROCESS.~~**

19 ~~(a) To resign as an agent for service of process of~~ A registered agent may resign as agent
20 for a limited liability company or registered foreign limited liability company, the agent must
21 deliver by delivering to the [Secretary of State] for filing a statement of resignation containing
22 the company name and stating that the agent is resigning. that states:

23 (1) the name of the company;

1 (2) the name of the agent;
2 (3) that the agent resigns from serving as registered agent for the company; and
3 (4) the address of the company to which the agent will send the notice required by
4 subsection (c).

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

6 (1) the 31st day after the day on which it is filed by the [Secretary of State]; or
7 (2) the designation of a new registered agent for the limited liability company or
8 registered foreign limited liability company.

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

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

17 (e) A registered agent may resign with respect to a limited liability company or registered
18 foreign limited liability company whether or not the company is in good standing.

19 ~~(b) The [Secretary of State] shall file a statement of resignation delivered under~~
20 ~~subsection (a) and mail or otherwise provide or deliver a copy to the designated office of the~~
21 ~~limited liability company or foreign limited liability company and another copy to the principal~~
22 ~~office of the company if the mailing addresses of the principal office appears in the records of~~
23 ~~the [Secretary of State] and is different from the mailing address of the designated office.~~

1 ~~(c) An agency for service of process terminates on the earlier of:~~
2 ~~(1) the 31st day after the [Secretary of State] files the statement of resignation;~~
3 ~~(2) when a record designating a new agent for service of process is delivered to~~
4 ~~the [Secretary of State] for filing on behalf of the limited liability company and becomes~~
5 ~~effective.~~

6 **SECTION 117. CHANGE OF NAME OR ADDRESS BY REGISTERED AGENT.**

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

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

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

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

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

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

18 **SECTION ~~116~~ 118. SERVICE OF PROCESS, NOTICE, OR DEMAND.**

19 ~~(a) An agent for service of process appointed by a limited liability company or foreign~~
20 ~~limited liability company is an agent of the company for service of any process, notice, or~~
21 ~~demand required or permitted by law to be served on the company.~~

22 ~~(b) If a limited liability company or foreign limited liability company does not appoint or~~
23 ~~maintain an agent for service of process in this state or the agent for service of process cannot~~

1 with reasonable diligence be found at the agent's street address the [Secretary of State] is an
2 agent of the company upon whom process, notice, or demand may be served.

3 ~~(e) Service of any process, notice, or demand on the [Secretary of State] as agent for a~~
4 ~~limited liability company or foreign limited liability company may be made by delivering to the~~
5 ~~[Secretary of State] duplicate copies of the process, notice, or demand. If a process, notice, or~~
6 ~~demand is served on the [Secretary of State], the [Secretary of State] shall forward one of the~~
7 ~~copies by registered or certified mail, return receipt requested, to the company at its designated~~
8 ~~office.~~

9 ~~(d) Service is effected under subsection (c) at the earliest of:~~

10 ~~(1) the date the limited liability company or foreign limited liability company~~
11 ~~receives the process, notice, or demand;~~

12 ~~(2) the date shown on the return receipt, if signed on behalf of the company; or~~

13 ~~(3) five days after the process, notice, or demand is deposited with the United~~
14 ~~States Postal Service, if correctly addressed and with sufficient postage.~~

15 ~~(e) The [Secretary of State] shall keep a record of each process, notice, and demand~~
16 ~~served pursuant to this section and record the time of, and the action taken regarding, the service.~~

17 ~~(f) This section does not affect the right to serve process, notice, or demand in any other~~
18 ~~manner provided by law.~~

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

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

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

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

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

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

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

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

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

18 **SECTION ~~117~~ 119. DELIVERY OF RECORD.**

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

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

SECTION 120. 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 signing and 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;

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

(3) the name and street and mailing addresses within this state of the initial company's registered agent for service of process of the company; and

~~(3) IF THE COMPANY WILL HAVE NO MEMBERS WHEN THE [SECRETARY OF STATE] FILES THE CERTIFICATE, A STATEMENT TO THAT EFFECT.~~

(c) ~~Subject to Section 112 110(c), a~~ A certificate of organization may ~~also~~ contain statements as to matters other than those required by subsection (b), but may not vary or otherwise affect the provisions specified in Section 111(c) in a manner inconsistent with that

section. However, a statement in a certificate of organization is not effective as a statement of authority.

~~(d) UNLESS THE FILED CERTIFICATE OF ORGANIZATION CONTAINS THE STATEMENT AS PROVIDED IN SUBSECTION (B)(3), THE FOLLOWING RULES APPLY:~~

~~(1) A limited liability company is formed when THE [SECRETARY OF STATE] HAS FILED the company's certificate of organization AND THE COMPANY HAS AT LEAST ONE MEMBER, UNLESS THE CERTIFICATE STATES A DELAYED EFFECTIVE DATE PURSUANT TO SECTION 205(C) BECOMES EFFECTIVE AND AT LEAST ONE PERSON BECOMES A MEMBER.~~

~~(2) IF THE CERTIFICATE STATES A DELAYED EFFECTIVE DATE, A LIMITED LIABILITY COMPANY IS NOT FORMED IF, BEFORE THE CERTIFICATE TAKES EFFECT, A STATEMENT OF CANCELLATION IS SIGNED AND DELIVERED TO THE [SECRETARY OF STATE] FOR FILING AND THE [SECRETARY OF STATE] FILES THE CERTIFICATE.~~

~~(3) SUBJECT TO ANY DELAYED EFFECTIVE DATE AND EXCEPT IN A PROCEEDING BY THIS STATE TO DISSOLVE A LIMITED LIABILITY COMPANY, THE FILING OF THE CERTIFICATE OF ORGANIZATION BY THE [SECRETARY OF STATE] IS CONCLUSIVE PROOF THAT THE ORGANIZER SATISFIED ALL CONDITIONS TO THE FORMATION OF A LIMITED LIABILITY COMPANY.~~

~~(E) IF A FILED CERTIFICATE OF ORGANIZATION CONTAINS A STATEMENT AS PROVIDED IN SUBSECTION (B)(3), THE FOLLOWING RULES APPLY:~~

~~(1) THE CERTIFICATE LAPSES AND IS VOID UNLESS, WITHIN [90] DAYS FROM THE DATE THE [SECRETARY OF STATE] FILES THE CERTIFICATE, AN ORGANIZER SIGNS AND DELIVERS TO THE [SECRETARY OF STATE] FOR FILING A NOTICE STATING:~~

~~(A) THAT THE LIMITED LIABILITY COMPANY HAS AT LEAST ONE MEMBER;~~

~~AND~~

~~(B) THE DATE ON WHICH A PERSON OR PERSONS BECAME THE COMPANY'S
INITIAL MEMBER OR MEMBERS.~~

~~(2) IF AN ORGANIZER COMPLIES WITH PARAGRAPH (1), A LIMITED LIABILITY
COMPANY IS DEEMED FORMED AS OF THE DATE OF INITIAL MEMBERSHIP STATED IN THE NOTICE
DELIVERED PURSUANT TO PARAGRAPH (1).~~

~~(3) EXCEPT IN A PROCEEDING BY THIS STATE TO DISSOLVE A LIMITED LIABILITY
COMPANY, THE FILING OF THE NOTICE DESCRIBED IN PARAGRAPH (1) BY THE [SECRETARY OF
STATE] IS CONCLUSIVE PROOF THAT THE ORGANIZER SATISFIED ALL CONDITIONS TO THE
FORMATION OF A LIMITED LIABILITY COMPANY.~~

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, ~~stating:~~

~~(1) in the heading or an introductory paragraph, the company's present name and
the date of the filing of the company's initial certificate of organization;~~

~~(2) if the company's name has been changed at any time since the company's~~

1 formation, each of the company's former names; and

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

4 ~~(d) Subject to Sections 112(c) and 205(c), an amendment to or restatement of a certificate~~
5 ~~of organization is effective when filed by the [Secretary of State].~~

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

10 (1) cause the certificate to be amended; or

11 (2) if appropriate, deliver to the [Secretary of State] for filing a statement of
12 change under Section 114 or a statement of correction under Section ~~206~~ 208.

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

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

17 (1) Except as otherwise provided in paragraphs (2) ~~through (4)~~ and (3), a record
18 signed on behalf of a limited liability company must be signed by a person authorized by the
19 company.

20 (2) A ~~limited liability~~ company's initial certificate of organization must be signed
21 by at least one person acting as an organizer.

22 ~~(3) A NOTICE UNDER SECTION 201(E)(1) MUST BE SIGNED BY AN ORGANIZER.~~

23 ~~(4)~~ A record ~~filed~~ delivered on behalf of a dissolved ~~limited liability~~ company that

1 has no ~~members~~ member must be signed by the person winding up the company's activities AND
2 AFFAIRS under Section 702(c) or a person appointed under Section 702(d) to wind up ~~those~~ the
3 activities AND AFFAIRS.

4 ~~(5) A statement of cancellation under Section 201(d)(2) must be signed by each~~
5 ~~organizer that signed the initial certificate of organization, but a personal representative of a~~
6 ~~deceased or incompetent organizer may sign in the place of the decedent or incompetent.~~

7 ~~(6) (4)~~ A statement of denial by a person under Section 303 must be signed by that
8 person.

9 ~~(7) (5)~~ Any other record ~~must be signed by the person on whose behalf the record~~
10 ~~is~~ delivered on behalf of a person to the [Secretary of State] for filing must be signed by that
11 person.

12 (b) Any record filed under this [act] may be signed by an agent. Whenever this [act]
13 requires a particular individual to sign a record and the individual is deceased or incompetent,
14 the record may be signed by a legal representative of the individual.

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

17 **SECTION 204. SIGNING AND FILING PURSUANT TO JUDICIAL ORDER.**

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

21 (1) the person to sign the record;

22 (2) the person to deliver the record to the [Secretary of State] for filing; or

23 (3) the [Secretary of State] to file the record unsigned.

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

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

5 **~~SECTION 205. DELIVERY TO AND FILING OF RECORDS BY [SECRETARY~~**
6 **~~OF STATE]; EFFECTIVE TIME AND DATE.~~**

7 ~~(a) A record authorized or required to be delivered to the [Secretary of State] for filing~~
8 ~~under this [act] must be captioned to describe the record's purpose, be in a medium permitted by~~
9 ~~the [Secretary of State], and be delivered to the [Secretary of State]. If the filing fees have been~~
10 ~~paid, unless the [Secretary of State] determines that a record does not comply with the filing~~
11 ~~requirements of this [act], the [Secretary of State] shall file the record and:~~

12 ~~(1) for a statement of denial under Section 303, send a copy of the filed statement~~
13 ~~and a receipt for the fees to the person on whose behalf the statement was delivered for filing~~
14 ~~and to the limited liability company; and~~

15 ~~(2) for all other records, send a copy of the filed record and a receipt for the fees~~
16 ~~to the person on whose behalf the record was filed.~~

17 ~~(b) Upon request and payment of the requisite fee, the [Secretary of State] shall send to~~
18 ~~the requester a certified copy of a requested record.~~

19 ~~(c) Except as otherwise provided in Sections 115 and 206 and except for a certificate of~~
20 ~~organization that contains a statement as provided in Section 201(b)(3), a record delivered to the~~
21 ~~[Secretary of State] for filing under this [act] may specify an effective time and a delayed~~
22 ~~effective date. Subject to Sections 115, 201(d)(1), and 206, a record filed by the [Secretary of~~
23 ~~State] is effective:~~

1 ~~(1) if the record does not specify either an effective time or a delayed effective~~
2 ~~date, on the date and at the time the record is filed as evidenced by the [Secretary of State's]~~
3 ~~endorsement of the date and time on the record;~~

4 ~~(2) if the record specifies an effective time but not a delayed effective date, on the~~
5 ~~date the record is filed at the time specified in the record;~~

6 ~~(3) if the record specifies a delayed effective date but not an effective time, at~~
7 ~~12:01 a.m. on the earlier of:~~
8 ~~s(A) the specified date; or~~

9 ~~(B) the 90th day after the record is filed; or~~

10 ~~(4) if the record specifies an effective time and a delayed effective date, at the~~
11 ~~specified time on the earlier of:~~

12 ~~(A) the specified date; or~~

13 ~~(B) the 90th day after the record is filed.~~

14 **SECTION 205. FILING REQUIREMENTS.**

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

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

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

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

23 (4) The record must be signed by a person authorized or required under this [act]

1 to sign the record.

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

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

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

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

14 **SECTION 206. EFFECTIVE TIME AND DATE.** Except as otherwise provided in
15 Section 207 and subject to Section 208(c), a record filed under this [act] is effective:

16 (1) on the date and at the time of its filing by the [Secretary of State], as provided in
17 Section 209;

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

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

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

1 **SECTION 207. WITHDRAWAL OF FILED RECORD BEFORE**
2 **EFFECTIVENESS.**

3 (a) Except as otherwise provided in [Article] 10, a record delivered to the [Secretary of
4 State] for filing may be withdrawn before it takes effect by delivering to the [Secretary of State]
5 for filing a statement of withdrawal.

6 (b) A statement of withdrawal must:

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

9 (2) identify the record to be withdrawn; and

10 (3) if signed by fewer than all the persons that signed the record being withdrawn,
11 state that the record is withdrawn in accordance with the agreement of all the persons that signed
12 the record.

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

15 **SECTION ~~206~~ 208. CORRECTING FILED RECORD.**

16 ~~(a) A limited liability company or foreign limited liability company may deliver to the~~
17 ~~[Secretary of State] for filing a statement of correction to correct a record previously delivered~~
18 ~~by the company to the [Secretary of State] and filed by the [Secretary of State], if at the time of~~
19 ~~filing the record contained inaccurate information or was defectively signed.~~

20 ~~(b) A statement of correction under subsection (a) may not state a delayed effective date~~
21 ~~and must:~~

22 ~~(1) describe the record to be corrected, including its filing date, or attach a copy of~~
23 ~~the record as filed;~~

~~(2) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and~~

~~(3) correct the defective signature or inaccurate information.~~

~~(c) When filed by the [Secretary of State], a statement of correction under subsection (a) is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:~~

~~(1) for the purposes of Section 103(d); and~~

~~(2) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.~~

(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.

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

5 **SECTION 209. DUTY OF [SECRETARY OF STATE] TO FILE; REVIEW OF**
6 **REFUSAL TO FILE; TRANSMISSION OF INFORMATION BY [SECRETARY OF**
7 **STATE].**

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

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

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

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

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

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

1 court may decide the matter in a summary proceeding.

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

4 (f) Except as otherwise provided by Section 118 or by law other than this [act], the
5 [Secretary of State] may deliver any record to a person by delivering it:

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

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

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

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

10 **SECTION ~~207~~ 210. LIABILITY FOR INACCURATE INFORMATION IN FILED**
11 **RECORD.**

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

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

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

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

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

23 (i) effected an amendment under Section 202;

1 (ii) filed a petition under Section 204; or

2 (iii) delivered to the [Secretary of State] for filing a statement of
3 change under Section ~~114~~ 115 or a statement of correction under Section ~~206~~ 208.

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

10 (c) An individual who signs a record authorized or required to be filed under this [act]
11 affirms under penalty of perjury that the information stated in the record is accurate.

12 **~~SECTION 208. CERTIFICATE OF EXISTENCE OR AUTHORIZATION.~~**

13 ~~(a) The [Secretary of State], upon request and payment of the requisite fee, shall furnish~~
14 ~~to any person a certificate of existence for a limited liability company if the records filed in the~~
15 ~~[office of the Secretary of State] show that the company has been formed under Section 201 and~~
16 ~~the [Secretary of State] has not filed a statement of termination pertaining to the company. A~~
17 ~~certificate of existence must state:~~

18 ~~(1) the company's name;~~

19 ~~(2) that the company was duly formed under the laws of this state and the date of~~
20 ~~formation;~~

21 ~~(3) whether all fees, taxes, and penalties due under this [act] or other law to the~~
22 ~~[Secretary of State] have been paid;~~

23 ~~(4) whether the company's most recent annual report required by Section 209 has~~

1 been filed by the [Secretary of State];

2 ~~(5) whether the [Secretary of State] has administratively dissolved the company;~~

3 ~~(6) whether the company has delivered to the [Secretary of State] for filing a~~
4 ~~statement of dissolution;~~

5 ~~(7) that a statement of termination has not been filed by the [Secretary of State];~~

6 and

7 ~~(8) other facts of record in the [office of the Secretary of State] which are~~
8 ~~specified by the person requesting the certificate.~~

9 (b) ~~The [Secretary of State], upon request and payment of the requisite fee, shall furnish~~
10 ~~to any person a certificate of authorization for a foreign limited liability company if the records~~
11 ~~filed in the [office of the Secretary of State] show that the [Secretary of State] has filed a~~
12 ~~certificate of authority, has not revoked the certificate of authority, and has not filed a notice of~~
13 ~~cancellation. A certificate of authorization must state:~~

14 ~~(1) the company's name and any alternate name adopted under Section 805(a) for~~
15 ~~use in this state;~~

16 ~~(2) that the company is authorized to transact business in this state;~~

17 ~~(3) whether all fees, taxes, and penalties due under this [act] or other law to the~~
18 ~~[Secretary of State] have been paid;~~

19 ~~(4) whether the company's most recent annual report required by Section 209 has~~
20 ~~been filed by the [Secretary of State];~~

21 ~~(5) that the [Secretary of State] has not revoked the company's certificate of~~
22 ~~authority and has not filed a notice of cancellation; and~~

23 ~~(6) other facts of record in the [office of the Secretary of State] which are~~

1 ~~specified by the person requesting the certificate.~~

2 ~~(c) Subject to any qualification stated in the certificate, a certificate of existence or~~
3 ~~certificate of authorization issued by the [Secretary of State] is conclusive evidence that the~~
4 ~~limited liability company is in existence or the foreign limited liability company is authorized to~~
5 ~~transact business in this state.~~

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

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

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

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

13 (2) IN THE CASE OF A LIMITED LIABILITY COMPANY:

14 (A) THAT A CERTIFICATE OF FORMATION HAS BEEN FILED AND HAS TAKEN
15 EFFECT;

16 (B) THE DATE THE CERTIFICATE BECAME EFFECTIVE;

17 (C) THE PERIOD OF THE COMPANY'S DURATION IF THE RECORDS OF THE
18 [SECRETARY OF STATE] REFLECT THAT ITS PERIOD OF DURATION IS LESS THAN PERPETUAL; AND

19 (D) THAT:

20 (I) A STATEMENT OF DISSOLUTION, STATEMENT OF ADMINISTRATIVE
21 DISSOLUTION, OR STATEMENT OF TERMINATION HAS NOT BEEN FILED;

22 (II) THE RECORDS OF THE [SECRETARY TO STATE] DO NOT
23 OTHERWISE REFLECT THAT THE COMPANY HAS BEEN DISSOLVED OR TERMINATED; AND

1 (III) A PROCEEDING IS NOT PENDING UNDER SECTION 707;

2 (3) IN THE CASE OF A REGISTERED FOREIGN LIMITED LIABILITY COMPANY, THAT IT IS
3 REGISTERED TO DO BUSINESS IN THIS STATE;

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

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

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

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

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

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

16 **SECTION ~~209~~ 212. ANNUAL [ANNUAL] [BIENNIAL] REPORT FOR**
17 **[SECRETARY OF STATE].**

18 (a) ~~Each year, a~~ A limited liability company or a registered foreign limited liability
19 company ~~authorized to transact business in this state~~ shall deliver to the [Secretary of State] for
20 filing a [an annual] [a biennial] report that states:

21 (1) the name of the company;

22 (2) ~~the street and mailing addresses of the company's designated office and the~~
23 name and street and mailing addresses of its registered agent ~~for service of process~~ in this state;

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

2 (4) IF THE COMPANY IS MEMBER MANAGED, THE NAME OF AT LEAST ONE MEMBER;

3 (5) IF THE COMPANY IS MANAGER MANAGED, THE NAME OF AT LEAST ONE

4 MANAGER; AND

5 ~~(4)(6)~~ in the case of a foreign ~~limited liability~~ company, ~~the state or other its~~
6 ~~jurisdiction under whose law the company is formed~~ of formation and any alternate name
7 adopted under Section ~~805(a)~~ 806(a).

8 (b) Information in ~~an annual report under this section~~ the [annual] [biennial] report must
9 be current as of the date the report is signed by the limited liability company or registered foreign
10 limited liability company delivered to the [Secretary of State] for filing.

11 (c) The first ~~annual report under this section~~ [annual] [biennial] report must be delivered
12 to the [Secretary of State] ~~between~~ after [January 1] and before [April 1] of the year following
13 the calendar year in which a ~~the~~ limited liability COMPANY WAS FORMED COMPANY'S
14 CERTIFICATE OF ORGANIZATION BECAME EFFECTIVE or a the registered foreign limited liability
15 company ~~was authorized to transact business~~ registered to do business in this state. ~~A report~~
16 Subsequent [annual][biennial] reports must be delivered to the [Secretary of State] ~~between~~ after
17 [January 1] and before [April 1] of each ~~subsequent~~ [second] calendar year thereafter.

18 (d) If ~~an annual~~ [an annual] [a biennial] report ~~under this section~~ does not contain the
19 information required ~~in by subsection (a)~~ this section, the [Secretary of State] promptly shall
20 ~~promptly~~ notify the reporting limited liability company or registered foreign limited liability
21 company in a record and return the report ~~to it~~ for correction. ~~If the report is corrected to contain~~
22 ~~the information required in subsection (a) and delivered to the [Secretary of State] within 30 days~~
23 ~~after the effective date of the notice, it is timely delivered.~~

(e) If ~~an annual~~ [an annual] [a biennial] report ~~under this section~~ contains an address of a designated office or the name or address of ~~an a registered~~ agent for service of process which differs from the information shown in the records of the [Secretary of State] immediately before the ~~annual~~ [annual] [biennial] report becomes effective, the differing information in the ~~annual~~ [annual] [biennial] report is considered a statement of change under Section ~~414~~ 115.

[ARTICLE] 3

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

SECTION 301. NO AGENCY POWER OF MEMBER AS MEMBER.

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

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

SECTION 302. STATEMENT OF AUTHORITY.

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

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

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

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

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

1 the company; and

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

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

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

7 (b) To amend or cancel a statement of authority filed by the [Secretary of State] under
8 Section 205(a), a limited liability company must deliver to the [Secretary of State] for filing an
9 amendment or cancellation stating:

10 (1) the name of the company;

11 (2) the street and mailing addresses of the company's ~~designated office~~ registered
12 agent;

13 (3) ~~the caption of the statement being amended or canceled and~~ the date the
14 statement being affected became effective; and

15 (4) the contents of the amendment or a declaration that the statement ~~being~~
16 ~~affected~~ 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 knowledge or notice of the limitation
22 by any person.

23 (e) Subject to subsection (c), a grant of authority not pertaining to transfers of real

1 property and contained in an effective statement of authority is conclusive in favor of a person
2 that gives value in reliance on the grant, except to the extent that when the person gives value:

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

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

5 or

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

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

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

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

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

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

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

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

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

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

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

18 (2) denies the grant of authority.

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

20 ~~(a) The debts, obligations, or other liabilities of a limited liability company, whether~~
21 ~~arising in contract, tort, or otherwise:~~

22 ~~(1) are solely the debts, obligations or other liabilities of the company; and~~

23 ~~(2) do not become the debts, obligations, or other liabilities of a member or~~

1 ~~manager solely by reason of the member acting as a member or manager acting as a manager~~

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

7 (b) The failure of a limited liability company to observe ~~ANY PARTICULAR~~ formalities
8 relating to the exercise of its powers or management of its activities AND AFFAIRS is not a ground
9 for imposing liability on ~~the members or managers for the debts, obligations, or other liabilities~~
10 ~~of the company~~ a member or manager of the company for a debt, obligation, or other liability of
11 the company.

12 [ARTICLE] 4

13 RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY

14 COMPANY

15 SECTION 401. BECOMING MEMBER.

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

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

1 ~~(C) IF A FILED CERTIFICATE OF ORGANIZATION CONTAINS THE STATEMENT REQUIRED BY~~
2 ~~SECTION 201(B)(3), A PERSON BECOMES AN INITIAL MEMBER OF THE LIMITED LIABILITY COMPANY~~
3 ~~WITH THE CONSENT OF A MAJORITY OF THE ORGANIZERS. THE ORGANIZERS MAY CONSENT TO~~
4 ~~MORE THAN ONE PERSON SIMULTANEOUSLY BECOMING THE COMPANY'S INITIAL MEMBERS.~~

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

6 (1) as provided in the operating agreement;

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

8 (3) with the consent of all the members; or

9 ~~(4) if, within 90 consecutive days after the company ceases to have any members:~~

10 ~~(A) the last person to have been a member, or the legal representative of~~
11 ~~that person, designates a person to become a member; and~~

12 ~~(B) the designated person consents to become a member.~~

13 ~~(4) as provided in Section 701(a)(3).~~

14 ~~(e)~~ (d) A person may become a member without:

15 (1) acquiring a transferable interest; ~~and without~~ or

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

18 **SECTION 402. FORM OF CONTRIBUTION.** A contribution may consist of
19 ~~tangible or intangible property or other benefit to a limited liability company, including money~~
20 ~~transferred, services performed, promissory notes, other agreements or other benefit provided to~~
21 ~~the limited liability company or an agreement to contribute money or transfer property, and~~
22 ~~contracts for perform services to be performed, or provide another benefit.~~

1 **SECTION 403. LIABILITY FOR CONTRIBUTIONS.**

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

4 **(b)** If a person does not FULFILL AN OBLIGATION TO make a ~~required~~ contribution, the
5 person ~~or the person's estate~~ is obligated at the option of the limited liability company to
6 contribute money equal to the value of the part of the contribution which has not been made, ~~at~~
7 ~~the option of the company~~.

8 **(b) (c)** The obligation of a person to make a contribution may be compromised only by
9 consent of all members. ~~A~~ If a creditor of a limited liability company ~~which~~ extends credit or
10 otherwise acts in reliance on an obligation described in subsection (a) without notice of a
11 compromise under this subsection, the creditor may enforce the obligation.

12 **SECTION 404. SHARING OF AND RIGHT TO DISTRIBUTIONS BEFORE**
13 **DISSOLUTION.**

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

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

21 (c) A person does not have a right to demand or receive a distribution from a limited
22 liability company in any form other than money. Except as otherwise provided in Section ~~708(e)~~
23 710, a limited liability company may distribute an asset in kind ONLY if each part of the asset is

1 fungible with each other part and each person receives a percentage of the asset equal in value to
2 the person's share of distributions.

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

8 **SECTION 405. LIMITATIONS ON ~~DISTRIBUTION~~ DISTRIBUTIONS.**

9 (a) A limited liability company may not make a distribution, INCLUDING A DISTRIBUTION
10 UNDER SECTION 710, if after the distribution:

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

13 (2) the company's total assets would be less than the sum of its total liabilities
14 plus, UNLESS THE OPERATING AGREEMENT PERMITS OTHERWISE, the amount that would be needed,
15 if the company were to be dissolved; AND wound up, ~~AND TERMINATED~~ at the time of the
16 distribution, to satisfy the preferential rights upon dissolution; AND winding up, ~~AND~~
17 ~~TERMINATION~~ of members AND TRANSFEREES whose preferential rights are superior to those of
18 persons receiving the distribution.

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

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

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

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

(1) in the case of a distribution ~~BY PURCHASE, REDEMPTION, OR OTHER ACQUISITION OF A TRANSFERABLE INTEREST IN THE COMPANY~~ AS DEFINED IN SECTION 102(4)(A), as of the EARLIER OF:

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

(B) THE DATE THE PERSON ENTITLED TO THE DISTRIBUTION CEASES TO OWN THE INTEREST OR RIGHT BEING ACQUIRED BY THE COMPANY IN RETURN FOR THE DISTRIBUTION;

(2) IN THE CASE OF ANY OTHER DISTRIBUTION OF INDEBTEDNESS, AS OF THE DATE THE INDEBTEDNESS IS DISTRIBUTED; AND

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

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

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

(d) A limited liability company's indebtedness to a member OR TRANSFEREE incurred by reason of a distribution made in accordance with this section is at parity with the company's indebtedness to its general, unsecured creditors, EXCEPT TO THE EXTENT SUBORDINATED BY AGREEMENT.

(e) A limited liability company's indebtedness, including indebtedness issued ~~IN~~ CONNECTION WITH OR AS PART OF AS a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest ~~are~~ is made only IF AND to the extent that PAYMENT OF a distribution could THEN be made ~~TO MEMBERS~~ under this

1 section. ~~(F)~~ If THE indebtedness is issued as a distribution, each payment of principal or interest
2 ~~ON THE INDEBTEDNESS~~ is treated as a distribution, the effect of which is measured on the date the
3 payment is made.

4 (F) IN MEASURING THE EFFECT OF A DISTRIBUTION UNDER SECTION 710, THE LIABILITIES OF
5 A DISSOLVED LIMITED LIABILITY COMPANY DO NOT INCLUDE ANY CLAIM THAT HAS BEEN DISPOSED
6 OF UNDER SECTION 704, 705, OR 706.

7 ~~(g) In subsection (a), “distribution” does not include amounts constituting reasonable~~
8 ~~compensation for present or past services or reasonable payments made in the ordinary course of~~
9 ~~business under a bona fide retirement plan or other benefits program.~~

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

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

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

22 (c) A person that receives a distribution knowing that the distribution ~~TO THAT PERSON~~
23 ~~WAS MADE IN VIOLATION OF~~ VIOLATED Section 405 is personally liable to the limited liability

1 company but only to the extent that the distribution received by the person exceeded the amount
2 that could have been properly paid under Section 405.

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

5 (1) implead any other person that is subject to liability under subsection (a) and
6 seek to ~~COMPEL~~ ENFORCE A RIGHT OF contribution from the person; and

7 (2) implead any person that received a distribution in violation of subsection (c)
8 and seek to ~~COMPEL~~ ENFORCE A RIGHT OF contribution from the person in the amount the person
9 received in violation of subsection (c).

10 (e) An action under this section is barred ~~IF NOT~~ UNLESS commenced ~~WITHIN~~ NOT LATER
11 THAN two years after the distribution.

12 **SECTION 407. MANAGEMENT OF LIMITED LIABILITY COMPANY.**

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

15 (1) expressly provides that:

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

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

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

19 (2) includes words of similar import.

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

21 (1) ~~The~~ Except as expressly provided in this [act], the management and conduct of
22 the company are vested in the members.

23 (2) Each member has equal rights in the management and conduct of the

1 company's activities AND AFFAIRS.

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

4 (4) An act outside the ordinary course of the activities AND AFFAIRS of the
5 company may be undertaken only with the consent of all members.

6 (5) The consent of all members is required to approve a transaction under
7 [Article] 10.

8 (6) The operating agreement may be amended only with the consent of all
9 members.

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

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

14 (2) Each manager has equal rights in the management and conduct of the
15 company's activities AND AFFAIRS ~~of the company.~~

16 ~~(3) A difference arising among managers as to a matter in the ordinary course of~~
17 ~~the activities of the company may be decided by a majority of the managers.~~

18 ~~(4)~~ (3) The consent of all members is required to:

19 (A) ~~sell, lease, exchange, or otherwise dispose of all, or substantially all,~~
20 ~~of the company's property, with or without the good will, outside the ordinary course of the~~
21 ~~company's activities;~~

22 ~~(B)~~ (A) approve a ~~merger, conversion, or domestication~~ transaction under
23 [Article] 10;

1 ~~(C)~~ (B) undertake any ~~other~~ act outside the ordinary course of the
2 company's activities AND AFFAIRS; ~~and~~ or

3 ~~(D)~~ (C) amend the operating agreement.

4 ~~(5)~~ (4) A manager may be chosen at any time by the consent of a majority of the
5 members and remains a manager until a successor has been chosen, unless the manager at an
6 earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual,
7 terminates. A manager may be removed at any time by the consent of a majority of the members
8 without notice or cause.

9 ~~(6)~~ (5) A person need not be a member to be a manager, but the dissociation of a
10 member that is also a manager removes the person as a manager. If a person that is both a
11 manager and a member ceases to be a manager, that cessation does not by itself dissociate the
12 person as a member.

13 ~~(7)~~ (6) A person's ceasing to be a manager does not discharge any debt,
14 obligation, or other liability to the limited liability company or members which the person
15 incurred while a manager.

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

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

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

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

4 ~~(f)~~ (h) ~~This [act] does not entitle a~~ A member is not entitled to remuneration for services
5 performed for a member-managed limited liability company, except for reasonable compensation
6 for services rendered in winding up the activities of the company.

7 **SECTION 408. REIMBURSEMENT, INDEMNIFICATION, ADVANCEMENT,**
8 **AND INSURANCE.**

9 (a) A limited liability company shall reimburse A MEMBER OF A MEMBER-MANAGED
10 COMPANY OR THE MANAGER OF A MANAGER-MANAGED COMPANY for any payment made ~~AND~~
11 ~~INDEMNIFY FOR ANY DEBT, OBLIGATION, OR OTHER LIABILITY INCURRED BY A~~ THE member ~~OF A~~
12 ~~MEMBER-MANAGED COMPANY OR THE manager OF A MANAGER-MANAGED COMPANY~~ in the course
13 of the member's or manager's activities on behalf of the company, if, ~~IN MAKING THE PAYMENT~~
14 ~~OR INCURRING THE DEBT, OBLIGATION, OR OTHER LIABILITY,~~ the member or manager complied
15 with ~~THE DUTIES STATED IN~~ Sections 405, 407, and 409 IN MAKING THE PAYMENT.

16 (B) A LIMITED LIABILITY COMPANY SHALL INDEMNIFY AND HOLD HARMLESS A PERSON
17 WITH RESPECT TO ANY CLAIM OR DEMAND AGAINST THE PERSON AND ANY DEBT, OBLIGATION, OR
18 OTHER LIABILITY INCURRED BY THE PERSON BY REASON OF THE PERSON'S FORMER OR PRESENT
19 CAPACITY AS A MEMBER OR MANAGER, IF THE CLAIM, DEMAND, DEBT, OBLIGATION, OR OTHER
20 LIABILITY DOES NOT ARISE FROM THE PERSON'S BREACH OF SECTION 405, 407, OR 409.

21 (C) IN THE ORDINARY COURSE OF ITS ACTIVITIES AND AFFAIRS, A LIMITED LIABILITY
22 COMPANY MAY ADVANCE REASONABLE EXPENSES, INCLUDING ATTORNEY'S FEES AND COSTS,
23 INCURRED BY A PERSON IN CONNECTION WITH A CLAIM OR DEMAND AGAINST THE PERSON BY

1 REASON OF THE PERSON’S FORMER OR PRESENT CAPACITY AS A MEMBER OR MANAGER, IF THE
2 PERSON PROMISES TO REPAY THE COMPANY IF THE PERSON ULTIMATELY IS DETERMINED NOT TO BE
3 ENTITLED TO BE INDEMNIFIED UNDER SUBSECTION (B).

4 ~~(b)~~ (d) A limited liability company may purchase and maintain insurance on behalf of a
5 member or manager of the company against liability asserted against or incurred by the member
6 or manager in that capacity or arising from that status even if, under ~~Section 110(g)~~ Section
7 111(c)(7), the operating agreement could not eliminate or limit the person’s liability to the
8 company for the conduct giving rise to the liability.

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

11 (a) A member of a member-managed limited liability company owes to the company and,
12 subject to Section 901(b), the other members the ~~FIDUCIARY~~ duties of loyalty and care stated in
13 subsections (b) and (c).

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

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

18 (A) in the conduct or winding up of the company’s activities AND AFFAIRS;

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

20 (C) from the appropriation of a ~~limited liability~~ company opportunity;

21 (2) to refrain from dealing with the company in the conduct or winding up of the
22 company’s activities AND AFFAIRS as or on behalf of a person having an interest adverse to the
23 company; and

1 (3) to refrain from competing with the company in the conduct of the company's
2 activities AND AFFAIRS before the dissolution of the company.

3 (c) ~~Subject to the business judgment rule, the~~ The duty of care of a member of a member-
4 managed limited liability company in the conduct ~~and or~~ or winding up of the company's activities
5 AND AFFAIRS is to ~~act with the care that a person in a like position would reasonably exercise~~
6 ~~under similar circumstances and in a manner the member reasonably believes to be in the best~~
7 ~~interests of the company. In discharging this duty, a member may rely in good faith upon~~
8 ~~opinions, reports, statements, or other information provided by another person that the member~~
9 ~~reasonably believes is a competent and reliable source for the information~~ refrain from engaging
10 in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

11 (d) A member ~~IN A MEMBER-MANAGED LIMITED LIABILITY COMPANY OR A MANAGER-~~
12 ~~MANAGED LIMITED LIABILITY COMPANY~~ shall discharge the duties and obligations under this [act]
13 or under the operating agreement and exercise any rights consistently with the contractual
14 obligation of good faith and fair dealing.

15 (e) ~~It is a defense to a claim under subsection (b)(2) and any comparable claim in equity~~
16 ~~or at common law that the transaction was fair to the limited liability company. A member does~~
17 not violate a duty or obligation under this [act] or under the operating agreement solely because
18 the member's conduct furthers the member's own interest.

19 (f) All ~~of~~ the members of a member-managed limited liability company or a manager-
20 managed limited liability company may authorize or ratify, after full disclosure of all material
21 facts, a specific act or transaction that otherwise would violate the duty of loyalty.

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

1 (H) IF, AS PERMITTED BY SUBSECTION (F) OR (I)(6) OR THE OPERATING AGREEMENT, A
2 MEMBER ENTERS INTO A TRANSACTION WITH THE LIMITED LIABILITY COMPANY WHICH OTHERWISE
3 WOULD BE PROHIBITED BY SUBSECTION (B)(2), THE MEMBER’S RIGHTS AND OBLIGATIONS ARISING
4 FROM THE TRANSACTION ARE THE SAME AS THOSE OF A PERSON THAT IS NOT A MEMBER.

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

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

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

10 (3) Subsection (d) applies to ~~THE MEMBERS AND~~ managers AND MEMBERS.

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

12 ~~(5) SUBSECTION (F) APPLIES~~ THE POWER TO RATIFY UNDER SUBSECTION (F) APPLIES
13 only to the members.

14 ~~(5)~~ ~~(6)~~ A SUBJECT TO SUBSECTION (D), A member does not have any ~~FIDUCIARY~~
15 duty to the company or to any other member solely by reason of being a member.

16 **SECTION 410. ~~RIGHT~~ RIGHTS OF MEMBERS, MANAGERS, MEMBER,**
17 **MANAGER, AND PERSON DISSOCIATED ~~MEMBERS TO INFORMATION AS~~**
18 **MEMBER TO INFORMATION.**

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

20 (1) On reasonable notice, a member may inspect and copy during regular business
21 hours, at a reasonable location specified by the company, any record maintained by the company
22 regarding the company’s activities, AFFAIRS, financial condition, and other circumstances, to the
23 extent the information is material to the member’s rights and duties under the operating

1 agreement or this [act].

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

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

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

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

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

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

16 (2) During regular business hours and at a reasonable location specified by the
17 company, a member may ~~obtain from the company and~~ inspect and copy full information
18 regarding the activities, AFFAIRS, financial condition, and other circumstances of the company as
19 is just and reasonable if:

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

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

1 information; and

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

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

5 (A) of the information that the company will provide in response to the
6 demand and when and where the company will provide the information; and

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

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

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

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

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

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

19 (b)(2). ~~The~~

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

22 (e) ~~(d)~~ (e) A limited liability company may charge a person that makes a demand under this
23 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 (g) (i) applies both to the agent or legal representative and the member or person dissociated as a member.

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

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

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

[ARTICLE] 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

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

SECTION 502. TRANSFER OF TRANSFERABLE INTEREST.

(a) A SUBJECT TO SECTION 503(F), A transfer, in whole or in part, of a transferable interest:

(1) is permissible;

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

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

4 (A) participate in the management or conduct of the company's activities
5 AND AFFAIRS; or

6 (B) except as otherwise provided in subsection (c), have access to records
7 or other information concerning the company's activities AND AFFAIRS.

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

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

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

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

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

20 (g) Except as otherwise provided in Section ~~602(4)(B)~~ 602(5)(B), ~~WHEN IF~~ a member
21 transfers a transferable interest, the transferor retains the rights of a member other than the
22 TRANSFERRABLE interest ~~IN DISTRIBUTIONS~~ transferred and retains all duties and obligations of a
23 member.

1 (h) ~~WHEN~~ IF a member transfers a transferable interest to a person that becomes a
2 member with respect to the transferred interest, the transferee is liable for the member's
3 obligations under Sections 403 and 406(c) known to the transferee when the transferee becomes
4 a member.

5 **SECTION 503. CHARGING ORDER.**

6 (a) On application by a judgment creditor of a member or transferee, a court may enter a
7 charging order against the transferable interest of the judgment debtor for the unsatisfied amount
8 of the judgment. ~~A~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F), A charging order
9 constitutes a lien on a judgment debtor's transferable interest and requires the limited liability
10 company to pay over to the person to which the charging order was issued any distribution that
11 ~~would~~ otherwise would be paid to the judgment debtor.

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

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

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

17 (c) Upon a showing that distributions under a charging order will not pay the judgment
18 debt within a reasonable time, the court may foreclose the lien and order the sale of the
19 transferable interest. ~~THE~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (F), THE purchaser at
20 the foreclosure sale only obtains the transferable interest, does not thereby become a member,
21 and is subject to Section 502.

22 (d) At any time before foreclosure under subsection (c), the member or transferee whose
23 transferable interest is subject to a charging order under subsection (a) may extinguish the

1 charging order by satisfying the judgment and filing a certified copy of the satisfaction with the
2 court that issued the charging order.

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

7 (f) IF A COURT ORDERS FORECLOSURE OF A CHARGING ORDER LIEN AGAINST THE SOLE
8 MEMBER OF A LIMITED LIABILITY COMPANY:

9 (1) THE COURT SHALL CONFIRM THE SALE;

10 (2) THE PURCHASER AT THE SALE OBTAINS THE MEMBER'S ENTIRE INTEREST, NOT
11 ONLY THE MEMBER'S TRANSFERABLE INTEREST;

12 (3) THE PURCHASER THEREBY BECOMES A MEMBER; AND

13 (4) THE PERSON WHOSE INTEREST WAS SUBJECT TO THE FORECLOSED CHARGING
14 ORDER IS DISSOCIATED AS A MEMBER.

15 (G) This [act] does not deprive any member or transferee of the benefit of any exemption
16 laws applicable to the ~~member's or transferee's~~ transferable interest of the member or transferee.

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

20 **SECTION 504. POWER OF ~~PERSONAL~~ LEGAL REPRESENTATIVE OF**
21 **DECEASED MEMBER.** If a member dies, the deceased member's ~~PERSONAL REPRESENTATIVE~~
22 ~~OR OTHER~~ legal representative may exercise:

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

(2) for the purposes of settling the estate, the rights ~~OF A CURRENT~~ THE DECEASED member
HAD under Section 410.

[ARTICLE] 6

MEMBER'S DISSOCIATION

SECTION 601. ~~MEMBER'S POWER TO DISSOCIATE~~ AS MEMBER; WRONGFUL DISSOCIATION.

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

(b) A person's dissociation ~~from a limited liability company~~ as a member is wrongful
only if the dissociation:

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

(2) occurs before the ~~TERMINATION~~ COMPLETION OF THE WINDING UP of the
company and:

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

(B) the person is expelled as a member by judicial order under Section
~~602(5)~~ 602(6);

(C) the person is dissociated under Section ~~602(7)(A) BY BECOMING A~~
~~DEBTOR IN BANKRUPTCY~~ 602(8); or

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

(c) A person that wrongfully dissociates as a member is liable to the limited liability
company and, subject to Section 901, to the other members for damages caused by the

dissociation. The liability is in addition to any ~~other~~ debt, obligation, or other liability of the member to the company or the other members.

SECTION 602. EVENTS CAUSING DISSOCIATION. A person is dissociated as a member ~~from a limited liability company~~ when:

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

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

(3) THE PERSON'S ENTIRE INTEREST IS TRANSFERRED IN A FORECLOSURE SALE UNDER SECTION 503(F);

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

~~(4)~~ (5) the person is expelled as a member by the unanimous consent of the other members if:

(A) it is unlawful to carry on the company's activities AND AFFAIRS with the person as a member;

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

(i) a transfer for security purposes; or

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

(C) the person is a corporation and, ~~WITHIN 90 DAYS AFTER;~~

(i) the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been

1 revoked, or its right to conduct business has been suspended by the jurisdiction of its
2 incorporation; AND

3 (II) NOT LATER THAN 90 DAYS AFTER THE NOTIFICATION the certificate of
4 dissolution OR THE EQUIVALENT has not been revoked or its charter or right to conduct business
5 has not been reinstated; or

6 (D) the person is ~~a limited liability company or partnership~~ an unincorporated
7 entity that has been dissolved and whose business is being wound up;

8 ~~(5)~~ (6) on application by the company, the person is expelled as a member by judicial
9 order because the person:

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

13 (B) has willfully or persistently committed, or is willfully and persistently
14 committing, a material breach of the operating agreement or ~~the person's duties or obligations~~ a
15 duty or obligation under Section 409; or

16 (C) has engaged ~~in~~; or is engaging; in conduct relating to the company's activities
17 AND AFFAIRS which makes it not reasonably practicable to carry on the activities AND AFFAIRS
18 with the person as a member;

19 ~~(6)~~ (7) in the case of ~~a person who is~~ an individual:

20 (A) the ~~person~~ individual dies; or

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

22 (i) a guardian or general conservator for the ~~person~~ individual is
23 appointed; or

1 (ii) ~~there is a judicial order~~ a court orders that the ~~person~~ individual has
2 otherwise become incapable of performing the ~~person's~~ individual's duties as a member under
3 this [act] or the operating agreement;

4 ~~(7)~~ (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 ~~of~~ the person's property;

9 ~~(8)~~ (9) in the case of a person that is a TESTAMENTARY OR INTER VIVOS trust or is acting as
10 a member by virtue of being a trustee of SUCH a trust, the trust's entire transferable interest in the
11 company is distributed;

12 ~~(9)~~ (10) in the case of a person that is an estate or is acting as a member by virtue of
13 being a personal representative of an estate, the estate's entire transferable interest in the
14 company is distributed;

15 ~~(10)~~ (11) in the case of a ~~MEMBER PERSON~~ that is not an individual, ~~PARTNERSHIP, LIMITED~~
16 ~~LIABILITY COMPANY~~, corporation, UNINCORPORATED ENTITY, trust, or estate, the ~~TERMINATION~~
17 EXISTENCE of the ~~MEMBER PERSON~~ TERMINATES;

18 ~~(11)~~ (12) the company participates in a merger under [Article] 10, ~~if~~ and:

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

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

21 ~~(12)~~ (13) the company participates in an interest exchange under [Article] 10 and, as a
22 result of the interest exchange, the person ceases to be a member;

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

1 (2) the consent of all the members;

2 (3) the passage of 90 consecutive days during which the company has no
3 members; unless:

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

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

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

11 (A) the conduct of all or substantially all ~~of~~ the company's activities AND
12 AFFAIRS is unlawful; or

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

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

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

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

22 (6) the signing and filing of a statement of administrative dissolution by the
23 [Secretary of State] under Section 707(c).

(b) In a proceeding brought under subsection (a)(5), the court may order a remedy other than dissolution.

SECTION 702. WINDING UP.

(a) A dissolved limited liability company shall wind up its activities AND AFFAIRS and, EXCEPT AS OTHERWISE PROVIDED IN SECTION 703, the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities AND AFFAIRS, a limited liability company:

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

(2) may:

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

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

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

(D) transfer the company's property;

(E) settle disputes by mediation or arbitration;

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

and

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

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

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

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

11 (2) shall promptly deliver to the [Secretary of State] for filing an amendment to
12 the company's certificate of organization ~~TO~~ STATING:

13 (A) ~~STATE~~ that the company has no members;

14 (B) ~~STATE~~ THE NAME AND STREET AND MAILING ADDRESSES OF THE
15 PERSON; AND

16 (C) that the person has been appointed pursuant to this subsection to wind
17 up the company; ~~AND~~

18 ~~(C) PROVIDE THE STREET AND MAILING ADDRESSES OF THE PERSON.~~

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

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

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

1 (A) the company does not have any members;

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

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

6 (3) in connection with a proceeding under Section 701(a)(4) or (5).

7 **SECTION 703. RESCINDING DISSOLUTION.**

8 (A) A LIMITED LIABILITY COMPANY MAY RESCIND ITS DISSOLUTION, UNLESS A STATEMENT
9 OF TERMINATION APPLICABLE TO THE COMPANY IS EFFECTIVE, [THE APPROPRIATE COURT] HAS
10 ENTERED AN ORDER UNDER SECTION 701(A)(4) OR (5) DISSOLVING THE COMPANY, OR THE
11 [SECRETARY OF STATE] HAS DISSOLVED THE COMPANY UNDER SECTION 707.

12 (B) RESCINDING DISSOLUTION UNDER THIS SECTION REQUIRES:

13 (1) THE CONSENT OF EACH MEMBER;

14 (2) IF A STATEMENT OF DISSOLUTION APPLICABLE TO THE LIMITED LIABILITY
15 COMPANY HAS BEEN FILED BY THE [SECRETARY OF STATE] BUT HAS NOT BECOME EFFECTIVE, THE
16 DELIVERY TO THE [SECRETARY OF STATE] FOR FILING OF A STATEMENT OF WITHDRAWAL UNDER
17 SECTION 207 APPLICABLE TO THE STATEMENT OF DISSOLUTION; AND

18 (3) IF A STATEMENT OF DISSOLUTION APPLICABLE TO THE LIMITED LIABILITY
19 COMPANY IS EFFECTIVE, THE DELIVERY TO THE [SECRETARY OF STATE] FOR FILING OF A
20 STATEMENT OF CORRECTION UNDER SECTION 208 STATING THAT DISSOLUTION HAS BEEN
21 RESCINDED UNDER THIS SECTION.

22 (C) IF A LIMITED LIABILITY COMPANY RESCINDS ITS DISSOLUTION:

23 (1) THE COMPANY RESUMES CARRYING ON ITS ACTIVITIES AND AFFAIRS AS IF

1 DISSOLUTION HAD NEVER OCCURRED;

2 (2) SUBJECT TO PARAGRAPH (3), ANY LIABILITY INCURRED BY THE COMPANY AFTER
3 THE DISSOLUTION AND BEFORE THE RESCISSION IS EFFECTIVE IS DETERMINED AS IF DISSOLUTION
4 HAD NEVER OCCURRED; AND

5 (3) THE RIGHTS OF A THIRD PARTY ARISING OUT OF CONDUCT IN RELIANCE ON THE
6 DISSOLUTION BEFORE THE THIRD PARTY KNEW OR HAD NOTICE OF THE RESCISSION MAY NOT BE
7 ADVERSELY AFFECTED.

8 **SECTION ~~703~~ 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED**
9 **LIABILITY COMPANY.**

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

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

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

16 (2) STATE THAT A CLAIM MUST BE IN WRITING AND provide a mailing address to
17 which the claim is to be sent;

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

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

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

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

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

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

6 (B) the claimant does not commence the required action ~~within the~~ not
7 later than 90 days after the complainant receives the notice.

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

10 **SECTION ~~704~~ 705. OTHER CLAIMS AGAINST DISSOLVED LIMITED**
11 **LIABILITY COMPANY.**

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

15 (b) ~~The~~ A notice ~~authorized by~~ under subsection (a) must:

16 (1) be published at least once in a newspaper of general circulation in the [county]
17 in this state in which the dissolved limited liability company's principal office is located or, if it
18 ~~has none~~ the principal office is not located in this state, in the [county] in which the ~~company's~~
19 ~~designated~~ office of the company's registered agent is or was last located;

20 (2) describe the information required to be contained in a claim, STATE THAT THE
21 CLAIM MUST BE IN WRITING, and provide a mailing address to which the claim is to be sent; and

22 (3) state that a claim against the company is barred unless an action to enforce the
23 claim is commenced ~~within five~~ NOT LATER THAN THREE years after publication of the notice.

1 (c) If a dissolved limited liability company publishes a notice in accordance with
2 subsection (b), the claim of each of the following claimants is barred unless the claimant
3 commences an action to enforce the claim against the company ~~within FIVE~~ NOT LATER THAN
4 THREE years after the publication date of the notice; ~~the claim of each of the following claimants~~
5 ~~is barred~~:

6 (1) a claimant that did not receive notice in a record under Section ~~703~~ 704;

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

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

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

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

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

19 **SECTION 706. COURT PROCEEDINGS.**

20 (A) A DISSOLVED LIMITED LIABILITY COMPANY THAT HAS PUBLISHED A NOTICE UNDER
21 SECTION 705 MAY FILE AN APPLICATION WITH [THE APPROPRIATE COURT] IN THE [COUNTY] WHERE
22 THE DISSOLVED COMPANY'S PRINCIPAL OFFICE IS LOCATED , OR, IF THE PRINCIPAL OFFICE IS NOT
23 LOCATED IN THIS STATE, WHERE THE OFFICE OF ITS REGISTERED AGENT IS LOCATED, FOR A

1 DETERMINATION OF THE AMOUNT AND FORM OF SECURITY TO BE PROVIDED FOR PAYMENT OF
2 CLAIMS THAT ARE CONTINGENT, HAVE NOT BEEN MADE KNOWN TO THE COMPANY, OR ARE BASED
3 ON AN EVENT OCCURRING AFTER THE EFFECTIVE DATE OF DISSOLUTION BUT WHICH, BASED ON THE
4 FACTS KNOWN TO THE DISSOLVED COMPANY, ARE REASONABLY EXPECTED TO ARISE AFTER THE
5 EFFECTIVE DATE OF DISSOLUTION. SECURITY IS NOT REQUIRED FOR ANY CLAIM THAT IS OR IS
6 REASONABLY ANTICIPATED TO BE BARRED UNDER SECTION 705(C).

7 (B) NOT LATER THAN 10 DAYS AFTER THE FILING OF AN APPLICATION UNDER SUBSECTION
8 (A), THE DISSOLVED LIMITED LIABILITY COMPANY SHALL GIVE NOTICE OF THE PROCEEDING TO
9 EACH CLAIMANT HOLDING A CONTINGENT CLAIM KNOWN TO THE COMPANY.

10 (C) IN ANY PROCEEDING UNDER THIS SECTION, THE COURT MAY APPOINT A GUARDIAN AD
11 LITEM TO REPRESENT ALL CLAIMANTS WHOSE IDENTITIES ARE UNKNOWN. THE REASONABLE FEES
12 AND EXPENSES OF THE GUARDIAN, INCLUDING ALL REASONABLE EXPERT WITNESS FEES, MUST BE
13 PAID BY THE DISSOLVED LIMITED LIABILITY COMPANY.

14 (D) A DISSOLVED LIMITED LIABILITY COMPANY THAT PROVIDES SECURITY IN THE AMOUNT
15 AND FORM ORDERED BY THE COURT UNDER SUBSECTION (A) SATISFIES THE COMPANY'S
16 OBLIGATIONS WITH RESPECT TO CLAIMS THAT ARE CONTINGENT, HAVE NOT BEEN MADE KNOWN TO
17 THE COMPANY, OR ARE BASED ON AN EVENT OCCURRING AFTER THE EFFECTIVE DATE OF
18 DISSOLUTION, AND SUCH CLAIMS MAY NOT BE ENFORCED AGAINST A MEMBER OR TRANSFEREE
19 THAT RECEIVED ASSETS IN LIQUIDATION.

20 **SECTION ~~705~~ 707. ADMINISTRATIVE DISSOLUTION.**

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

23 (1) pay, ~~within 60 days after the due date~~, any fee, tax, interest, or penalty ~~due~~

1 required to be paid to the [Secretary of State] ~~under this [act] or law other than this [act]~~ not later
2 than [six months] after it is due; or

3 (2) ~~deliver, within 60 days after the due date, its annual~~ [an annual] [a biennial]
4 report to the [Secretary of State] not later than [six months] after it is due; or

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

6 (b) If the [Secretary of State] determines that ~~a ground exists~~ one or more grounds exist
7 for administratively dissolving a limited liability company, the [Secretary of State] shall file a
8 record of the determination and serve the company with a copy of the filed with notice in a
9 record of the [Secretary of State's] determination.

10 (c) If ~~within 60~~ a limited liability company, not later than [60] days after service of the
11 copy pursuant to notice under subsection (b), ~~a limited liability company~~ does not correct cure
12 each ground for dissolution or demonstrate to the reasonable satisfaction of the [Secretary of
13 State] that each ground determined by the [Secretary of State] does not exist, the [Secretary of
14 State] shall administratively dissolve the company ~~administratively by preparing, signing, and~~
15 ~~filing a declaration~~ statement of administrative dissolution that ~~states~~ recites the grounds for
16 dissolution and the effective date of dissolution. The [Secretary of State] shall file the statement
17 and serve a copy on the company ~~with a copy of the filed declaration~~ pursuant to Section 209.

18 (d) A limited liability company that ~~has been~~ is administratively dissolved continues in
19 existence as an entity but, ~~subject to Section 706,~~ may not carry on ~~only~~ any activities except as
20 necessary to wind up its activities AND AFFAIRS and liquidate its assets under Sections 702, 704,
21 705, 706, and 708 710, ~~and to notify claimants under Sections 703 and 704~~ or to apply for
22 reinstatement under Section 708.

23 (e) The administrative dissolution of a limited liability company does not terminate the

1 authority of its ~~agent for service of process~~ registered agent.

2 **SECTION ~~706~~ 708. REINSTATEMENT ~~FOLLOWING ADMINISTRATIVE~~**
3 **~~DISSOLUTION~~.**

4 (a) A limited liability company that ~~has been~~ is administratively dissolved under Section
5 707 may apply to the [Secretary of State] for reinstatement ~~[within two years]~~ [not later than two
6 years after the effective date of ~~dissolution~~ dissolution]. The application must ~~be delivered to the~~
7 ~~[Secretary of State] for filing and~~ state:

8 (1) the name of the company at the time of its administrative dissolution and, if
9 needed, a different name that satisfies Section 108;

10 (2) the address of the principal office of the company and the name and address of
11 its registered agent;

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

13 (~~2~~) (4) that the grounds for dissolution did not exist or have been ~~eliminated~~
14 cured; and

15 (~~3~~) that the company's name satisfies the requirements of Section 108.

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

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

1 ~~(1) cancel the statement of administrative dissolution and prepare a statement the~~
2 ~~[Secretary of State] shall prepare a declaration of reinstatement that states this the [Secretary of~~
3 ~~State's] determination and the effective date of reinstatement, sign and;~~

4 ~~(2) file the original of the declaration of reinstatement, statement; and~~

5 ~~(3) serve a copy of the statement on the limited liability company with a copy.~~

6 ~~(e)~~ (d) When a reinstatement ~~becomes~~ under this section is effective, ~~it;~~

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

9 (2) The limited liability company may resume its activities and affairs as if the
10 administrative dissolution had not occurred.

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

13 **SECTION 707 709. APPEAL FROM REJECTION JUDICIAL REVIEW OF**
14 **DENIAL OF REINSTATEMENT.**

15 (a) If the [Secretary of State] ~~rejects~~ denies a limited liability company's application for
16 reinstatement following administrative dissolution, the [Secretary of State] shall ~~prepare, sign,~~
17 ~~and file~~ serve the company with a notice in a record that explains the ~~reason~~ reasons for ~~rejection~~
18 ~~and serve the company with a copy of the notice~~ the denial.

19 ~~(b) Within 30 days after service of a notice of rejection of reinstatement under subsection~~
20 ~~(a), a limited liability company may appeal from the rejection by petitioning the [appropriate~~
21 ~~court] to set aside the dissolution. The petition must be served on the [Secretary of State] and~~
22 ~~contain a copy of the [Secretary of State's] declaration of dissolution, the company's application~~
23 ~~for reinstatement, and the [Secretary of State's] notice of rejection.~~

1 ~~(e) (b)~~ The court may order the [Secretary of State] to reinstate a dissolved limited
2 liability company or take other action the court considers appropriate. A limited liability
3 company may seek judicial review of denial of reinstatement in the [appropriate court] not later
4 than [30] days after service of the notice of denial.

5 **SECTION ~~708~~ 710. ~~DISTRIBUTION~~ DISPOSITION OF ASSETS IN WINDING**
6 **UP LIMITED LIABILITY COMPANY'S ACTIVITIES.**

7 (a) In winding up its activities AND AFFAIRS, a limited liability company ~~must~~ shall apply
8 its assets to discharge its obligations to creditors, including members that are creditors.

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

11 (1) to each person owning a transferable interest that reflects contributions made
12 ~~BY A MEMBER~~ and not previously returned, an amount equal to the value of the unreturned
13 contributions; and

14 (2) in equal shares among members and dissociated members, except to the extent
15 necessary to comply with any transfer effective under Section 502.

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

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

20 **[ARTICLE] 8**

21 **FOREIGN LIMITED LIABILITY COMPANIES**

22 **SECTION 801. GOVERNING LAW.**

23 (a) The law of the ~~state or other jurisdiction under which~~ of formation of a foreign limited

1 liability company ~~is formed~~ governs:

2 (1) the internal affairs of the company; and

3 (2) the liability of a member as member and a manager as manager for ~~the debts,~~
4 ~~obligations or other liabilities~~ a debt, obligation, or liability of the company.

5 (b) A foreign limited liability company ~~may~~ is not be denied a certificate of authority by
6 ~~reason~~ precluded from registering to do business in this state because of any difference between
7 the law of the ~~under which the company is formed~~ jurisdiction of formation and the law of this
8 state.

9 (c) ~~A certificate of authority~~ Registration of a foreign limited liability company to do
10 business in this state does not authorize a ~~the~~ foreign limited liability company to engage in any
11 ~~business~~ activities or affairs or exercise any power that a ~~limited liability~~ domestic company may
12 not engage in or exercise in this state.

13 **~~SECTION 802. APPLICATION FOR CERTIFICATE OF AUTHORITY.~~**

14 (a) ~~A foreign limited liability company may apply for a certificate of authority to transact~~
15 ~~business in this state by delivering an application to the [Secretary of State] for filing. The~~
16 ~~application must state:~~

17 (1) ~~the name of the company and, if the name does not comply with Section 108,~~
18 ~~an alternate name adopted pursuant to Section 805(a);~~

19 (2) ~~the name of the state or other jurisdiction under whose law the company is~~
20 ~~formed;~~

21 (3) ~~the street and mailing addresses of the company's principal office and, if the~~
22 ~~law of the jurisdiction under which the company is formed requires the company to maintain an~~
23 ~~office in that jurisdiction, the street and mailing addresses of the required office; and~~

1 ~~(4) the name and street and mailing addresses of the company's initial agent for~~
2 ~~service of process in this state.~~

3 ~~(b) A foreign limited liability company shall deliver with a completed application under~~
4 ~~subsection (a) a certificate of existence or a record of similar import signed by the [Secretary of~~
5 ~~State] or other official having custody of the company's publicly filed records in the state or~~
6 ~~other jurisdiction under whose law the company is formed.~~

7 **SECTION 802. REGISTRATION TO DO BUSINESS IN THIS STATE.**

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

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

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

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

18 (e) Section 801(a) and (b) applies even if a foreign limited liability company fails to
19 register under this [article].

20 **SECTION 802 803. APPLICATION FOR CERTIFICATE OF AUTHORITY**
21 **FOREIGN REGISTRATION STATEMENT.** ~~(a) A foreign limited liability company may~~
22 ~~apply for a certificate of authority to transact~~ To register to do business in this state, a foreign
23 limited liability company must by delivering an application deliver a foreign registration

1 statement to the [Secretary of State] for filing. The ~~application~~ statement must state:

2 (1) the name of the company and, if the name does not comply with Section 108, an
3 alternate name adopted pursuant to Section ~~805~~ 806(a);

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

5 ~~(2) (3) the name of the state or other company's jurisdiction under whose law the~~
6 ~~company is formed~~ of formation;

7 ~~(3) (4) the street and mailing addresses of the company's principal office and, if the law~~
8 ~~of the jurisdiction under which the company is formed require~~ of formation requires the company
9 to maintain an office in that jurisdiction, the street and mailing addresses of the required office;
10 and

11 ~~(4) (5) the name and street and mailing addresses of the company's initial~~ registered
12 ~~agent for service of process~~ in this state.

13 ~~(b) A foreign limited liability company shall deliver with a completed application under~~
14 ~~subsection (a) a certificate of existence or a record of similar import signed by the [Secretary of~~
15 ~~State] or other official having custody of the company's publicly filed records in the state or~~
16 ~~other jurisdiction under whose law the company is formed.~~

17 **SECTION 804. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

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

20 (1) the name of the company;

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

22 (3) an address required by Section 803(4); or

23 (4) the information required by Section 803(5).

1 **SECTION ~~803~~ 805. ACTIVITIES NOT CONSTITUTING TRANSACTING**
2 **DOING BUSINESS.**

3 (a) Activities of a foreign limited liability company which do not constitute ~~transacting~~
4 doing business in this state ~~within the meaning of~~ under this [article] include:

5 (1) maintaining, defending, mediating, arbitrating, or settling an action or
6 proceeding;

7 (2) carrying on any activity concerning its internal affairs, including holding
8 meetings of its members or managers;

9 (3) maintaining accounts in financial institutions;

10 (4) maintaining offices or agencies for the transfer, exchange, and registration of
11 the ~~company's own~~ securities of the company or maintaining trustees or depositories with
12 respect to those securities;

13 (5) selling through independent contractors;

14 (6) soliciting or obtaining orders, ~~whether by mail or electronic means or through~~
15 ~~employees or agents or otherwise~~ by any means, if the orders require acceptance outside this
16 state before they become contracts;

17 (7) creating or acquiring indebtedness, mortgages, or security interests in ~~real or~~
18 ~~personal~~ property;

19 (8) securing or collecting debts or enforcing mortgages or ~~other~~ security interests
20 in property securing the debts and holding, protecting, or maintaining property ~~so acquired~~;

21 (9) conducting an isolated transaction that is ~~completed within 30 days and is not~~
22 in the course of similar transactions; ~~and~~

23 (10) owning, without more, property; and

1 (11) ~~transacting doing~~ business in interstate commerce.

2 (b) ~~For purposes of this [article], the ownership in this state of income producing real~~
3 ~~property or tangible personal property, other than property excluded under subsection (a),~~
4 ~~constitutes transacting business in this state. A person does not do business in this state solely by~~
5 ~~being a member or manager of a foreign limited liability company that does business in this~~
6 ~~state.~~

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

10 ~~**SECTION 804. FILING OF CERTIFICATE OF AUTHORITY.** Unless the~~
11 ~~[Secretary of State] determines that an application for a certificate of authority does not comply~~
12 ~~with the filing requirements of this [act], the [Secretary of State], upon payment of all filing fees,~~
13 ~~shall file the application of a foreign limited liability company, prepare, sign, and file a~~
14 ~~certificate of authority to transact business in this state, and send a copy of the filed certificate,~~
15 ~~together with a receipt for the fees, to the company or its representative.~~

16 **SECTION ~~805~~ 806. NONCOMPLYING NAME OF FOREIGN LIMITED**
17 **LIABILITY COMPANY.**

18 (a) A foreign limited liability company whose name does not comply with Section 108
19 may not ~~obtain a certificate of authority~~ register to do business in this state until it adopts, for the
20 purpose of ~~transacting doing~~ business in this state, an alternate name that complies with Section
21 108. A registered foreign limited liability company that ~~adopts~~ registers under an alternate name
22 under this subsection ~~and obtains a certificate of authority with the alternate name~~ need not
23 comply with ~~[this state's fictitious or assumed~~ or fictitious name statute]. After ~~obtaining a~~

~~certificate of authority~~ registering to do business in this state with an alternate name, a registered
foreign limited liability company shall ~~transact~~ 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) ~~unless an assumed or fictitious name~~ the company is authorized to use under
~~[fictitious or this state's assumed or fictitious name statute] to transact business in this state~~
~~under another name.~~

(b) If a registered foreign limited liability company ~~authorized to transact business in this~~
~~state~~ changes its name to one that does not comply with Section 108, it may not ~~thereafter~~
~~transact do~~ business in this state until it complies with subsection (a) ~~and obtains an amended~~
~~certificate of authority~~ by amending its registration to adopt an alternate name that complies with
Section 108.

SECTION 807. 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 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 808. 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 the public filing of a record, other than a limited liability partnership,

1 shall deliver a statement of withdrawal to the [Secretary of State] for filing. The statement must
2 state:

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

4 (A) its name and jurisdiction of formation;

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

6 and

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

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

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

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

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

17 (b) After a withdrawal under this section of a foreign entity that has converted to another
18 type of entity is effective, service of process in any action or proceeding based on a cause of
19 action arising during the time the foreign limited liability company was registered to do business
20 in this state may be made pursuant to Section 117.

21 **SECTION 809. TRANSFER OF REGISTRATION.**

22 (a) When a registered foreign limited liability company has merged into a foreign entity
23 that is not registered to do business in this state or has converted to a foreign entity required to

1 register with the [Secretary of State] to do business in this state, the foreign entity shall deliver to
2 the [Secretary of State] for filing an application for transfer of registration. The application must
3 state:

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

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

8 (3) the name of the applicant foreign entity into which the foreign limited liability
9 company has merged or to which it has been converted, and, if the name does not comply with
10 Section 108, an alternate name adopted pursuant to Section 806(a);

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

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

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

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

21 **SECTION 806 810. REVOCATION OF CERTIFICATE OF AUTHORITY**
22 **TERMINATION OF REGISTRATION.**

23 (a) ~~A certificate of authority~~ The [Secretary of State] may terminate the registration of a

1 ~~registered~~ foreign limited liability company ~~to transact business in this state may be revoked by~~
2 ~~the [Secretary of State]~~ in the manner provided in subsections (b) and (c) if the company does
3 not:

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

7 (2) deliver to the [Secretary of State] for filing, not later than ~~within 60~~ [60] days
8 after the due date, ~~its annual~~ [an annual] [a biennial] report required under Section ~~209~~ 212;

9 (3) ~~appoint and maintain an~~ have a registered agent ~~for service of process~~ as
10 required by Section ~~113(b)~~ 114; or

11 (4) deliver to the [Secretary of State] for filing a statement of a change under
12 Section ~~114~~ 115 ~~within~~ not later than 30 days after a change has occurred in the name or address
13 of the registered agent.

14 (b) ~~To revoke a certificate of authority of a foreign limited liability company, the~~ The
15 [Secretary of State] ~~must prepare, sign, and file a notice of revocation and send~~ may terminate
16 the registration of a registered foreign limited liability company by:

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

19 (2) delivering a copy of the notice or the information in the notation to the
20 company's registered agent ~~for service of process in this state~~, or if the company does not
21 ~~appoint and maintain a proper~~ have a registered agent ~~in this state~~, to the company's designated
22 principal office.

23 (c) The A notice or information in a notation under subsection (b) must state include:

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

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

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

SECTION ~~807~~ 811. CANCELLATION OF CERTIFICATE OF AUTHORITY
WITHDRAWAL OF REGISTRATION OF REGISTERED FOREIGN LIMITED
LIABILITY COMPANY. ~~To cancel its certificate of authority to transact business in this state,~~
~~a foreign limited liability company must deliver to the [Secretary of State] for filing a notice of~~
~~cancellation stating the name of the company and that the company desires to cancel its~~
~~certificate of authority. The certificate is canceled when the notice becomes effective.~~

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

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

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

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

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

1 (b) After the withdrawal of the registration of a foreign limited liability company, service
2 of process in any action or proceeding based on a cause of action arising during the time the
3 company was registered to do business in this state may be made pursuant to Section 117.

4 **~~SECTION 808. EFFECT OF FAILURE TO HAVE CERTIFICATE OF~~**
5 **~~AUTHORITY.~~**

6 ~~(a) A foreign limited liability company transacting business in this state may not maintain~~
7 ~~an action or proceeding in this state unless it has a certificate of authority to transact business in~~
8 ~~this state.~~

9 ~~(b) The failure of a foreign limited liability company to have a certificate of authority to~~
10 ~~transact business in this state does not impair the validity of a contract or act of the company or~~
11 ~~prevent the company from defending an action or proceeding in this state.~~

12 ~~(c) A member or manager of a foreign limited liability company is not liable for the~~
13 ~~debts, obligations, or other liabilities of the company solely because the company transacted~~
14 ~~business in this state without a certificate of authority.~~

15 ~~(d) If a foreign limited liability company transacts business in this state without a~~
16 ~~certificate of authority or cancels its certificate of authority, it appoints the [Secretary of State] as~~
17 ~~its agent for service of process for rights of action arising out of the transaction of business in~~
18 ~~this state.~~

19 **~~SECTION 809~~ 812. ACTION BY [ATTORNEY GENERAL].** The [Attorney
20 General] may maintain an action to enjoin a foreign limited liability company from ~~transacting~~
21 doing business in this state in violation of this [article].

1 [ARTICLE] 9

2 ACTIONS BY MEMBERS

3 SECTION 901. DIRECT ACTION BY MEMBER.

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

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

11 SECTION 902. DERIVATIVE ACTION. A member may maintain a derivative action
12 to enforce a right of a limited liability company if:

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

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

18 SECTION 903. PROPER PLAINTIFF.

19 ~~(a) Except as otherwise provided in subsection (b), a derivative action under Section 902~~
20 ~~may be maintained only by a person that is a member at the time the action is commenced and~~
21 ~~remains a member while the action continues.~~

22 ~~(b) If the sole plaintiff in a derivative action dies while the action is pending, the court~~
23 ~~may permit another member of the limited liability company to be substituted as plaintiff.~~

1 A derivative action to enforce a right of a limited liability company may be maintained only by a
2 person that is a member at the time the action is commenced and:

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

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

7 **SECTION 904. PLEADING.** In a derivative action ~~under Section 902~~, the complaint
8 must state with particularity:

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

11 ~~(2) if a demand has not been made, the reasons a demand under Section 902(1) would be~~
12 ~~futile~~ why the demand should be excused as futile.

13 **SECTION 905. SPECIAL LITIGATION COMMITTEE.**

14 (a) If a limited liability company is named as or made a party in a derivative proceeding,
15 the company may appoint a special litigation committee to investigate the claims asserted in the
16 proceeding and determine whether pursuing the action is in the best interests of the company. If
17 the company appoints a special litigation committee, on motion by the committee made in the
18 name of the company, except for good cause shown, the court shall stay discovery for the time
19 reasonably necessary to permit the committee to make its investigation. This subsection does not
20 prevent the court from enforcing a person's right to information under Section 410 or, for good
21 cause shown, granting extraordinary relief in the form of a temporary restraining order or
22 preliminary injunction.

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

1 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 in the proceeding; and

6 (B) if all members are named as defendants or plaintiffs in the proceeding,
7 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 plaintiffs in
10 the proceeding; and

11 (B) if all managers are named as defendants or plaintiffs in the proceeding,
12 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, ~~GIVING NOTICE TO THE PLAINTIFF~~ AND SHALL SERVE EACH PARTY WITH A COPY OF
22 THE DETERMINATION AND REPORT. The court shall determine whether the members of the
23 committee were disinterested and independent and whether the committee conducted its

1 investigation and made its recommendation in good faith, independently, and with reasonable
2 care, with the committee having the burden of proof. If the court finds that the members of the
3 committee were disinterested and independent and that the committee acted in good faith,
4 independently, and with reasonable care, the court shall enforce the determination of the
5 committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection (a)
6 and allow the action to proceed under the direction of the plaintiff.

7 **SECTION 906. PROCEEDS AND EXPENSES.**

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

9 (1) any proceeds or other benefits of a derivative action ~~under Section 902~~,
10 whether by judgment, compromise, or settlement, belong to the limited liability company and not
11 to the plaintiff; and

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

14 (b) If a derivative action ~~under Section 902~~ is successful in whole or in part, the court
15 may award the plaintiff reasonable expenses, including reasonable attorney's fees and costs,
16 from the recovery of the limited liability company.

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

19 **[ARTICLE] 10**

20 **MERGER, CONVERSION, INTEREST EXCHANGE, AND DOMESTICATION**

21 ~~**SECTION 1001. DEFINITIONS.** In this [article]:~~

22 ~~(1) "Constituent limited liability company" means a constituent organization that is a~~
23 ~~limited liability company.~~

1 ~~(2) “Constituent organization” means an organization that is party to a merger.~~

2 ~~(3) “Converted organization” means the organization into which a converting~~
3 ~~organization converts pursuant to Sections 1006 through 1009.~~

4 ~~(4) “Converting limited liability company” means a converting organization that is a~~
5 ~~limited liability company.~~

6 ~~(5) “Converting organization” means an organization that converts into another~~
7 ~~organization pursuant to Section 1006.~~

8 ~~(6) “Domesticated company” means the a company that exists after a domesticating~~
9 ~~foreign limited liability company or limited liability company effects a domestication pursuant to~~
10 ~~Sections 1010 through 1013.~~

11 ~~(7) “Domesticating company” means the company that effects a domestication pursuant~~
12 ~~to Sections 1010 through 1013.~~

13 ~~(8) “Governing statute” means the statute that governs an organization’s internal affairs.~~

14 ~~(9) “Organization” means a general partnership, including a limited liability partnership,~~
15 ~~limited partnership, including a limited liability limited partnership, limited liability company,~~
16 ~~businessecompany, corporation, or any other person having a governing statute. The term~~
17 ~~includes a domestic or foreign organization regardless of whether organized for profit.~~

18 ~~(10) “Organizational documents” means:~~

19 ~~(A) for a domestic or foreign general partnership, its partnership agreement;~~

20 ~~(B) for a limited partnership or foreign limited partnership, its certificate of~~
21 ~~limited partnership and partnership agreement;~~

22 ~~(C) for a domestic or foreign limited liability company, its certificate or articles of~~
23 ~~organization and operating agreement, or comparable records as provided in its governing~~

1 statute;

2 (D) for a business company, its agreement of company and declaration of company;

3 (E) for a domestic or foreign corporation for profit, its articles of incorporation,
4 bylaws, and other agreements among its shareholders which are authorized by its governing
5 statute, or comparable records as provided in its governing statute; and

6 (F) for any other organization, the basic records that create the organization and
7 determine its internal governance and the relations among the persons that own it, have an
8 interest in it, or are members of it.

9 (11) "Personal liability" means liability for a debt, obligation, or other liability of an
10 organization which is imposed on a person that co-owns, has an interest in, or is a member of the
11 organization:

12 (A) by the governing statute solely by reason of the person co-owning, having an
13 interest in, or being a member of the organization; or

14 (B) by the organization's organizational documents under a provision of the
15 governing statute authorizing those documents to make one or more specified persons liable for
16 all or specified debts, obligations, or other liabilities of the organization solely by reason of the
17 person or persons co-owning, having an interest in, or being a member of the organization.

18 (12) "Surviving organization" means an organization into which one or more other
19 organizations are merged whether the organization preexisted the merger or was created by the
20 merger.

21 **SECTION 1002. MERGER.**

22 (a) A limited liability company may merge with one or more other constituent
23 organizations pursuant to this section, Sections 1003 through 1005, and a plan of merger, if:

1 ~~(1) the governing statute of each of the other organizations authorizes the merger;~~

2 ~~(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the~~
3 ~~governing statutes; and~~

4 ~~(3) each of the other organizations complies with its governing statute in effecting~~
5 ~~the merger.~~

6 ~~(b) A plan of merger must be in a record and must include:~~

7 ~~(1) the name and form of each constituent organization;~~

8 ~~(2) the name and form of the surviving organization and, if the surviving~~
9 ~~organization is to be created by the merger, a statement to that effect;~~

10 ~~(3) the terms and conditions of the merger, including the manner and basis for~~
11 ~~converting the interests in each constituent organization into any combination of money, interests~~
12 ~~in the surviving organization, and other consideration;~~

13 ~~(4) if the surviving organization is to be created by the merger, the surviving~~
14 ~~organization's organizational documents that are proposed to be in a record; and~~

15 ~~(5) if the surviving organization is not to be created by the merger, any~~
16 ~~amendments to be made by the merger to the surviving organization's organizational documents~~
17 ~~that are, or are proposed to be, in a record.~~

18 ~~**SECTION 1003. ACTION ON PLAN OF MERGER BY CONSTITUENT**~~
19 ~~**LIMITED LIABILITY COMPANY.**~~

20 ~~(a) Subject to Section 1014, a plan of merger must be consented to by all the members of~~
21 ~~a constituent limited liability company.~~

22 ~~(b) Subject to Section 1014 and any contractual rights, after a merger is approved, and at~~
23 ~~any time before articles of merger are delivered to the [Secretary of State] for filing under~~

1 ~~Section 1004, a constituent limited liability company may amend the plan or abandon the~~
2 ~~merger:~~

3 ~~(1) as provided in the plan; or~~

4 ~~(2) except as otherwise prohibited in the plan, with the same consent as was~~
5 ~~required to approve the plan.~~

6 **~~SECTION 1004. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.~~**

7 ~~(a) After each constituent organization has approved a merger, articles of merger must be~~
8 ~~signed on behalf of:~~

9 ~~(1) each constituent limited liability company, as provided in Section 203(a); and~~

10 ~~(2) each other constituent organization, as provided in its governing statute.~~

11 ~~(b) Articles of merger under this section must include:~~

12 ~~(1) the name and form of each constituent organization and the jurisdiction of its~~
13 ~~governing statute;~~

14 ~~(2) the name and form of the surviving organization, the jurisdiction of its~~
15 ~~governing statute, and, if the surviving organization is created by the merger, a statement to that~~
16 ~~effect;~~

17 ~~(3) the date the merger is effective under the governing statute of the surviving~~
18 ~~organization;~~

19 ~~(4) if the surviving organization is to be created by the merger:~~

20 ~~(A) if it will be a limited liability company, the company's certificate of~~
21 ~~organization; or~~

22 ~~(B) if it will be an organization other than a limited liability company, the~~
23 ~~organizational document that creates the organization that is in a public record;~~

1 ~~(5) if the surviving organization preexists the merger, any amendments provided~~
2 ~~for in the plan of merger for the organizational document that created the organization that are in~~
3 ~~a public record;~~

4 ~~(6) a statement as to each constituent organization that the merger was approved~~
5 ~~as required by the organization's governing statute;~~

6 ~~(7) if the surviving organization is a foreign organization not authorized to~~
7 ~~transact business in this state, the street and mailing addresses of an office that the [Secretary of~~
8 ~~State] may use for the purposes of Section 1005(b); and~~

9 ~~(8) any additional information required by the governing statute of any constituent~~
10 ~~organization.~~

11 ~~(e) Each constituent limited liability company shall deliver the articles of merger for~~
12 ~~filing in the [office of the Secretary of State].~~

13 ~~(d) A merger becomes effective under this [article]:~~

14 ~~(1) if the surviving organization is a limited liability company, upon the later of:~~

15 ~~(A) compliance with subsection (c); or~~

16 ~~(B) subject to Section 205(c), as specified in the articles of merger; or~~

17 ~~(2) if the surviving organization is not a limited liability company, as provided by~~
18 ~~the governing statute of the surviving organization.~~

19 ~~**SECTION 1005. EFFECT OF MERGER.**~~

20 ~~(a) When a merger becomes effective:~~

21 ~~(1) the surviving organization continues or comes into existence;~~

22 ~~(2) each constituent organization that merges into the surviving organization~~
23 ~~ceases to exist as a separate entity;~~

1 ~~(3) all property owned by each constituent organization that ceases to exist vests~~
2 ~~in the surviving organization;~~

3 ~~(4) all debts, obligations, or other liabilities of each constituent organization that~~
4 ~~ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;~~

5 ~~(5) an action or proceeding pending by or against any constituent organization~~
6 ~~that ceases to exist may be continued as if the merger had not occurred;~~

7 ~~(6) except as prohibited by other law, all of the rights, privileges, immunities,~~
8 ~~powers, and purposes of each constituent organization that ceases to exist vest in the surviving~~
9 ~~organization;~~

10 ~~(7) except as otherwise provided in the plan of merger, the terms and conditions~~
11 ~~of the plan of merger take effect; and~~

12 ~~(8) except as otherwise agreed, if a constituent limited liability company ceases to~~
13 ~~exist, the merger does not dissolve the limited liability company for the purposes of [Article] 7;~~

14 ~~(9) if the surviving organization is created by the merger:~~

15 ~~(A) if it is a limited liability company, the certificate of organization~~
16 ~~becomes effective; or~~

17 ~~(B) if it is an organization other than a limited liability company, the~~
18 ~~organizational document that creates the organization becomes effective; and~~

19 ~~(10) if the surviving organization preexisted the merger, any amendments~~
20 ~~provided for in the articles of merger for the organizational document that created the~~
21 ~~organization become effective.~~

22 ~~(b) A surviving organization that is a foreign organization consents to the jurisdiction of~~
23 ~~the courts of this state to enforce any debt, obligation, or other liability owed by a constituent~~

1 organization, if before the merger the constituent organization was subject to suit in this state on
2 the debt, obligation, or other liability. A surviving organization that is a foreign organization and
3 not authorized to transact business in this state appoints the [Secretary of State] as its agent for
4 service of process for the purposes of enforcing a debt, obligation, or other liability under this
5 subsection. Service on the [Secretary of State] under this subsection must be made in the same
6 manner and has the same consequences as in Section 116(c) and (d).

7 **~~SECTION 1006. CONVERSION.~~**

8 (a) ~~An organization other than a limited liability company or a foreign limited liability~~
9 ~~company may convert to a limited liability company, and a limited liability company may~~
10 ~~convert to an organization other than a foreign limited liability company pursuant to this section,~~
11 ~~Sections 1007 through 1009, and a plan of conversion, if:~~

12 (1) ~~the other organization's governing statute authorizes the conversion;~~

13 (2) ~~the conversion is not prohibited by the law of the jurisdiction that enacted the~~
14 ~~other organization's governing statute; and~~

15 (3) ~~the other organization complies with its governing statute in effecting the~~
16 ~~conversion.~~

17 (b) ~~A plan of conversion must be in a record and must include:~~

18 (1) ~~the name and form of the organization before conversion;~~

19 (2) ~~the name and form of the organization after conversion;~~

20 (3) ~~the terms and conditions of the conversion, including the manner and basis for~~
21 ~~converting interests in the converting organization into any combination of money, interests in~~
22 ~~the converted organization, and other consideration; and~~

23 (4) ~~the organizational documents of the converted organization that are, or are~~

1 proposed to be, in a record.

2 **~~SECTION 1007. ACTION ON PLAN OF CONVERSION BY CONVERTING~~**
3 **~~LIMITED LIABILITY COMPANY.~~**

4 (a) ~~Subject to Section 1014, a plan of conversion must be consented to by all the~~
5 ~~members of a converting limited liability company.~~

6 (b) ~~Subject to Section 1014 and any contractual rights, after a conversion is approved,~~
7 ~~and at any time before articles of conversion are delivered to the [Secretary of State] for filing~~
8 ~~under Section 1008, a converting limited liability company may amend the plan or abandon the~~
9 ~~conversion:~~

10 (1) ~~as provided in the plan; or~~

11 (2) ~~except as otherwise prohibited in the plan, by the same consent as was~~
12 ~~required to approve the plan.~~

13 **~~SECTION 1008. FILINGS REQUIRED FOR CONVERSION; EFFECTIVE~~**
14 **~~DATE.~~**

15 (a) ~~After a plan of conversion is approved:~~

16 (1) ~~a converting limited liability company shall deliver to the [Secretary of State]~~
17 ~~for filing articles of conversion, which must be signed as provided in Section 203(a) and must~~
18 ~~include;~~

19 (A) ~~a statement that the limited liability company has been converted into~~
20 ~~another organization;~~

21 (B) ~~the name and form of the organization and the jurisdiction of its~~
22 ~~governing statute;~~

23 (C) ~~the date the conversion is effective under the governing statute of the~~

1 ~~converted organization;~~

2 ~~(D) a statement that the conversion was approved as required by this [act];~~

3 ~~(E) a statement that the conversion was approved as required by the~~
4 ~~governing statute of the converted organization; and~~

5 ~~(F) if the converted organization is a foreign organization not authorized~~
6 ~~to transact business in this state, the street and mailing addresses of an office which the~~
7 ~~[Secretary of State] may use for the purposes of Section 1009(c); and~~

8 ~~(2) if the converting organization is not a converting limited liability company,~~
9 ~~the converting organization shall deliver to the [Secretary of State] for filing a certificate of~~
10 ~~organization, which must include, in addition to the information required by Section 201(b):~~

11 ~~(A) a statement that the converted organization was converted from~~
12 ~~another organization;~~

13 ~~(B) the name and form of that converting organization and the jurisdiction~~
14 ~~of its governing statute; and~~

15 ~~(C) a statement that the conversion was approved in a manner that~~
16 ~~complied with the converting organization's governing statute.~~

17 ~~(b) A conversion becomes effective:~~

18 ~~(1) if the converted organization is a limited liability company, when the~~
19 ~~certificate of organization takes effect; and~~

20 ~~(2) if the converted organization is not a limited liability company, as provided by~~
21 ~~the governing statute of the converted organization.~~

22 **~~SECTION 1009. EFFECT OF CONVERSION.~~**

23 ~~(a) An organization that has been converted pursuant to this [article] is for all purposes~~

1 ~~the same entity that existed before the conversion.~~

2 ~~(b) When a conversion takes effect:~~

3 ~~(1) all property owned by the converting organization remains vested in the~~
4 ~~converted organization;~~

5 ~~(2) all debts, obligations, or other liabilities of the converting organization~~
6 ~~continue as debts, obligations, or other liabilities of the converted organization;~~

7 ~~(3) an action or proceeding pending by or against the converting organization may~~
8 ~~be continued as if the conversion had not occurred;~~

9 ~~(4) except as prohibited by law other than this [act], all of the rights, privileges,~~
10 ~~immunities, powers, and purposes of the converting organization remain vested in the converted~~
11 ~~organization;~~

12 ~~(5) except as otherwise provided in the plan of conversion, the terms and~~
13 ~~conditions of the plan of conversion take effect; and~~

14 ~~(6) except as otherwise agreed, the conversion does not dissolve a converting~~
15 ~~limited liability company for the purposes of [Article] 7.~~

16 ~~(c) A converted organization that is a foreign organization consents to the jurisdiction of~~
17 ~~the courts of this state to enforce any debt, obligation, or other liability for which the converting~~
18 ~~limited liability company is liable if, before the conversion, the converting limited liability~~
19 ~~company was subject to suit in this state on the debt, obligation, or other liability. A converted~~
20 ~~organization that is a foreign organization and not authorized to transact business in this state~~
21 ~~appoints the [Secretary of State] as its agent for service of process for purposes of enforcing a~~
22 ~~debt, obligation, or other liability under this subsection. Service on the [Secretary of State] under~~
23 ~~this subsection must be made in the same manner and has the same consequences as in Section~~

1 ~~116(c) and (d).~~

2 **~~SECTION 1010. DOMESTICATION.~~**

3 ~~(a) A foreign limited liability company may become a limited liability company pursuant~~
4 ~~to this section, Sections 1011 through 1013, and a plan of domestication, if:~~

5 ~~(1) the foreign limited liability company's governing statute authorizes the~~
6 ~~domestication;~~

7 ~~(2) the domestication is not prohibited by the law of the jurisdiction that enacted~~
8 ~~the governing statute; and~~

9 ~~(3) the foreign limited liability company complies with its governing statute in~~
10 ~~effecting the domestication.~~

11 ~~(b) A limited liability company may become a foreign limited liability company pursuant~~
12 ~~to this section, Sections 1011 through 1013, and a plan of domestication, if:~~

13 ~~(1) the foreign limited liability company's governing statute authorizes the~~
14 ~~domestication;~~

15 ~~(2) the domestication is not prohibited by the law of the jurisdiction that enacted~~
16 ~~the governing statute; and~~

17 ~~(3) the foreign limited liability company complies with its governing statute in~~
18 ~~effecting the domestication.~~

19 ~~(c) A plan of domestication must be in a record and must include:~~

20 ~~(1) the name of the domesticating company before domestication and the~~
21 ~~jurisdiction of its governing statute;~~

22 ~~(2) the name of the domesticated company after domestication and the jurisdiction~~
23 ~~of its governing statute;~~

1 ~~(3) the terms and conditions of the domestication, including the manner and basis~~
2 ~~for converting interests in the domesticating company into any combination of money, interests~~
3 ~~in the domesticated company, and other consideration; and~~

4 ~~(4) the organizational documents of the domesticated company that are, or are~~
5 ~~proposed to be, in a record.~~

6 ~~**SECTION 1011. ACTION ON PLAN OF DOMESTICATION BY**~~
7 ~~**DOMESTICATING LIMITED LIABILITY COMPANY.**~~

8 ~~(a) A plan of domestication must be consented to:~~

9 ~~(1) by all the members, subject to Section 1014, if the domesticating company is a~~
10 ~~limited liability company; and~~

11 ~~(2) as provided in the domesticating company's governing statute, if the company~~
12 ~~is a foreign limited liability company.~~

13 ~~(b) Subject to any contractual rights, after a domestication is approved, and at any time~~
14 ~~before articles of domestication are delivered to the [Secretary of State] for filing under Section~~
15 ~~1012, a domesticating limited liability company may amend the plan or abandon the~~
16 ~~domestication:~~

17 ~~(1) as provided in the plan; or~~

18 ~~(2) except as otherwise prohibited in the plan, by the same consent as was~~
19 ~~required to approve the plan.~~

20 ~~**SECTION 1012. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE**~~
21 ~~**DATE.**~~

22 ~~(a) After a plan of domestication is approved, a domesticating company shall deliver to~~
23 ~~the [Secretary of State] for filing articles of domestication, which must include:~~

1 ~~(1) a statement, as the case may be, that the company has been domesticated from~~
2 ~~or into another jurisdiction;~~

3 ~~(2) the name of the domesticating company and the jurisdiction of its governing~~
4 ~~statute;~~

5 ~~(3) the name of the domesticated company and the jurisdiction of its governing~~
6 ~~statute;~~

7 ~~(4) the date the domestication is effective under the governing statute of the~~
8 ~~domesticated company;~~

9 ~~(5) if the domesticating company was a limited liability company, a statement that~~
10 ~~the domestication was approved as required by this [act];~~

11 ~~(6) if the domesticating company was a foreign limited liability company, a~~
12 ~~statement that the domestication was approved as required by the governing statute of the other~~
13 ~~jurisdiction; and~~

14 ~~(7) if the domesticated company was a foreign limited liability company not~~
15 ~~authorized to transact business in this state, the street and mailing addresses of an office that the~~
16 ~~[Secretary of State] may use for the purposes of Section 1013(b).~~

17 ~~(b) A domestication becomes effective:~~

18 ~~(1) when the certificate of organization takes effect, if the domesticated company~~
19 ~~is a limited liability company; and~~

20 ~~(2) according to the governing statute of the domesticated company, if the~~
21 ~~domesticated organization is a foreign limited liability company.~~

22 ~~**SECTION 1013. EFFECT OF DOMESTICATION.**~~

23 ~~(a) When a domestication takes effect:~~

1 ~~(1) the domesticated company is for all purposes the company that existed before~~
2 ~~the domestication;~~

3 ~~(2) all property owned by the domesticating company remains vested in the~~
4 ~~domesticated company;~~

5 ~~(3) all debts, obligations, or other liabilities of the domesticating company~~
6 ~~continue as debts, obligations, or other liabilities of the domesticated company;~~

7 ~~(4) an action or proceeding pending by or against a domesticating company may~~
8 ~~be continued as if the domestication had not occurred;~~

9 ~~(5) except as prohibited by other law, all of the rights, privileges, immunities,~~
10 ~~powers, and purposes of the domesticating company remain vested in the domesticated~~
11 ~~company;~~

12 ~~(6) except as otherwise provided in the plan of domestication, the terms and~~
13 ~~conditions of the plan of domestication take effect; and~~

14 ~~(7) except as otherwise agreed, the domestication does not dissolve a~~
15 ~~domesticating limited liability company for the purposes of [Article] 7.~~

16 ~~(b) A domesticated company that is a foreign limited liability company consents to the~~
17 ~~jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by~~
18 ~~the domesticating company, if, before the domestication, the domesticating company was subject~~
19 ~~to suit in this state on the debt, obligation, or other liability. A domesticated company that is a~~
20 ~~foreign limited liability company and not authorized to transact business in this state appoints the~~
21 ~~[Secretary of State] as its agent for service of process for purposes of enforcing a debt,~~
22 ~~obligation, or other liability under this subsection. Service on the [Secretary of State] under this~~
23 ~~subsection must be made in the same manner and has the same consequences as in Section~~

1 ~~116(c) and (d).~~

2 ~~(c) If a limited liability company has adopted and approved a plan of domestication under~~
3 ~~Section 1010 providing for the company to be domesticated in a foreign jurisdiction, a statement~~
4 ~~surrendering the company's certificate of organization must be delivered to the [Secretary of~~
5 ~~State] for filing setting forth:~~

6 ~~(1) the name of the company;~~

7 ~~(2) a statement that the certificate of organization is being surrendered in~~
8 ~~connection with the domestication of the company in a foreign jurisdiction;~~

9 ~~(3) a statement the domestication was approved as required by this [act]; and~~

10 ~~(4) the jurisdiction of formation of the domesticated foreign limited liability~~
11 ~~company.~~

12 ~~**SECTION 1014. RESTRICTIONS ON APPROVAL OF MERGERS,**~~
13 ~~**CONVERSIONS, AND DOMESTICATIONS.**~~

14 ~~(a) If a member of a constituent, converting, or domesticating limited liability company~~
15 ~~will have personal liability with respect to a surviving, converted, or domesticated organization,~~
16 ~~approval or amendment of a plan of merger, conversion, or domestication are ineffective without~~
17 ~~the consent of the member, unless:~~

18 ~~(1) the company's operating agreement provides for approval of a merger,~~
19 ~~conversion, or domestication with the consent of fewer than all the members; and~~

20 ~~(2) the member has consented to the provision of the operating agreement.~~

21 ~~(b) A member does not give the consent required by subsection (a) merely by consenting~~
22 ~~to a provision of the operating agreement that permits the operating agreement to be amended~~
23 ~~with the consent of fewer than all the members.~~

~~**SECTION 1015. [ARTICLE] NOT EXCLUSIVE.** This [article] does not preclude an entity from being merged, converted, or domesticated under law other than this [act].~~

[PART] 1

GENERAL PROVISIONS

SECTION 1001. DEFINITIONS. In this [article]:

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

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

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

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

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

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

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

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

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

liability company that approves a domestication pursuant to the law of its jurisdiction of formation.

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

(11) “Entity”:

(A) means:

(i) a business corporation;

(ii) a nonprofit corporation;

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

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

(v) a limited liability company;

[(vi) a general cooperative association;]

(vii) a limited cooperative association;

(viii) an unincorporated nonprofit association;

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

(x) any other person that has:

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

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

(B) does not include:

(i) an individual;

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

1 (iii) an association or relationship that is not a partnership solely by reason
2 of [Section 202(c) of the Revised Uniform Partnership Act] [Section 7 of the Uniform
3 Partnership Act] or a similar provision of the law of another jurisdiction;

4 (iv) a decedent’s estate; [or]

5 (v) a government or a governmental subdivision, agency, or
6 instrumentality[; or]

7 [(vi) a person excluded under Section 1009].

8 (12) “Filing entity” means an entity whose formation requires the filing of a public
9 organic record.

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

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

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

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

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

18 (15) “Governor” means:

19 (A) a director of a business corporation;

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

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

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

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

1 (F) a member of a member-managed limited liability company;
2 [(G) a director of a general cooperative association;]
3 (H) a director of a limited cooperative association;
4 (I) a manager of an unincorporated nonprofit association;
5 (J) a trustee of a statutory trust, business trust, or common-law business trust; or
6 (K) any other person by or under whose authority the powers of an entity are
7 exercised and under whose direction the activities and affairs of the entity are managed pursuant
8 to the organic law and organic rules of the entity.

9 (16) “Interest” means:

10 (A) a share in a business corporation;
11 (B) a membership in a nonprofit corporation;
12 (C) a partnership interest in a general partnership;
13 (D) a partnership interest in a limited partnership;
14 (E) a membership interest in a limited liability company;
15 [(F) a share in a general cooperative association;]
16 (G) a member’s interest in a limited cooperative association;
17 (H) a membership in an unincorporated nonprofit association;
18 (I) a beneficial interest in a statutory trust, business trust, or common-law business
19 trust; or
20 (J) a governance interest or distributional interest in any other type of
21 unincorporated entity.

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

23 (18) “Interest holder” means:

1 (A) a shareholder of a business corporation;

2 (B) a member of a nonprofit corporation;

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

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

5 (E) a limited partner of a limited partnership;

6 (F) a member of a limited liability company;

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

8 (H) a member of a limited cooperative association;

9 (I) a member of an unincorporated nonprofit association;

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

11 common-law business trust; or

12 (K) any other direct holder of an interest.

13 (19) “Interest holder liability” means:

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

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

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

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

18 or specified liabilities of the entity; or

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

20 contribute to the entity.

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

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

23 before the merger becomes effective.

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

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

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

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

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

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

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

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

14 (A) the bylaws of a business corporation;

15 (B) the bylaws of a nonprofit corporation;

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

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

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

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

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

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

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

1 (30) “Protected agreement” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (37) “Surviving entity” means the entity that continues in existence after or is created by
2 a merger.

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

4 (A) recognized at common law; or

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

8 **SECTION 1002. RELATIONSHIP OF [ARTICLE] TO OTHER LAWS.** This
9 [article] does not authorize an act prohibited by, and does not affect the application or
10 requirements of, law other than this [article].

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

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

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

22 **SECTION 1004. STATUS OF FILINGS.** A filing under this [article] signed by a
23 domestic entity becomes part of the public organic record of the entity if the entity’s organic law

1 provides that similar filings under that law become part of the public organic record of the entity.

2 **SECTION 1005. NONEXCLUSIVITY.** The fact that a transaction under this [article]
3 produces a certain result does not preclude the same result from being accomplished in any other
4 manner permitted by law other than this [article].

5 **SECTION 1006. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts
6 ascertainable outside the plan if the manner in which the facts will operate upon the plan is
7 specified in the plan. The facts may include the occurrence of an event or a determination or
8 action by a person, whether or not the event, determination, or action is within the control of a
9 party to the transaction.

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

14 **SECTION 1008. APPRAISAL RIGHTS.**

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

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

21 (2) the organic rules provide such a limit.

22 (b) An interest holder of a domestic merging, acquired, converting, or domesticating
23 entity is entitled to contractual appraisal rights in connection with a transaction under this

1 [article] to the extent provided in:

2 (1) the entity's organic rules; or

3 (2) the plan.

4 **[SECTION 1009. EXCLUDED ENTITIES AND TRANSACTIONS.]**

5 (a) The following entities may not participate in a transaction under this [article]:

6 (1)

7 (2).

8 (b) This [article] may not be used to effect a transaction that:

9 (1)

10 (2).]

11 **[PART] 2**

12 **MERGER**

13 **SECTION 1021. MERGER AUTHORIZED.**

14 (a) By complying with this [part]:

15 (1) one or more domestic limited liability companies may merge with one or more
16 domestic or foreign entities into a domestic or foreign surviving entity; and

17 (2) two or more foreign entities may merge into a domestic limited liability
18 company.

19 (b) By complying with the provisions of this [part] applicable to foreign entities, a
20 foreign entity may be a party to a merger under this [part] or may be the surviving entity in such
21 a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.

22 **SECTION 1022. PLAN OF MERGER.**

23 (a) A domestic limited liability company may become a party to a merger under this [part]

1 by approving a plan of merger. The plan must be in a record and contain:

2 (1) as to each merging entity, its name, jurisdiction of formation, and type of
3 entity;

4 (2) if the surviving entity is to be created in the merger, a statement to that effect
5 and the entity's name, jurisdiction of formation, and type of entity;

6 (3) the manner of converting the interests in each party to the merger into
7 interests, securities, obligations, money, other property, rights to acquire interests or securities, or
8 any combination of the foregoing;

9 (4) if the surviving entity exists before the merger, any proposed amendments to
10 its public organic record, if any, or to its private organic rules that are, or are proposed to be, in a
11 record;

12 (5) if the surviving entity is to be created in the merger, its proposed public
13 organic record, if any, and the full text of its private organic rules that are proposed to be in a
14 record;

15 (6) the other terms and conditions of the merger; and

16 (7) any other provision required by the law of a merging entity's jurisdiction of
17 formation or the organic rules of a merging entity.

18 (b) In addition to the requirements of subsection (a), a plan of merger may contain any
19 other provision not prohibited by law.

20 **SECTION 1023. APPROVAL OF MERGER.**

21 (a) A plan of merger is not effective unless it has been approved:

22 (1) by a domestic merging limited liability company, by all the members of the
23 company entitled to vote on or consent to any matter; and

1 (2) in a record, by each member of a domestic merging limited liability company
2 that will have interest holder liability for debts, obligations and other liabilities that arise after the
3 merger becomes effective, unless:

4 (A) the operating agreement of the company in a record provides for the
5 approval of a merger in which some or all of its members become subject to interest holder
6 liability by the vote or consent of fewer than all the members; and

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

9 (B) A MERGER INVOLVING A DOMESTIC MERGING ENTITY THAT IS NOT A LIMITED LIABILITY
10 COMPANY IS NOT EFFECTIVE UNLESS THE MERGER IS APPROVED BY THAT ENTITY IN ACCORDANCE
11 WITH ITS ORGANIC LAW.

12 (c) A merger involving a foreign merging entity is not effective unless the merger is
13 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
14 formation.

15 **SECTION 1024. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.**

16 (a) A plan of merger may be amended only with the consent of each party to the plan,
17 except as otherwise provided in the plan.

18 (b) A domestic merging limited liability company may approve an amendment of a plan
19 of merger:

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

22 (2) by the managers or members in the manner provided in the plan, but a member
23 that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent

1 to any amendment of the plan that will change:

2 (A) the amount or kind of interests, securities, obligations, money, other
3 property, rights to acquire interests or securities, or any combination of the foregoing, to be
4 received by the interest holders of any party to the plan;

5 (B) the public organic record, if any, or private organic rules of the
6 surviving entity that will be in effect immediately after the merger becomes effective, except for
7 changes that do not require approval of the interest holders of the surviving entity under its
8 organic law or organic rules; or

9 (C) any other terms or conditions of the plan, if the change would
10 adversely affect the member in any material respect.

11 (c) After a plan of merger has been approved and before a statement of merger becomes
12 effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a
13 domestic merging limited liability company may abandon the plan in the same manner as the
14 plan was approved.

15 (d) If a plan of merger is abandoned after a statement of merger has been delivered to the
16 [Secretary of State] for filing and before the statement becomes effective, a statement of
17 abandonment, signed by a party to the plan, must be delivered to the [Secretary of State] for
18 filing before the statement of merger becomes effective. The statement of abandonment takes
19 effect upon filing, and the merger is abandoned and does not become effective. The statement of
20 abandonment must contain:

21 (1) the name of each party to the plan of merger;

22 (2) the date on which the statement of merger was delivered to the [Secretary of
23 State] for filing; and

1 (3) a statement that the merger has been abandoned in accordance with this
2 section.

3 **SECTION 1025. STATEMENT OF MERGER.**

4 (a) A statement of merger must be signed by each merging entity and delivered to the
5 [Secretary of State] for filing.

6 (b) A statement of merger must contain:

7 (1) the name, jurisdiction of formation, and type of entity of each merging entity
8 that is not the surviving entity;

9 (2) the name, jurisdiction of formation, and type of entity of the surviving entity;

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

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

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

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

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

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

1 (d) If the surviving entity is a domestic entity, its public organic record, if any, must
2 satisfy the requirements of the law of this state, but the public organic record does not need to be
3 signed.

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

9 **SECTION 1026. EFFECT OF MERGER.**

10 (a) When a merger becomes effective:

11 (1) the surviving entity continues or comes into existence;

12 (2) each merging entity that is not the surviving entity ceases to exist;

13 (3) all property of each merging entity vests in the surviving entity without
14 transfer, reversion, or impairment;

15 (4) all debts, obligations, and other liabilities of each merging entity are debts,
16 obligations, and other liabilities of the surviving entity;

17 (5) except as otherwise provided by law or the plan of merger, all the rights,
18 privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;

19 (6) if the surviving entity exists before the merger:

20 (A) all its property continues to be vested in it without transfer, reversion,
21 or impairment;

22 (B) it remains subject to all its debts, obligations, and other liabilities; and

23 (C) all its rights, privileges, immunities, powers, and purposes continue to

1 be vested in it;

2 (7) the name of the surviving entity may be substituted for the name of any
3 merging entity that is a party to any pending action or proceeding;

4 (8) if the surviving entity exists before the merger:

5 (A) its public organic record, if any, is amended as provided in the
6 statement of merger; and

7 (B) its private organic rules that are to be in a record, if any, are amended
8 to the extent provided in the plan of merger;

9 (9) if the surviving entity is created by the merger:

10 (A) its public organic record, if any, is effective; and

11 (B) its private organic rules are effective; and

12 (10) the interests in each merging entity which are to be converted in the merger
13 are converted, and the interest holders of those interests are entitled only to the rights provided to
14 them under the plan of merger and to any appraisal rights they have under Section 1008 and the
15 merging entity's organic law.

16 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
17 the merger does not give rise to any rights that an interest holder, governor, or third party would
18 otherwise have upon a dissolution, liquidation, or winding up of the merging entity.

19 (c) When a merger becomes effective, a person that did not have interest holder liability
20 with respect to any of the merging entities and that becomes subject to interest holder liability
21 with respect to a domestic entity as a result of a merger has interest holder liability only to the
22 extent provided by the organic law of that entity and only for those debts, obligations, and other
23 liabilities that arise after the merger becomes effective.

1 (d) When a merger becomes effective, the interest holder liability of a person that ceases
2 to hold an interest in a domestic merging entity with respect to which the person had interest
3 holder liability is as follows:

4 (1) The merger does not discharge any interest holder liability under the organic
5 law of the domestic merging entity to the extent the interest holder liability arose before the
6 merger became effective.

7 (2) The person does not have interest holder liability under the organic law of the
8 domestic merging entity for any liability that arises after the merger becomes effective.

9 (3) The organic law of the domestic merging entity continues to apply to the
10 release, collection, or discharge of any interest holder liability preserved under paragraph (1) as
11 if the merger had not occurred and the surviving entity were the domestic merging entity.

12 (4) The person has whatever rights of contribution from any other person as are
13 provided by law other than this [act], this [act], or the organic rules of the domestic merging
14 entity with respect to any interest holder liability preserved under paragraph (1) as if the merger
15 had not occurred.

16 (e) When a merger becomes effective, a foreign entity that is the surviving entity may be
17 served with process in this state for the collection and enforcement of any debts, obligations or
18 other liabilities of a domestic merging entity as provided in Section 118.

19 (f) When a merger becomes effective, the registration to do business in this state of any
20 foreign merging entity that is not the surviving entity is canceled.

21 **[PART] 3**

22 **INTEREST EXCHANGE**

23 **SECTION 1031. INTEREST EXCHANGE AUTHORIZED.**

1 (a) By complying with this [part]:

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

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

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

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

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

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

22 (1) the name of the acquired entity;

23 (2) the name, jurisdiction of formation, and type of entity of the acquiring entity;

1 (3) the manner of converting the interests in the acquired entity into interests,
2 securities, obligations, money, other property, rights to acquire interests or securities, or any
3 combination of the foregoing;

4 (4) any proposed amendments to the certificate of organization or operating
5 agreement that are, or are proposed to be, in a record of the acquired entity;

6 (5) the other terms and conditions of the interest exchange; and

7 (6) any other provision required by the law of this state or the operating
8 agreement of the acquired entity.

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

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

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

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

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

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

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

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

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

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

9 **SECTION 1034. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST**
10 **EXCHANGE.**

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

13 **(b) A domestic acquired limited liability company may approve an amendment of a plan**
14 **of interest exchange:**

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

17 **(2) by the managers or members of the company in the manner provided in the**
18 **plan, but an interest holder that was entitled to vote on or consent to approval of the interest**
19 **exchange is entitled to vote on or consent to any amendment of the plan that will change:**

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

23 **(B) the certificate of organization or operating agreement of the acquired**

company that will be in effect immediately after the interest exchange becomes effective, except for changes that do not require approval of the members of the acquired company under this [act] or the operating agreement; or

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

(c) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner as the plan was approved.

(d) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the [Secretary of State] for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect upon 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 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.

(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.

1 (b) A statement of interest exchange must contain:

2 (1) the name of the acquired limited liability company;

3 (2) the name, jurisdiction of formation, and type of the acquiring entity;

4 (3) a statement that the plan of interest exchange was approved by the acquired
5 limited liability entity in accordance with this [part]; and

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

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

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

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

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

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

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

1 (3) the certificate of organization of the acquired company is amended as
2 provided in the statement of interest exchange; and

3 (4) the provisions of the operating agreement of the acquired company that are to
4 be in a record, if any, are amended to the extent provided in the plan of interest exchange.

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

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

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

18 (1) The interest exchange does not discharge any interest holder liability to the
19 extent the interest holder liability arose before the interest exchange became effective.

20 (2) The person does not have interest holder liability for any liability that arises
21 after the interest exchange becomes effective.

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

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

3 **[PART] 4**

4 **CONVERSION**

5 **SECTION 1041. CONVERSION AUTHORIZED.**

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

7 (1) a domestic entity of a different type; or

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

10 (b) By complying with the provisions of this [part] applicable to foreign entities, a
11 foreign entity that is not a foreign limited liability company may become a domestic limited
12 liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of
13 formation.

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

18 **SECTION 1042. PLAN OF CONVERSION.**

19 (a) A domestic limited liability company may convert to a different type of entity under
20 this [part] by approving a plan of conversion. The plan must be in a record and contain:

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

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

23 (3) the manner of converting the interests in the converting limited liability

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

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

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

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

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

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

SECTION 1043. APPROVAL OF CONVERSION.

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

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

(2) in a record, by member of a domestic converting limited liability company that will have interest holder liability for debts, obligations and other liabilities that arise after the conversion becomes effective;

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

(B) the member voted for or consented in a record to that provision of the

1 operating agreement or became a member after the adoption of that provision.

2 (b) A conversion involving a domestic converting entity that is not a limited liability
3 company is not effective unless it is approved by the domestic converting entity in accordance
4 with its organic law.

5 (c) A conversion of a foreign converting entity is not effective unless it is approved by
6 the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

7 **SECTION 1044. AMENDMENT OR ABANDONMENT OF PLAN OF**
8 **CONVERSION.**

9 (a) A plan of conversion of a domestic converting limited liability company may be
10 amended:

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

13 (2) by the managers or members of the entity in the manner provided in the plan,
14 but a member that was entitled to vote on or consent to approval of the conversion is entitled to
15 vote on or consent to any amendment of the plan that will change:

16 (A) the amount or kind of interests, securities, obligations, money, other
17 property, rights to acquire interests or securities, or any combination of the foregoing, to be
18 received by any of the interest holders of the converting entity under the plan;

19 (B) the public organic record or private organic rules of the converted
20 entity that will be in effect immediately after the conversion becomes effective, except for
21 changes that do not require approval of the interest holders of the converted entity under its
22 organic law or organic rules; or

23 (C) any other terms or conditions of the plan, if the change would

1 adversely affect the interest holder in any material respect.

2 (b) After a plan of conversion has been approved by a domestic converting limited
3 liability company and before a statement of conversion becomes effective, the plan may be
4 abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited
5 liability company may abandon the plan in the same manner as the plan was approved.

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

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

13 (2) the date on which the statement of conversion was delivered to the [Secretary
14 of State] for filing; and

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

17 **SECTION 1045. STATEMENT OF CONVERSION.**

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

20 (b) A statement of conversion must contain:

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

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

23 (3) if the converting entity is a domestic entity, a statement that the plan of

1 conversion was approved in accordance with this [part] or, if the converting entity is a foreign
2 entity, a statement that the conversion was approved by the foreign converting entity in
3 accordance with the law of its jurisdiction of formation;

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

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

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

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

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

15 (e) A plan of conversion that is signed by a domestic converting entity and meets all the
16 requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a
17 statement of conversion and upon filing has the same effect. If a plan of conversion is filed as
18 provided in this subsection, references in this [article] to a statement of conversion refer to the
19 plan of conversion filed under this subsection.

20 **SECTION 1046. EFFECT OF CONVERSION.**

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

23 (1) the converted entity is:

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

2 (B) the same entity without interruption as the converting entity;

3 (2) all property of the converting entity continues to be vested in the converted
4 entity without transfer, reversion, or impairment;

5 (3) all debts, obligations, and other liabilities of the converting entity continue as
6 debts, obligations, and other liabilities of the converted entity;

7 (4) except as otherwise provided by law or the plan of conversion, all the rights,
8 privileges, immunities, powers, and purposes of the converting entity remain in the converted
9 entity;

10 (5) the name of the converted entity may be substituted for the name of the
11 converting entity in any pending action or proceeding;

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

14 (7) the interests in the converting entity are converted, and the interest holders of
15 the converting entity are entitled only to the rights provided to them under the plan of conversion
16 and to any appraisal rights they have under Section 1008 and the converting entity's organic law.

17 (b) Except as otherwise provided in the operating agreement of a domestic converting
18 limited liability company, the conversion does not give rise to any rights that a member,
19 manager, or third party would otherwise have upon a dissolution, liquidation, or winding up of
20 the converting entity.

21 (c) When a conversion becomes effective, a person that did not have interest holder
22 liability with respect to the converting entity and that becomes subject to interest holder liability
23 with respect to a domestic entity as a result of a conversion has interest holder liability only to

1 the extent provided by the organic law of the entity and only for those debts, obligations, and
2 liabilities that arise after the conversion becomes effective.

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

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

8 (2) the person does not have interest holder liability for any liability that arises
9 after the conversion becomes effective; and

10 (3) the person has whatever rights of contribution from any other person as are
11 provided by law other than this [act], this [act], or the operating agreement of the converting
12 entity with respect to any interest holder liability preserved under paragraph (1) as if the
13 conversion had not occurred.

14 (e) When a conversion becomes effective, a foreign entity that is the converted entity
15 may be served with process in this state for the collection and enforcement of any of its debts,
16 obligations, and liabilities as provided in Section 118.

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

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

21 **[PART] 5**

22 **DOMESTICATION**

1 **SECTION 1051. DOMESTICATION AUTHORIZED.**

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

5 (b) By complying with the provisions of this [part] applicable to foreign limited liability
6 companies, a foreign limited liability company may become a domestic limited liability company
7 if the domestication is authorized by the law of the foreign limited liability company's
8 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 a domestication, the provision applies to a
11 domestication of the limited liability company as if the domestication were a merger until the
12 provision is amended after [the effective date of this [act]].

13 **SECTION 1052. PLAN OF DOMESTICATION.**

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

17 (1) the name of the domesticating limited liability company;

18 (2) the name and jurisdiction of formation of the domesticated limited liability
19 company;

20 (3) the manner of converting the interests in the domesticating limited liability
21 company into interests, securities, obligations, money, other property, rights to acquire interests
22 or securities, or any combination of the foregoing;

23 (4) the proposed certificate of organization of the domesticated limited liability

1 company;

2 (5) the full text of the provisions of the operating agreement of the domesticated
3 limited liability company that are proposed to be in a record;

4 (6) the other terms and conditions of the domestication; and

5 (7) any other provision required by the law of this state or the operating
6 agreement of the domesticating limited liability company.

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

9 **SECTION 1053. APPROVAL OF DOMESTICATION.**

10 (a) A plan of domestication of a domestic domesticating limited liability company is not
11 effective unless it has been approved:

12 (1) by all the members entitled to vote on or consent to any matter; and

13 (2) in a record, by each member that will have interest holder liability for debts,
14 obligations, and liabilities that arise after the domestication becomes effective, unless:

15 (A) the operating agreement of the entity in a record provides for the
16 approval of a domestication or merger in which some or all of its members become subject to
17 interest holder liability by the vote or consent of fewer than all the members; and

18 (B) the member voted for or consented in a record to that provision of the
19 operating agreement or became an interest holder after the adoption of that provision.

20 (b) A domestication of a foreign domesticating limited liability company is not effective
21 unless it is approved in accordance with the law of the foreign limited liability company's
22 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.

1 (c) If a plan of domestication is abandoned after a statement of domestication has been
2 delivered to the [Secretary of State] for filing and before the filing becomes effective, a statement
3 of abandonment, signed by the domesticating limited liability company, must be delivered to the
4 [Secretary of State] for filing before the time the statement of domestication becomes effective.
5 The statement of abandonment takes effect upon filing, and the domestication is abandoned and
6 does not become effective. The statement of abandonment must contain:

7 (1) the name of the domesticating limited liability company;

8 (2) the date on which the statement of domestication was delivered to the
9 [Secretary of State] for filing; and

10 (3) a statement that the domestication has been abandoned in accordance with this
11 section.

12 **SECTION 1055. STATEMENT OF DOMESTICATION.**

13 (a) A statement of domestication must be signed by the domesticating limited liability
14 company and delivered to the [Secretary of State] for filing.

15 (b) A statement of domestication must contain:

16 (1) the name and jurisdiction of formation of the domesticating limited liability
17 company;

18 (2) the name and jurisdiction of formation of the domesticated limited liability
19 company;

20 (3) if the domesticating limited liability company is a domestic limited liability
21 company, a statement that the plan of domestication was approved in accordance with this [part]
22 or, if the domesticating limited liability company is a foreign limited liability company, a
23 statement that the domestication was approved in accordance with the law of its jurisdiction of

1 formation;

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

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

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

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

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

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

1 domesticated company without transfer, reversion, or impairment;

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

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

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

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

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

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

16 (b) Except as otherwise provided in the organic law or operating agreement of the
17 domesticating limited liability company, the domestication does not give rise to any rights that a
18 member, manager, or third party would otherwise have upon a dissolution, liquidation, or
19 winding up of the domesticating company.

20 (c) When a domestication becomes effective, a person that did not have interest holder
21 liability with respect to the domesticating limited liability company and that becomes subject to
22 interest holder liability with respect to a domestic company as a result of the domestication has
23 interest holder liability only to the extent provided by the organic law of the domestic company

1 and only for those debts, obligations, and other liabilities that arise after the domestication
2 becomes effective.

3 (d) When a domestication becomes effective:

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

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

8 (3) A person has whatever rights of contribution from any other person as are
9 provided by law other than this [act], this [act], or the operating agreement of a domestic
10 domesticating limited liability company with respect to any interest holder liability preserved
11 under paragraph (1) as if the domestication had not occurred.

12 (e) When a domestication becomes effective, a foreign limited liability company that is
13 the domesticated company may be served with process in this state for the collection and
14 enforcement of any of its debts, obligations, and liabilities as provided in Section 118.

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

17 (g) A domestication does not require the limited liability company to wind up its affairs
18 and does not constitute or cause the dissolution of the company.

19 **[ARTICLE] 11**

20 **MISCELLANEOUS PROVISIONS**

21 **SECTION 1101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
22 applying and construing this uniform act, consideration must be given to the need to promote
23 uniformity of the law with respect to its subject matter among states that enact it.

1 **SECTION 1102. SEVERABILITY CLAUSE.** *If any provision of this [act] or its*
2 *application to any person or circumstance is held invalid, the invalidity does not affect other*
3 *provisions or applications of this [act] which can be given effect without the invalid provision or*
4 *application, and to this end the provisions of this [act] are severable.*

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

7 **SECTION ~~1102~~ 1103. RELATION TO ELECTRONIC SIGNATURES IN**
8 **GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, ~~and~~ or
9 supersedes the ~~federal~~ Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
10 Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15
11 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in
12 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

13 **SECTION ~~1103~~ 1104. SAVINGS CLAUSE.** This [act] does not affect an action
14 commenced, proceeding brought, or right accrued before [the effective date of this [act]] ~~takes~~
15 effect.

16 **SECTION ~~1104~~ 1105. APPLICATION TO EXISTING RELATIONSHIPS.**

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

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

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

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

(c) For the purposes 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 112(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 that the "all-inclusive" date should be at least one year after the date of enactment but no longer than two years.*

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

SECTION ~~1105~~ 1106. REPEALS. ~~Effective [all-inclusive date], the~~ The following acts and parts of acts are repealed: ~~[the state limited liability company act, as amended, and in effect immediately before the effective date of this act].~~

(1) [the state limited liability company act, as [amended, and as] in effect immediately

1 before [the effective date of this [act]];

2 (2)

3 (3)

4 **SECTION ~~1106~~ 1107. EFFECTIVE DATE.** This [act] takes effect ~~on~~