

**COMPARISON OF**  
**COMMITTEE FINAL WORKPRODUCT (June 29, 2017)**

**vs. RULLCA**

**{ARTICLE} 1**

**GENERAL PROVISIONS**

**SECTION 101. SHORT TITLE.** This {act} may be cited as the Uniform Arizona  
Limited Liability Company Act.

**SECTION 102. DEFINITIONS.** In this {act}:

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

(2) ~~(2)~~ “Commission” means the corporation commission.

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

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

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

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

(5) “Designating foreign company” means, with respect to any foreign series, the foreign  
limited liability company that designated or otherwise established the foreign series in  
accordance with the law of its jurisdiction of formation.

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

(A) includes:

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

(ii) a transfer to a member in return for the member’s relinquishment of any right to participate as a member in the management or conduct of the company’s activities and affairs or to have access to records or other information concerning the company’s activities and affairs; and

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

(7) “Foreign series” means a series of a foreign limited liability company that has been established as such in accordance with the law of a jurisdiction other than this state.

(8) —~~(5)~~ “Foreign limited liability company” means an unincorporated entity formed under the law of a jurisdiction other than this state which would be a limited liability company if formed under the law of this state; and includes a foreign series for purposes of Article 1.

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

(10) —~~(7)~~ “Jurisdiction of formation” means the jurisdiction whose law governs the internal affairs of an entity.

(11)—~~(8)~~ “Limited liability company”, except in the phrase “foreign limited liability company” and in ~~{Article}~~ 10, means an entity formed under this ~~{act}~~ or which becomes subject to this ~~{act}~~ under ~~{Article}~~ 10 or Section 110.

(12) “Majority in interest of the members” means, at any particular time, one or more members that hold in the aggregate a majority of the interests in the limited liability company’s profits held at that time by all members, disregarding any profit interests held by persons who are not members. The members’ respective interests in the company’s profits shall be in proportion to their rights to share in distributions that exceed the repayment of their contributions.

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

(14)—~~(10)~~ “Manager-managed limited liability company” means a limited liability company that qualifies under Section 407(a).

(15)—~~(11)~~ “Member” means a person that:

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

(B) has not dissociated under Section 602.

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

(17)—~~(13)~~ “Operating agreement” means the agreement, whether or not referred to as an operating agreement and whether oral, implied, in a record, or in any combination thereof, of all

the members of a limited liability company, including a sole member, concerning the matters described in Section 105(a). The term includes the agreement as amended or restated.

~~(18)~~—~~(14)~~ “Organizer” means a person that acts under Section 201 to form a limited liability company.

~~(19)~~—~~(15)~~ “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, limited liability company, ~~[general cooperative association,]~~ limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common-law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

~~(20)~~—~~(16)~~ “Principal ~~office~~address” means the ~~principal executive office~~mailing address of a limited liability company or foreign limited liability company, whether or not ~~the office is~~ located in this state.

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

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

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

~~(23)~~—~~(20)~~ “Registered foreign limited liability company” means a foreign limited liability company that is registered to do business in this state pursuant to a statement of registration filed by the ~~[Secretary of State]~~commission.

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

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

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

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

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

(27)—~~(23)~~ “Transfer” includes:

(A) an assignment;

(B) a conveyance;

(C) a sale;

(D) a lease;

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

(F) a gift; and

(G) a transfer by operation of law.

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

~~(29)~~—~~(25)~~ “Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member. The term includes a person that owns a transferable interest under Section 603(a)(3).

### **SECTION 103. KNOWLEDGE; NOTICE.**

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

(1) has actual knowledge of it; or

(2) is deemed to know it under ~~subsection (d)(1) or~~ law other than this ~~fact~~.

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

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

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

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

(d) A person not a member is deemed to have notice of a limited liability company's:

~~(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~~notice of winding up under Section 702(b)(2)(A) becomes effective;~~

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

~~(C) participation in a merger, interest exchange, conversion, or domestication; 90 days after articles of merger, interest exchange, conversion, or domestication~~

under {Article} 10 become effective.

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

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

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

(a) Except as otherwise provided in subsections (c) and (d), ~~the~~ the:

(1) The operating agreement governs:

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

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

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

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

(2) The operating agreement may contain any provision that is not contrary to law.

(3) In the event of a conflict between a provision of the operating agreement and this act, the provision of the operating agreement governs.

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



(c) An operating agreement may not:

(1) vary the law applicable under Section 104;

(2) vary a limited liability company's capacity under Section 109

to sue and be sued in its own name;

(3) vary any requirement, procedure, or other provision of this ~~{act}~~ pertaining to:

(A) ~~registered~~statutory agents; or

(B) the ~~{Secretary of State}~~commission, including

provisions pertaining to records authorized or required to be delivered to the ~~{Secretary of State}~~commission for filing under this ~~{act}~~;

(4) vary the provisions of Section 204;

(5) ~~alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in subsection (d);~~ (6) eliminate the contractual obligation of good faith and fair dealing or the duty to refrain from willful or intentional misconduct under Section 409~~(d)~~; ~~but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured;~~

~~(7)~~ relieve limit or ~~exonerate~~eliminate a person ~~from~~'s liability for any violation of the contractual obligation of good faith and fair dealing or conduct involving ~~bad faith,~~ willful or intentional misconduct, ~~or knowing violation of law;~~

~~(8)~~ unreasonably restrict the duties and rights of members and managers 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;

~~(98)~~ vary the causes of dissolution specified in Section 701(a)(4);  
~~——(10) vary the requirement to wind up the company's activities and affairs as specified in Section 702(a), (b)(1), and (e); (B) and 701(a)(6);~~

~~(119)~~ unreasonably restrict the right of a member to maintain an action under ~~[Article] 8; Article 8, except that the operating agreement may require a member maintaining a direct action under Section 801 to plead and prove an actual or threatened injury that is not solely the result of any injury suffered or threatened to be suffered by the company;~~

~~(1210)~~ vary the ~~provisions~~provision of Section 805, but the operating agreement may provide that the company may not have a special litigation committee;

~~(13) vary the right of a member to approve a merger, interest exchange, conversion, or domestication under Section 1023(a)(2), 1033(a)(2), 1043(a)(2), or 1053(a)(2); (14) 11~~ vary the required contents of a plan of merger ~~under Section 1022(a), a~~ plan of interest exchange ~~under Section 1032(a), a~~ plan of conversion ~~under Section 1042(a), or, a~~ plan of domestication, or a plan of division under ~~Section 1052(a); or~~ A.R.S. § 29-2101;

~~(1513)~~ except as otherwise provided in Sections 106 and 107(b), restrict the rights under this ~~fact~~ of a person other than a member or manager; or

(14) reduce or eliminate the restrictions on distributions under Section 405(a).

(d) Subject to subsection (c)(~~75~~) and (c)(6), without limiting other terms that may be included in an operating agreement, the following rules apply:

~~——(1) The operating agreement may:~~

~~(A) specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty~~

(1) To the extent that, at law or in equity, a member or manager or other person has duties, including the duty of care, duty of loyalty, and any other fiduciary duty, to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by an operating agreement, the member's, manager's, or other person's duties may be expanded, limited, or eliminated by the operating agreement.

(2) An operating agreement may provide for the limitation or elimination of any or all liabilities for breach of the operating agreement or breach of duties, including the duty of care, duty of loyalty, and any other fiduciary duty, as expanded, limited, or eliminated in the operating agreement, of a member, manager, or other person to a company or to another member, manager, or another person who is a party to or is otherwise bound by the operating agreement.

(3) An operating agreement may specify a method by which a specific act, omission, or transaction, or a specific category of acts, omissions, or transactions, that would otherwise violate a duty, including the duty of care, duty of loyalty, and any other fiduciary duty, as expanded, limited, or eliminated in the operating agreement, may be authorized or ratified ~~by one or more disinterested and independent persons after full disclosure of all material facts; and~~ ~~—————(B) alter the prohibition in Section 405(a)(2) so that the prohibition requires only that the company's total assets not be less than the sum of its total liabilities.~~ A general provision in an operating agreement that provides for management by one or more members or managers, without more, is not sufficient to specify a method for authorization or ratification under this paragraph.

(4) An operating agreement may specify a method by which a member, manager, or other person may be reimbursed, indemnified, or held harmless, or by which the liability of a

member, manager, or other person may be limited or eliminated, for a specific act, omission, or transaction, or a specific category of acts, omissions, or transactions, that would otherwise violate a duty, including the duty of care, duty of loyalty, and any other fiduciary duty, as expanded, limited, or eliminated in the operating agreement. A general provision in an operating agreement that provides for management by one or more members or managers, without more, is not sufficient to specify a method for reimbursing, indemnifying, or holding harmless a person or limiting or eliminating a person's liability under this paragraph.

(e) Subject to the limitations of subsection (c)(5) and (c)(6), an operating agreement may define some or all of the fiduciary duties of a member, manager, or other person that is a party to or is otherwise bound by an operating agreement to be the same as the fiduciary duties of a director, officer, or shareholder of a corporation formed under the laws of this state, in which case, unless the operating agreement provides otherwise, all laws of evidence, evidentiary presumptions, and other laws that apply to the fiduciary duties of a director, officer, or shareholder of a corporation formed under the laws of this state shall apply to such duties.

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

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

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

~~(B) identify specific types or categories of activities that do not violate the~~

duty of loyalty;

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

~~\_\_\_\_\_ (D) alter or eliminate any other fiduciary duty.~~

~~\_\_\_\_\_ (e) The court shall decide as a matter of law whether a term of an operating agreement is manifestly unreasonable under subsection (c)(6) or (d)(3). The court:~~

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

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

~~\_\_\_\_\_ (A) the objective of the term is unreasonable; or~~

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

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

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

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

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

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

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

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or a person dissociated as a member are governed by the operating agreement. Subject ~~only to a court order issued under~~ to Section ~~503409(b) and (2) to effectuate a charging order~~, an amendment to the operating agreement made after a person becomes a transferee or is dissociated as a member:

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

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

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

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

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

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

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

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

(b) ~~A~~[Except as provided in subsection \(c\) and \(d\), a](#) limited liability company may have any lawful purpose, regardless of whether for profit.

[\(c\) A limited liability company may not engage in the business of banking.](#)

[\(d\) A limited liability company may not be an insurer as defined in A.R.S. § 20-104 unless as a title insurance agent as defined in A.R.S. § 20-1562 or as a pure captive insurer as defined in A.R.S. § 20-1098 which is expressly authorized by the director of the department of insurance pursuant to title 20. For the purposes of title insurance transactions or pure captive insurance business, the members of the company are individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of the company, to the extent of the amount of each member's initial investment in the company.](#)

~~(e)~~ A limited liability company has perpetual duration.

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

**SECTION 110. APPLICATION TO EXISTING RELATIONSHIPS.**

(a) Before ~~[all-inclusive date]~~, September 1, 2020, this [act] governs only:

(1) a limited liability company formed, converted, or domesticated on or after ~~the effective date of this [act]]~~; September 1, 2019; and

(2) ~~except as otherwise provided in subsection (e)~~, a limited liability company formed ~~before [the effective date of this [act]]~~, converted, or domesticated before September 1, 2019, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this [act].

(b) ~~Except as otherwise provided in subsection (e)~~, on and after ~~[all-inclusive date]~~ September 1, 2020, this [act] governs all limited liability companies.

(c) For purposes of applying this [act] to a limited liability company formed before ~~the effective date of this [act]]~~; September 1, 2019, the company's known place of business is deemed to be its principal address.

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

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

***Legislative Note:***

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



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

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

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

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

(d) This act does not affect the validity or enforceability of any provision of an operating agreement which was valid or enforceable under any prior statute that was in effect at the time such provision became part of the operating agreement.

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

**SECTION 112. PERMITTED NAMES.**

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

~~“Limited” may be abbreviated as “Ltd.”, and “company” may be abbreviated as “Co.”~~ in uppercase or lowercase letters.

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

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

(2) name ~~of a limited liability partnership whose statement of qualification is in effect;~~ ~~(3) name~~ under which a person is registered to do business in this state by the filing of a record by the ~~{~~[commission or the](#) Secretary of State~~}~~;

(~~4~~3) name reserved under Section 113 or other law of this state providing for the reservation of a name by the filing of a record by the ~~{~~[commission or the](#) Secretary of State~~}~~;

(~~5~~4) name registered under Section 114 or other law of this state providing for the registration of a name by the filing of a record by the ~~{~~[commission or the](#) Secretary of State~~}~~; and

(~~6~~5) name registered under ~~{this state's assumed or fictitious name statute}~~[A.R.S. § 44-1460.](#)

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

(d) Except as otherwise provided in subsection (e), in determining whether a name is the same as or not distinguishable on the records of the ~~{~~[commission or the](#) Secretary of State~~}~~ from the name of another person, words, phrases, or abbreviations indicating a type of person, such as “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “P.C.”, “PC”, “professional association”, “P.A.”, “PA”, “Limited”, “Ltd.”, “limited partnership”, “L.P.”, “LP”, “limited liability partnership”, “L.L.P.”, “LLP”, “registered limited liability partnership”,

“R.L.L.P.”, “RLLP”, “limited liability limited partnership”, “L.L.L.P.”, “LLL”, “registered limited liability limited partnership”, “R.L.L.L.P.”, “RLLLP”, “limited liability company”, “L.L.C.”, “LLC”, “limited cooperative association”, “limited cooperative”, or “L.C.A.”, or “LCA” may not be taken into account.

(e) ~~A person may consent in a record to the use of a name that is not distinguishable on the records of the [Secretary of State] from its name except for the addition of a word, phrase, or abbreviation indicating the type of person as provided in subsection (d). In such a case, the person need not change its name pursuant to subsection (e).~~ The name of a limited liability company or foreign limited liability company may not contain the words “association”, “corporation”, or “incorporated”, or an abbreviation of these words. The name of a company or foreign company may not contain the words “bank”, “deposit”, “credit union”, “trust”, or “trust company” separately or in combination to indicate or convey the idea that the company is engaged in banking, credit union, or trust business unless the company is to be and becomes actively and substantially engaged in the banking, credit union, or trust business or the company is a holding company holding substantial interest in companies actively and substantially engaged in the banking, credit union, or trust business.

(f) ~~The name of a limited liability company or foreign limited liability company may not contain the words [insert prohibited word or words that may be used only with approval by an appropriate state agency].~~ (g) A limited liability company or foreign limited liability company may use a conflicting name that is not distinguishable from a name described in subsection (b)(1) through (6) if the company delivers to the ~~[Secretary of State]~~ commission a certified copy of a final ~~judgment~~ judgement of a court of competent jurisdiction establishing the right of the company to use the name in this state.

(g) The name of a foreign series registering to do business in this state must include the word “series.”

### **SECTION 113. RESERVATION OF NAME.**

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

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

### **SECTION 114. REGISTRATION OF NAME.**

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

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

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

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

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

#### **SECTION 115. ~~REGISTERED~~STATUTORY AGENT.**

(a) Each limited liability company and each registered foreign limited liability company shall designate and maintain a ~~registered agent in this state. The designation of a registered agent is an affirmation of fact by the limited liability company or registered foreign limited liability company that the agent has consented to serve~~statutory agent in this state. Unless the statutory agent signed the document making the appointment, the appointment of a statutory agent is not effective until the agent or the company delivers a record to the commission signed by the agent accepting the appointment.

(b) A ~~registered~~statutory agent for a limited liability company or registered foreign limited liability company must have a place of business ~~or residence in this state. A statutory agent must be either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact~~business in this state.

(c) The only duties under this ~~{act}~~ of a ~~registered~~statutory agent that has complied with this ~~{act}~~ are:

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

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

(3) to keep current the information with respect to the agent in the ~~certificate~~articles of organization or foreign registration statement. ~~SECTION 116. CHANGE OF REGISTERED AGENT OR ADDRESS FOR REGISTERED AGENT BY LIMITED LIABILITY COMPANY.~~

#### SECTION 116. STATEMENT OF CHANGE.

(a) A limited liability company or registered foreign limited liability company may change its ~~registered~~statutory agent ~~or the address of its registered~~, principal address, the address of one or more of its managers or members, or the address of its statutory agent by delivering to the ~~{Secretary of State}~~commission for filing a statement of change that states:

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

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

(b) The members or managers of a limited liability company need not approve the delivery to the ~~{Secretary of State}~~commission filing of:

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

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

(c) ~~A~~Unless the successor statutory agent signed the statement of change ~~under this section designating a new registered agent is an affirmation of fact by~~, the appointment of a successor statutory agent is not effective until the successor statutory agent or the limited liability company ~~or registered foreign limited liability company that the agent has consented to~~ serve delivers a record to the commission signed by the agent accepting change or the appointment.

(d) As an alternative to using the procedure in this section, a limited liability company may ~~amend~~amends its ~~certificate~~articles of organization.

#### **SECTION 117. RESIGNATION OF ~~REGISTERED~~STATUTORY AGENT.**

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

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

(2) the name of the agent;

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

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

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

(1) the 31st day after the day on which it is filed by the ~~{Secretary of State}~~commission; or

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

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

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

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

#### **SECTION 118. CHANGE OF NAME OR ADDRESS BY ~~REGISTERED~~STATUTORY AGENT.**

(a) If a ~~registered~~statutory agent changes its name or address, the agent may deliver to the ~~{Secretary of State}~~commission for filing a statement of change that states:

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

(2) the name of the agent as currently shown in the records of the ~~{Secretary of State}~~commission for the company or foreign company;



- (3) if the name of the agent has changed, its new name; and
- (4) if the address of the agent has changed, its new address.

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

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

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

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

(b) If a limited liability company or registered foreign limited liability company ceases to have a ~~registered~~statutory agent, or if its ~~registered~~statutory agent cannot with reasonable diligence be served, the company or foreign company may be served by registered or certified mail, return receipt requested, or by similar commercial delivery service, addressed to the company or foreign company at its principal ~~office. The address of the.~~ The principal office address must be as shown on the company<sup>2</sup>'s or foreign company<sup>2</sup>'s most recent ~~[annual]~~ [biennial] report filed by the [Secretary of State]. filing with the commission. Service is effected under this subsection on the earliest of:

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

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

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

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

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

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

#### **SECTION 120. DELIVERY OF RECORD.**

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

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

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

**SECTION 122. POWERS OF COMMISSION.** The commission has the power reasonably necessary to administer this chapter efficiently and to perform the duties imposed on the commission under this chapter.

**SECTION 123. TAXATION.** A limited liability company established or a foreign limited liability company transacting business in this state pursuant to this chapter shall pay the taxes that are imposed by the laws of this state or any political subdivision of this state on domestic and foreign limited partnerships on an identical basis, except that, for purposes of title 23, chapter 4 and title 43, a company or foreign company and its members shall be taxed as if the company is either a partnership or a corporation or is disregarded as an entity as determined pursuant to the internal revenue code as defined in A.R.S. § 43-105.

**{ARTICLE} 2**

**FORMATION; ~~CERTIFICATE~~ARTICLES OF ORGANIZATION AND OTHER  
FILINGS**

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

(a) One or more persons may act as organizers to form a limited liability company by delivering to the ~~{Secretary of State}~~commission for filing ~~a certificate~~articles of organization.

(b) ~~A certificate~~ Articles of organization must state:

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

(2) the ~~street and~~principal address, which may be the same as the mailing ~~addresses~~address of the company's ~~principal office; and~~'s statutory agent;

(3) the name and street and mailing addresses in this state of the company<sup>2</sup>s  
~~registered's~~ statutory agent; and

(4) whether the company is a manager-managed limited liability company or a member-managed limited liability company and the corresponding information required in either paragraph (A) or (B):

(A) If the company is a manager-managed limited liability company, the name and address of each manager, and the name and address of each member who owns a twenty percent or greater interest in the capital or profits of the company;

(B) If the company is a member-managed limited liability company, the name and address of each member of the company.

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

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

**SECTION 202. AMENDMENT OR RESTATEMENT OF CERTIFICATE OF ORGANIZATION.** (e) A parent limited liability company and its subsidiary limited liability companies may be formed at the same time.

(f) The filing of articles of organization by the commission is conclusive proof that all conditions precedent required to be performed by the organizers have been satisfied and that the limited liability company has been legally organized and formed under this chapter.

(g) Within sixty days after the commission files the articles of organization, either of the following must occur:

(1) A notice of the filing of the articles shall be published in a newspaper of general circulation in the county of the statutory agent's street address for three consecutive publications containing the information required in subsection (b). An affidavit evidencing the publication may be filed with the commission.

(2) The commission shall input the information regarding the approval into the database as prescribed by A.R.S. § 10-130 if the statutory agent's street address is in a county with a population of more than eight hundred thousand persons.

**SECTION 202. AMENDMENT OR RESTATEMENT OF ARTICLES OF ORGANIZATION.**

(a) ~~A certificate~~ Articles of organization may be amended or restated at any time, including to:

(1) change the name of the limited liability company; or

(2) change from a member-managed limited liability company to a manager-managed limited liability company or vice versa.

(b) Articles of organization shall be amended if there is a statement in the articles that was false or erroneous when it was made or within thirty days after the occurrence of any of the following:

(1) a member-managed limited liability company has a change in members; or

(2) a manager-managed limited liability company has a change in managers or a change in members owning twenty percent or greater interest in the capital or profits of the company.

(c) Articles of organization shall be amended or a statement of change shall be filed within thirty days after the occurrence of any of the following:

(1) the limited liability company changes its statutory agent;

(2) the company changes its principal address;

(3) the address of one or more of its managers or members changes; or

(4) the address of the statutory agent changes.

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

(1) the name of the company;

(2) the ~~date of filing of its initial certificate; and~~ ~~(3) the~~ text of the

amendment.

(e) To restate its ~~certificate~~articles of organization without amendment, a limited liability company must deliver to the ~~[Secretary of State]~~commission for filing ~~a restatement~~restated articles, designated as such in its heading, stating:

(1) the name of the company;

(2) the text of the restated articles.

(f) To amend and restate its articles of organization, a limited liability company must deliver to the commission for filing amended and restated articles, designated as such in its heading, stating:

(1) the name of the company;

(2) the text of the amended and restated articles.

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

(1) cause the ~~certificate~~articles to be amended; or

(2) if appropriate, deliver to the ~~Secretary of State~~commission for filing a statement of change under Section 116 or a statement of correction under Section 209.

(h) Within sixty days after the commission approves the filing, either of the following must occur:

**~~SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO [SECRETARY OF STATE].~~**(1) a copy of the amendment, restated articles of organization, or amended and restated articles shall be published in a newspaper of general circulation in the county of the statutory agent's street address for three consecutive publications. An affidavit evidencing the publication may be filed with the commission.

(2) the commission shall input the information regarding the approval into the database as prescribed by A.R.S. § 10-130 if the statutory agent's street address is in a county with a population of more than eight hundred thousand persons.

(i) Publication or posting pursuant to subsection (h) is not required if amendments to the articles of organization only change:

(1) the names or addresses of members or managers;

(2) the company's principal address; or

(3) the name or address of the statutory agent.

(j) A limited liability company that has not amended its articles of organization as required by this section may not maintain an action upon or on account of a contract or transaction made in the name of the company in any court of this state until it has amended its articles as required by this section.

### **SECTION 203. SIGNING OF RECORDS TO BE DELIVERED FOR FILING TO THE COMMISSION.**

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

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

(2) A company's initial ~~certificate~~articles of organization must be signed by at least one person acting as an organizer. The organizer or organizers may be, but are not required to be, managers or members of the company.

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



(4) ~~A statement of denial by a person under Section 303 must be signed by that person.~~ (5) Any other record delivered on behalf of a person to the ~~[Secretary of State]~~commission for filing must be signed by that person.

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

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

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

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

(1) the person to sign the record;

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

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

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

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

#### **SECTION 205. LIABILITY FOR INACCURATE INFORMATION IN FILED RECORD.**

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

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

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

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

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

(i) effected an amendment under Section 202;

(ii) filed a petition under Section 204; or

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

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

(c) An individual who signs a record authorized or required to be filed under this {act} affirms under penalty of perjury that, to that individual's knowledge, the information stated in the record is accurate.

#### **SECTION 206. FILING REQUIREMENTS.**

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

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

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

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

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

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

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

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

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

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

(f) The ~~{Secretary of State}~~commission may require that a cover sheet for a filing be on a form prescribed by the ~~{Secretary of State}~~commission.

#### **SECTION 207. EFFECTIVE DATE AND TIME.**

(a) Except as otherwise provided in Section 208 and subject to Section 209(d), a record filed under this ~~{act}~~ is effective:

(1) on the date and at the time of its ~~filing by the {Secretary of State}~~delivery to the commission, as provided in subsection (b) or Section 210(b);

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

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

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

(b) If the commission is unable to make a determination that the record complies with all filing requirements of this act at the time the record is delivered for filing, the record is deemed to have been filed at the time of delivery if the commission subsequently determines either that:

(1) the record as delivered conforms to the filing requirements of this act; or

(2) within thirty days after notification of nonconformance is given by the commission to the person who delivered the record for filing or the person's representative, the record is brought into conformance.

**SECTION 208. WITHDRAWAL OF FILED RECORD BEFORE EFFECTIVENESS.**

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

(b) A statement of withdrawal must:

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

(2) identify the record to be withdrawn; and

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

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

**SECTION 209. CORRECTING FILED RECORD.**

(a) A person on whose behalf a filed record was delivered to the ~~Secretary of State~~commission 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~~commission was defective.

(b) To correct a filed record, a person on whose behalf the record was delivered to the ~~Secretary of State~~commission must deliver to the ~~Secretary of State~~commission 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 specifically identify the filed record to be corrected or attach a copy of the filed record;
- (4) must specify the inaccuracy or defect to be corrected; and
- (5) must correct the inaccuracy or defect.

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

**SECTION 210. DUTY OF ~~{SECRETARY OF STATE}~~COMMISSION TO FILE;  
REVIEW OF REFUSAL TO FILE; DELIVERY OF RECORD BY ~~{SECRETARY OF  
STATE}~~COMMISSION.**

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

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

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

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

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

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

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

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

incorrect.

(f) Except as otherwise provided by Section 119 or by law other than this ~~fact~~, the ~~Secretary of State~~ commission may deliver any record to a person by delivering it:

- (1) in person to the person that submitted it;
- (2) to the address of the person's ~~registered~~ statutory agent;
- (3) to the principal ~~office~~ address of the person; or
- (4) to another address the person provides to the ~~Secretary of State~~ commission

for delivery.

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

(a) On request of any person, ~~the Secretary of State~~ and after payment of the requisite fee, the commission shall issue a certificate of good standing for a limited liability company or a certificate of registration for a registered foreign limited liability company or a registered foreign series if the facts under subsection (b) are true as of the date of the certificate.

(b) A certificate under subsection (a) ~~must state~~ will be issued if:

(1) ~~the limited liability company's name or the registered foreign limited liability company's name used in this state;~~ ~~(2)~~ in the case of a limited liability company:

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

(B) ~~the date the certificate became effective;~~

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



~~\_\_\_\_\_ (D) that:~~

~~—(i) no statement of dissolution, no~~ statement of administrative dissolution, or ~~statement~~articles of termination ~~has~~have been filed;

~~(iiC)~~ the records of the ~~{Secretary to State}~~commission do not otherwise reflect that the company has been dissolved or terminated; and

~~(iiiD)~~ a proceeding is not pending under Section 708;

~~(32)~~ in the case of a registered foreign limited liability company, ~~that it or~~registered foreign series:

~~(A)~~ the company or foreign series is registered to do business in this state; and

~~(B)~~ no notice of termination has been sent under Section 910; and

~~(43)~~ ~~that~~ all fees, taxes, interest, and penalties owed to ~~this state~~the commission by the limited liability company or foreign limited liability company ~~and collected through the~~ ~~{Secretary of State}~~or foreign series have been paid, ~~if:~~

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

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

~~\_\_\_\_\_ (5) that the most recent [annual] [biennial] report required by Section 212 has been delivered to the [Secretary of State] for filing; and \_\_\_\_\_ (6) other facts reflected in the records of the [Secretary of State] pertaining to the limited liability company or foreign limited liability company which the person requesting the certificate reasonably requests.~~

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

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

**SECTION 212. INTERROGATORIES BY THE COMMISSION; INFORMATION DISCLOSED BY INTERROGATORIES.**

(a) The commission may propound to any limited liability company, registered foreign limited liability company, designating foreign company, or foreign series and to any member or manager of the company or series interrogatories as may be reasonably necessary and proper to enable it to ascertain whether the company complied with all applicable provisions of this act. The interrogatories shall be answered within thirty days after the mailing of the interrogatories or within an additional time fixed by the commission, and the answers to the interrogatories shall be full and complete and shall be made in writing and under penalty of perjury. If the interrogatories are directed to an individual they shall be answered by the individual, and if directed to a company or foreign series they shall be answered by a member, if the company or foreign series is a member-managed company or foreign series, or by a manager, if the company or foreign series is a manager-managed company or foreign series. The commission need not file any document to which the interrogatories relate until the interrogatories have been answered as provided in this section, or if the answers to the interrogatories disclose that the document is not in conformity with the provisions of this chapter. The commission shall certify to the attorney general, for such action as the attorney general deems appropriate, all interrogatories and answers to the interrogatories that disclose a violation of any of the provisions of this chapter.

(b) Interrogatories propounded by the commission and the answers to the interrogatories shall not be open to public inspection and the commission shall not disclose any facts or information obtained from the interrogatories and answers except if its official duty requires the facts or information to be made public or if the interrogatories or the answers are required for evidence in any criminal proceeding or in any other action by this state.

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

### 213. FILING SERVICES; FEES.

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

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

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

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

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

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

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

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

~~(d) If [an annual] [a biennial] report does not contain the information~~

(a) The commission shall collect and deposit, pursuant to A.R.S. § 35-146 and A.R.S. § 35-147, the following nonrefundable fees when the following documents are delivered to the commission:

(1) The initial articles of organization, fifty dollars.

(2) A foreign registration statement, one hundred fifty dollars.

(3) An amendment to the articles of organization, twenty-five dollars.

(4) A notice of winding up, articles of termination, or statement of withdrawal, thirty-five dollars.

(5) A certificate for any purpose not otherwise provided for, ten dollars.

(6) A statement of merger, interest exchange, conversion, domestication or division if the entity responsible for filing the statement is a limited liability company, fifty dollars.

(7) Written information on any limited liability company, ten dollars.

(8) A copy of any document or instrument, five dollars plus fifty cents per page.

(9) An application for reservation of a name, a notice of the transfer of any name reservation, an application for registration of a name or alternate name by a foreign limited liability company, or a renewal application for registration of a name or alternate name by a foreign company, ten dollars.

(10) A statement of change, five dollars.

(11) A statement of correction, twenty-five dollars.

(12) An application for reinstatement, in addition to other fees and penalties due, one hundred dollars.

(b) The commission shall provide for and establish an expedited service for the filing of all documents and services provided pursuant to this chapter as follows:

(1) The expedited filing shall be a priority service to be completed as soon as possible after the documents are delivered to the commission.

(2) In addition to any other fees required by this section, ~~the [Secretary of State] promptly shall notify the reporting limited liability company or registered foreign limited liability company in a record and return the report for correction.~~

~~——(e) If [an annual] [a biennial] report contains the name or address of a registered agent which differs from the information shown in the records of the [Secretary of State] immediately before the report becomes effective, the differing information in the report is considered a statement of change under Section 116. or any other law, the commission shall charge a nonrefundable fee for expedited services. The fee shall be determined by a supermajority vote of the commissioners.~~

(c) The commission may provide for and establish same day and next day services for the filing of any documents and services provided pursuant to this chapter as follows:

(1) The commission shall suspend same day or next day service if the commission determines that it does not have the necessary resources to perform the service within the established time period.

(2) In addition to any other fees required by this section or any other law, the commissioners may charge a nonrefundable fee for the same day or next day service or both. The fee shall be determined by a supermajority vote of the commissioners.

(d) The commission shall publicly post the current wait times for processing regular, expedited, and same day and next day services.

(e) All monies received pursuant to subsection (b) and (c) shall be deposited, pursuant to A.R.S. § 35-146 and A.R.S. § 35-147, in the public access fund established by A.R.S. § 10-122.01.

(f) The commission may allow any person to advance monies to the commission to pay fees required pursuant to this section for future filings and services. All monies received pursuant to this subsection shall be deposited, pursuant to A.R.S. § 35-146 and A.R.S. § 35-147, in the money on deposit account in the public access fund established by A.R.S. § 10-122.01.

(g) For the purposes of this section, “supermajority” means an affirmative vote of at least four commissioners.

### **{ ARTICLE} 3**

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

### **SECTION 301. ~~NO~~-AGENCY POWER OF MEMBER ~~AS MEMBER~~AND MANAGER.**

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

(a) In a member-managed limited liability company:

(1) Each member is an agent of the company for the purpose of conducting the company’s activities and affairs in the ordinary course;

(2) The act of each member done in the ordinary course of the company’s activities and affairs binds the company unless the acting member has in fact no authority to act for the company in the particular matter and the person with whom he is dealing has knowledge of the fact that the member has no such authority.

(b) In a manager-managed limited liability company:

(1) A member is not an agent of the company solely by reason of being a member except to the extent that authority has been delegated to the member by the manager or managers or by the provisions of an operating agreement;

(2) Each manager is an agent of the company for the purpose of conducting the company's activities and affairs in the ordinary course; and

~~————(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.~~(3) The act of each manager done in the ordinary course of the company's activities and affairs binds the company unless the acting manager has in fact no authority to act for the company in the particular matter and the person with whom he is dealing has knowledge of the fact that the manager has no such authority.

**SECTION 302. STATEMENT OF LIMITED LIABILITY COMPANY**

**AUTHORITY RESERVED.**

~~(a) A limited liability company may deliver to the [Secretary of State] for filing a statement of authority. The statement:~~SECTION 303. RESERVED.

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

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

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

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

~~the company; and~~

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

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

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

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

~~\_\_\_\_\_ (1) the name of the company;~~

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

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

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

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

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

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

~~\_\_\_\_\_ (1) the person has knowledge to the contrary;~~



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

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

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

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

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

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

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

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

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

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

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

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

~~——(2) denies the grant of authority.~~      **SECTION 304. LIABILITY OF MEMBERS AND MANAGERS.**

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

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

#### **{ARTICLE} 4**

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

#### **SECTION 401. BECOMING MEMBER; OWNERSHIP OF INTEREST IN LIMITED LIABILITY COMPANY IN JOINT TENANCY OR COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.**

(a) ~~¶~~At the time of formation, a limited liability company must have at least one member. If a company is to have only one member upon formation, the person becomes a member ~~as agreed by that person and the organizer of the company. That person~~by agreeing to be a member and by being identified as the member in the articles of organization. The member and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf-of the initial member.

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

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

- (1) as provided in the operating agreement;
- (2) as the result of a transaction effective under ~~{Article}~~ 10;
- (3) with the affirmative vote or consent of all the members; or

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

(d) A person may become a member without:

(1) acquiring a transferable interest; or

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

(e) A transferable interest may be held by two or more natural persons as joint tenants with right of survivorship or by a married couple as community property with right of survivorship. Except as otherwise provided in this section, an assignment or issuance of a transferable interest to two or more natural persons creates a tenancy in common, except an assignment or issuance to a married couple.

(f) A joint tenancy with right of survivorship is created when a written operating agreement expressly declares that two or more natural persons hold a transferable interest as joint tenants with right of survivorship or in joint tenancy with right of survivorship. A joint tenancy with right of survivorship may also be created by a written assignment of a transferable interest to two or more natural persons, who may include one or more assignors, or by the articles of organization, if the written assignment or the articles have been signed by each joint tenant and contain the express written declaration that the joint tenants hold the assigned transferable interest as joint tenants with right of survivorship or in joint tenancy with right of survivorship.

(g) An estate in community property with right of survivorship is created when a written operating agreement expressly declares that a married couple holds a transferable interest as community property with right of survivorship. An estate in community property with right of survivorship may also be created by a written assignment of a transferable interest to a married couple, who may include one or both assignor spouses, or by the articles of organization, if the

written assignment or the articles have been signed by each spouse and contain the express written declaration that the married couple holds the assigned transferable interest as community property with right of survivorship.

(h) All co-owners of a transferable interest held as joint tenants with right of survivorship, as community property, or as community property with right of survivorship shall own an equal undivided interest in the transferable interest. Each co-owner of a transferable interest, whether the transferable interest is held as tenants in common, joint tenants with right of survivorship, community property, or community property with right of survivorship, shall have only the rights of a transferee with respect to the interest, both during the lifetime and following the death of any other co-owner, unless and until the co-owner becomes a member in accordance with subsection (c).

(i) If a transferable interest is held by two or more persons in joint tenancy with right of survivorship or by a married couple as community property with right of survivorship, after the death of a co-owner of the transferable interest:

(1) The surviving co-owner or co-owners of the transferable interest shall succeed to the ownership of the decedent's interest in the transferable interest without further action by the limited liability company or the other members, and shall have only the rights of a transferee with respect to the interest, unless and until the co-owner is admitted as a member in accordance with subsection (c).

(2) The decedent's interest in the hands of the surviving co-owner or co-owners shall continue to be subject to all obligations and liabilities to which that interest was subject immediately before the death under the terms of the operating agreement or other agreement among one or more members or third parties.

(3) If there is more than one surviving co-owner of a transferable interest held in joint tenancy with right of survivorship, after the death of a co-owner the surviving co-owners shall continue to own the transferable interest in equal shares as joint tenants with right of survivorship.

(j) The distribution, voting, approval, and other management rights with respect to a transferable interest that is co-owned by two or more persons, whether the transferable interest is held as tenants in common, joint tenants with right of survivorship, community property, or community property with right of survivorship, shall be the same as if the interest were held by only one person.

(k) Each co-owner of a transferable interest who becomes a member may exercise all voting, approval, and other management rights of a member, including the right to approve an amendment to the operating agreement, with respect to an interest held as tenancy in common, joint tenancy with right of survivorship, community property, or community property with right of survivorship.

(l) The limited liability company is entitled to rely in good faith on the act of a member that purports to be taken in the exercise of any voting, approval, or other management right, including the right to approve an amendment to the operating agreement relating to a transferable interest that is co-owned by the member with one or more other persons, whether the transferable interest is held as tenants in common, joint tenants with right of survivorship, community property, or community property with right of survivorship.

(m) If a co-owner of a transferable interest held as joint tenants with right of survivorship or community property with right of survivorship transfers part or all of the co-owner's share of the transferable interest, the right of survivorship is extinguished and the co-owners of the

transferable interest after the transfer hold their shares of the transferable interest as tenants in common. In the case of community property with right of survivorship, the right of survivorship is also extinguished as provided in A.R.S. § 14-2803 or A.R.S. § 14-2804 or on the delivery to the limited liability company, at its principal address, of an affidavit entitled “affidavit terminating right of survivorship” that is executed by either spouse under oath stating the spouse’s intent to terminate the right of survivorship and describing the affected transferable interest. The delivery of the affidavit shall not extinguish the community property interest of either spouse.

(n) A limited liability company does not need to give effect to any creation or extinguishment of a right of survivorship until the company has received written notice of the change in the form of ownership or of the creation or the extinguishment of a right of survivorship at its principal address.

(o) With respect to a transferable interest owned in joint tenancy with right of survivorship, tenancy in common, or community property with or without right of survivorship, if a charging order from a court of competent jurisdiction is obtained against a co-owner’s share of the transferable interest, it shall attach only to that co-owner’s share or portion of the transferable interest and not to the share or portion of the other co-owner or co-owners.

#### **SECTION 402. FORM OF CONTRIBUTION.**

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

#### **SECTION 403. LIABILITY FOR CONTRIBUTIONS.**

(a) A person's obligation to make a contribution to a limited liability company is not enforceable unless set forth in a record signed by the person or as otherwise provided in subsection 502(h). A person's obligation to make a contribution to the company is not excused by the person's death, disability, termination, or other inability to perform personally.

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

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



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

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

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

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

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

**SECTION 405. LIMITATIONS ON DISTRIBUTIONS.**

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

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

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

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

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

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

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

(1) in the case of a distribution as defined in Section 102(47)(A), as of the earlier of:

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

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

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

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

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

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

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

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

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

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

~~(a) Except as otherwise provided in subsection (b), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 405 and in consenting to the distribution fails to~~

~~comply with Section 409, the member or manager is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without the violation of Section 405.~~

~~————(b) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection (a) applies to the other members and not the member that the operating agreement relieves of the authority and responsibility.——(c) A person that receives a distribution knowing that the distribution violated Section 405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid to that person under Section 405.~~

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

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

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

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

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

(a) ~~A~~Management of a limited liability company is ~~a member-managed limited liability company unless the operating agreement:~~ ~~————(1) expressly provides~~reserved to its members unless the articles of organization provide that: ~~————(A) the company is or~~

~~will be “manager managed”;~~ ~~(B) the company is or will be “managed by one or more managers”;~~ ~~or~~

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

~~(2) includes words of similar import.~~

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

(1) Except as expressly provided in this ~~{act}~~, the management and conduct of the company are vested in the members.

~~(2) Each~~ (2) Within the ordinary course of the company’s activities and affairs, each member has ~~equal rights in the management~~ the right to manage and conduct ~~of~~ the company’s activities and affairs.

(3) Except as otherwise provided in this act, a majority in interest of the members shall decide:

~~(3) A difference arising among members as to a matter~~ in (A) matters that are outside the ordinary course of the company’s activities and affairs ~~of~~ but within the company ~~may be decided by a majority of the members;~~ ’s purpose;

(B) matters on which there exists a known difference among members;

(C) whether to make an interim distribution prior to dissolution and winding up; or

(D) whether to make an advance to a member or manager under Section 408(c).

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

(A) undertake, or authorize a member or other person to undertake, an act outside the ~~ordinary course of the activities and affairs of the company; or~~ scope of the

company's purpose, as stated in the operating agreement, or that otherwise violates the operating agreement;

(B) amend the operating agreement;

(C) authorize an amendment to the articles of organization that changes the company from a member-managed limited liability company to a manager-managed limited liability company;

(D) issue a transferrable interest in the company to any person; or

(E) take any action requiring the approval of all members under this act.

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

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

~~—————(2) Each~~ (2) Within the ordinary course of the company's activities and affairs, each manager has ~~equal rights in the management~~ the right to manage and conduct ~~of~~ the company's activities and affairs.

(3) Except as otherwise provided in this act, a majority of the managers shall decide:

(A) matters that are outside the ordinary course of the company's activities and affairs but within the company's purpose;

(B) matters on which there exists a known difference among managers;

(C) whether to make an interim distribution prior to dissolution and winding up; or

(D) whether to make an advance to a member or manager under Section 408(c).

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

(A) undertake, or authorize a manager, member, or other person to undertake, an act outside the ~~ordinary course of the company's activities and affairs; or~~ scope of the company's purpose, as stated in the operating agreement, or that otherwise violates the operating agreement;

(B) amend the operating agreement;

(C) authorize an amendment to the articles of organization that changes the company from a manager-managed limited liability company to member-managed limited liability company;

(D) issue a transferrable interest in the limited liability company to any person; and

(E) take any action requiring the approval of all members under this act.

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

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

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

(d) An action requiring the vote or consent of members or managers under this ~~{act}~~ may be taken without a meeting, ~~and a~~ if approved by the minimum number of members or managers required to approve the action. A member may appoint a proxy or other agent to vote, consent, or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(e) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager and such person will not be included in determining whether a majority in interest of the members or, in the case of a manager-managed limited liability company, a majority of the managers, has voted for or consented to any matter or action.

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

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

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



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

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

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

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

(d) A limited liability company may reimburse, indemnify, and hold harmless a present or former member of a member-managed company or manager of a manager-managed company for any payment and with respect to any claim, demand, debt, obligation, or other

liability, provided that the approval of all members, after disclosure of all material facts, is required to reimburse, indemnify, or hold harmless a person with respect to any act, omission, or transaction by the person that constitutes a violation of the operating agreement or Section 405, 407, or 409, in each case as modified by the operating agreement.

(e) A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Section 105(c)(~~7~~6), the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

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

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

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

(1) to account to the company and hold as trustee for it any property, profit, or benefit derived by the member to which the member is not entitled:

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

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

(C) from the appropriation of a company opportunity;

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

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

(4) to disclose to each of the other members that are considering or voting on a decision or transaction regarding the company or one or more of the members' interests in the company:

(A) any material conflict of interest on the part of the disclosing member with respect to the decision or transaction; and

(B) if a material conflict of interest exists, all material facts relating to the decision or transaction that are within the disclosing member's knowledge and not known or reasonably available to the affected members.

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

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

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

(f) All the members of a member-managed limited liability company ~~or a manager-managed limited liability company~~ may authorize or ratify, after ~~full~~ disclosure of all material facts, a specific act, omission, or transaction, or specific category of acts, omissions, or transactions, that otherwise would violate the duty of loyalty, as expanded, limited, or eliminated in the operating agreement.

(g) It is a defense to a claim under subsection (b)(2) or subsection (b)(4) and any comparable claim in equity or at common law that the transaction or decision was fair to the limited liability company.

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

(i) A manager of a manager-managed limited liability company owes to the company and the members the duties of loyalty and care stated in subsections (j) and (k).

~~(i)(6j)~~ The fiduciary duty of loyalty of a manager in a manager-managed limited liability company, includes the ~~following rules apply~~ duties:

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

to account to the company and hold as trustee for it any property, profit, or benefit derived by the manager to which the manager is not entitled:

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

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

(C) from the appropriation of a company opportunity;

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

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

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

~~(5) The power to ratify under subsection (f) applies only to the members.~~to refrain from dealing with the company in the conduct or winding up of the company's activities and affairs as or on behalf of a person having an interest adverse to the company;

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

(4) to disclose to each of the other members and managers who are considering or voting on a decision or transaction regarding the company or one or more of the members' interests in the company;

(A) any material conflict of interest on the part of the disclosing manager with respect to the decision or transaction; and

(B) if a material conflict of interest exists, all material facts relating to the decision or transaction that are within the disclosing manager's knowledge and not known or reasonably available to the affected members or managers.

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

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

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

(n) All the members of a manager-managed limited liability company may authorize or ratify, after disclosure of all material facts, a specific act, omission, or transaction, or specific category of acts, omissions, or transactions, that otherwise would violate the duty of loyalty, as expanded, limited, or eliminated in the operating agreement.

(o) It is a defense to a claim under subsection (j)(2) or subsection (j)(4) and any comparable claim in equity or at common law that the transaction or decision was fair to the limited liability company.

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

~~-(6) Subject to subsection (d)~~(q) In a manager-managed limited liability company, a member does not have any fiduciary duty to the company or to any other member solely by reason of being a member. Whether and the extent to which a member of a manager-managed limited liability company owes fiduciary duties to the company or the other members depends upon the extent to which the member controls or participates in the management or the affairs of the company and shall be determined in accordance with the policies of this Section 409 and laws other than this act.

(r) A conflict of interest is material if it would reasonably be expected to affect a member's or manager's judgment regarding the decision or transaction under consideration.

**SECTION 410. RECORDS TO BE KEPT; RIGHTS TO INFORMATION AND RECORDS OF MEMBER, MANAGER, AND PERSON DISSOCIATED AS MEMBER.**

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

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

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

~~(A) without demand, any information concerning the company's activities, affairs, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this [act], except to the extent the company can establish that it reasonably believes the member already knows the information; and~~(1) a current list of the full name and last known address of each member and manager;

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

~~(3) The duty to furnish information under paragraph (2) also applies to each member to the extent the member knows any of the information described in paragraph (2).~~ 2) a copy of the articles of organization and all amendments thereto;

(3) a copy of all current and prior written operating agreements and amendments thereto;

(4) any record of a member's obligation to make a capital contribution to the company;

(5) a copy of the company's federal, state, and local income tax returns and reports, if any, for the three most recent years; and

(6) a copy of the company's financial statements, if any, for the three most recent years.

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

~~(1) The informational rights stated in subsection (a) and the duty stated in subsection (a)(3) apply to the managers and not the members.~~ ~~(2) During regular business hours and at a reasonable location specified by the limited liability company, a member or manager may inspect and copy ~~information~~the records described in subsection (a) and any other company records regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:~~

(A1) the member or manager seeks the ~~information~~records for a purpose reasonably related to the ~~member's interest as a member~~rights and duties of the member or manager under the operating agreement or this act;



(~~B~~2) the member or manager makes a demand in a record received by the company, describing with reasonable particularity the ~~information~~records sought and the purpose for seeking the ~~information~~records; and

(~~C~~3) the ~~information~~records sought ~~is~~are directly connected to the member's or manager's purpose.

(~~3~~c) Not later than 10 days after receiving a demand pursuant to ~~paragraph subsection (b)(2)(B)~~, the limited liability company shall inform in a record the member or manager that made the demand of:

(~~A~~) ~~what information~~(1) the records that the company will ~~provide~~make available in response to the demand and when and where the company will ~~provide the information~~make the records available, which time and location shall not be unreasonable under the circumstances; and

(~~B~~2) the ~~company's~~ reasons for declining, if the company declines to provide any demanded ~~information~~records.

(4d) Whenever this ~~{act}~~ or ~~an~~the operating agreement provides for a member or manager to vote on or give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the limited liability company shall, without demand, provide the member or manager with all information that is known to the company and ~~is material to the member's decision~~all records in the company's possession that are material to the member's or manager's decision, except to the extent the company reasonably believes that the member or manager already knows the information or is in possession of the records.

(ee) To the extent some or all of a limited liability company's records are maintained by a member or manager, the member or manager shall make those records available to the company as necessary for the company to satisfy its obligations pursuant to this section.

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

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

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

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

~~(b)(2)~~.

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

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

(fi) A member or person dissociated as a member may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection (hk) applies both to the agent or legal representative and to the member or person dissociated as a member.

(gi) Subject to Section 502 and 504, the rights under this section do not extend to a person as transferee.

(~~h~~k) In addition to any restriction or condition stated in its operating agreement, a limited liability company, ~~as a matter within the ordinary course of its activities and affairs,~~ may impose reasonable restrictions and conditions on access to and use of information to be furnished and records to be made available under this section, including designating information and records 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.

(l) If a dispute arises regarding a member's or manager's right under this section to obtain information or inspect or copy a record, or regarding whether any restriction imposed by the limited liability company on a member's or manager's right to obtain, inspect, copy, or use any such information or record is unreasonable, the court may award the successful party reasonable expenses, including reasonable attorney's fees and costs.

## **{ARTICLE} 5**

### **TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS**

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

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

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

(1) is permissible;

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

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

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

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

(b) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled. Solely for a purpose that is reasonably related to the transferee's right to receive distributions, a transferee has the rights to information under subsection 410(b).

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

(d) A transferable interest may be evidenced by a certificate of the interest issued by a limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate. A company may not issue a certificate of the interest in bearer form.

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

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

(g) Except as otherwise provided in Section 602(54)(B), if a member transfers a transferable interest, the transferor retains the rights of a member other than the transferable interest transferred and retains all the duties and obligations of a member.

(h) If a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Sections 403 and 406 known to the transferee when the transferee becomes a member or set forth in an operating agreement embodied in a signed record.

### **SECTION 503. CHARGING ORDER.**

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

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

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

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

~~————(c) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. Except as otherwise provided in subsection (f), the purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to Section 502.~~ ~~————(d) At any time before foreclosure under subsection (c), the~~The member or transferee whose transferable interest is subject to a charging order under subsection (a) may extinguish the charging order by satisfying the judgment and filing a certified copy of

the satisfaction with the court that issued the charging order.

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

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

~~\_\_\_\_\_ (1) the court shall confirm the sale;~~

~~\_\_\_\_\_ (2) the purchaser at the sale obtains the member's entire interest, not only the member's transferable interest;~~

~~\_\_\_\_\_ (3) the purchaser thereby becomes a member; and~~

~~\_\_\_\_\_ (4) the person whose interest was subject to the foreclosed charging order is~~

~~dissociated as a member.~~ ~~(gd)~~ This ~~{act}~~ does not deprive any member or transferee of the benefit of any exemption law applicable to the transferable interest of the member or transferee.

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

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

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

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

## ~~{~~ARTICLE~~}~~ 6

### DISSOCIATION

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

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

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

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

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

(A) the person ~~withdraws~~is expelled as a member by ~~express will~~judicial order under Section 602(5); or

(B) the person is ~~expelled as a member by judicial order~~dissociated under Section 602(~~67~~);

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

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

(c) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section ~~801~~806(d), to the other members for damages caused by the dissociation. The liability is in addition to any debt, obligation, or other liability of the member to the company or the other members. The company may offset its damages against any amount otherwise distributable to the person.

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

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

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

(3) the person's ~~entire interest is transferred in a foreclosure sale under Section 503(f) is~~ expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member ~~pursuant to the operating agreement;~~ ~~(5) the person is expelled as a member~~ by the affirmative vote or consent of all the other members if:

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

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

(i) a transfer for security purposes; or

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

(C) the person is an entity and:

(i) the company notifies the person that it will be expelled as a member because the person has filed a statement of dissolution or the equivalent, the person has been administratively dissolved, the person's charter or the equivalent has been revoked, or the



person's right to conduct business has been suspended by the person's jurisdiction of formation; and

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

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

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

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

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

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

(76) in the case of an individual:

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

(B) ~~in a member-managed limited liability company:~~ ~~(i) a~~ guardian or general conservator for the individual is appointed; ~~or~~

(~~9~~C) a court orders that the individual has otherwise become incapable of performing the individual's duties as a member under this {act} or the operating agreement; or

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

(D) a court of competent jurisdiction enters an order or judgment adjudicating the individual incompetent to manage his person or his estate.

(7) the person:

(A) becomes a debtor in bankruptcy;

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

(C) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all the person's property;

(~~9~~8) in the case of a person that is a testamentary or inter vivos trust or is acting as a member by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited liability company is distributed;

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

(~~11~~10) in the case of a person that is not an individual, the existence of the person terminates;

(~~12~~11) the limited liability company participates in a merger under {Article} 10 and:

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

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

~~(13)~~12) the limited liability company participates in an interest exchange under ~~{Article}~~ 10 and, as a result of the interest exchange, the person ceases to be a member;

~~(14)~~13) the limited liability company participates in a conversion under ~~{Article}~~ 10;

~~(15)~~14) the limited liability company participates in a domestication under ~~{Article}~~ 10 and, as a result of the domestication, the person ceases to be a member;

(15) the limited liability company participates in a division under Article 10 and:

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

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

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

### **SECTION 603. EFFECT OF DISSOCIATION.**

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

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

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

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

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

**{ARTICLE} 7**

**DISSOLUTION AND WINDING UP**

**SECTION 701. EVENTS CAUSING DISSOLUTION.**

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

(1) an event or circumstance that the operating agreement ~~states~~or articles of organization state causes dissolution;

(2) ~~the affirmative vote or consent of all the members;~~ the consent to dissolution is given in a record signed by that number of members specified in the operating agreement or, if none is specified, by a majority in interest of the members and by one or more members who on dissolution of the company and liquidation of its assets would be entitled to receive more than one-half of the value of all assets to be distributed to all members on liquidation;

(3) the passage of ~~90~~180 consecutive days during which the company has no members unless before the end of the period:

(A) consent to admit at least one specified person as a member is given ~~by transferees owning the rights to receive a majority of distributions as~~in a record signed by one or more transferees who on dissolution of the company and liquidation of its assets would be entitled to receive more than one-half of the value of all assets to be distributed to all transferees at the time the consent is to be effective; and

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

(4) on application by a member, the entry by ~~{the appropriate~~a court~~}~~of competent jurisdiction of an order dissolving the company on the grounds that:

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

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

or

(C) the members or managers are deadlocked in the management of the company and irreparable injury to the company is threatened or being suffered or the activities and affairs of the company cannot be conducted to the advantage of the members because of the deadlock;

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

(i) have acted, or are acting, ~~or will act~~ in a manner that is illegal or fraudulent with respect to the activities and affairs of the company, causing or threatening a material and adverse effect on the company; or

(ii) ~~have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant; or~~ have willfully or persistently breached the operating agreement or the duty of loyalty under Section 409, as modified by the operating agreement, causing or threatening a material and adverse effect on the company; or

(iii) have wasted, misapplied, or diverted substantial assets of the company for purposes not related to the activities and affairs of the company, causing or threatening a material and adverse effect on the company; or

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

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

## **SECTION 702. WINDING UP.**

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

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

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

(2) may:

(A) deliver to the ~~[Secretary of State]~~commission for filing a ~~statement~~notice of ~~dissolution~~winding up stating the name of the company ~~and~~, that the company ~~is dissolved~~has commenced to wind up its activities and affairs, and any other statements not prohibited by law;

(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; and

~~(F) deliver to the [Secretary of State] for filing a statement of termination stating the name of the company and that the company is terminated; and~~ ~~(G)~~  
perform other acts necessary or appropriate to the winding up.

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

(d) If the last person to have been a member or legal representative under subsection (c) ~~declines or fails to wind up the limited liability company's activities and affairs, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:~~ ~~(1)~~ does not elect to become liquidating agent within a reasonable time, another person may be appointed and replaced from time to time as liquidating agent if the appointment is in a record signed by one or more transferees who on dissolution of the limited liability company and liquidation of its assets would be entitled to receive more than one half of the value of all assets to be distributed to all transferees on liquidation at the time of the appointment. A liquidating agent pursuant to this subsection or subsection (c) may be replaced at any time by any other person appointed in a record signed by one or more transferees who on dissolution of the company and liquidation of its assets would be entitled to receive more than one half of the value of all assets to be distributed to all transferees on liquidation. A person appointed as liquidating agent under this subsection has the powers of a sole manager under Section 407(c) and is deemed to be a manager for the purposes of Section ~~304(a); and~~304.

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

~~\_\_\_\_\_ (A) that the company has no members;~~

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

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

(e) ~~[The appropriate~~ A court] of competent jurisdiction may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment or replacement of a person as liquidating agent to wind up the company's activities and affairs:

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

(2) if the company does not have any members, on the application of a transferee;

if:

~~—(A) the company does not have any members;~~ (A) the applicant establishes good cause;

(B) the last person to have been a member or the legal representative of the last person to have been a member declines ~~or~~ to become the liquidating agent or, having done so, fails to wind up the company's activities; ~~and~~ within a reasonable time; or

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

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

(f) Effective upon a person's becoming a liquidating agent, each other person who is then a manager of the limited liability company shall cease to be a manager and the members, if any, shall cease to have management authority except as set forth in an order of judicial supervision.



(g) Promptly after becoming a liquidating agent, the liquidating agent shall deliver to the commission for filing an amendment to the company's articles of organization stating:

(1) that the company has no managers;

(2) the name and the mailing address of each member or, if the company has no members, that the company has no members;

(3) the name and mailing address of the person who has been appointed as liquidating agent;

(4) if applicable, the case number and the name of the court that entered an order of judicial supervision of winding up; and

(5) any other statement not prohibited by law.

(h) If all of the known property and assets of the limited liability company have been applied and distributed pursuant to this chapter, articles of termination shall be filed with the commission stating:

(1) the name of the company; and

(2) that all of the known property and assets of the company have been applied and distributed pursuant to this chapter.

(i) After the authorized filing of the articles of termination, the limited liability company's existence continues but only for the purpose of suits, other proceedings, and appropriate action as provided in this chapter, dealing with and disposing of property that was overlooked during the winding up, defending and pursuing claims that were not paid or otherwise discharged before the filing, and engaging in activities that are reasonably necessary or appropriate for such purpose, all without affecting the liability of members and managers and without imposing liability on a liquidating agent. The managers or liquidating agent in office at

the time of termination or, if none, the members, may convey or transfer the company's real or personal property discovered after termination, and may take other action as necessary on behalf of and in the name of the company to complete the winding up of its activities and affairs and the liquidation and distribution of its assets.

### **SECTION 703. RESCINDING DISSOLUTION.**

(a) A limited liability company may rescind its dissolution, unless ~~a statement~~articles of termination applicable to the company ~~has~~have become effective, ~~{the appropriate a court}~~of competent jurisdiction has entered an order under Section 701(a)(4) dissolving the company, or the ~~{Secretary of State}~~commission has dissolved the company under Section 708.

(b) Rescinding dissolution under this section requires:

(1) the affirmative vote or consent of each member; ~~and or, if the~~  
company has no members, the consent of all transferees to the rescission and to the admission of one or more members;

(2) if the limited liability company has delivered to the ~~{Secretary of State}~~commission for filing a ~~statement~~notice of ~~dissolution~~winding up and:

(A) the ~~statement~~notice has not become effective, delivery to the ~~{Secretary of State}~~commission for filing of a statement of withdrawal under Section 208 applicable to the ~~statement~~notice of ~~dissolution~~winding up; or

(B) if the ~~statement of dissolution~~notice has become effective, delivery to the ~~{Secretary of State}~~commission for filing of a statement of ~~rescission~~correction under Section 209 stating the name of the company and that dissolution ~~has~~and winding up have been rescinded under this section.

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

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

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

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

**SECTION 704. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.**

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

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

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

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

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

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

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

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

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

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

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

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

(e) This section does not affect or prevent the enforcement of any mortgage, pledge, or other lien upon the limited liability company's property or, to the limits of the insurance protection only, any proceeding to establish liability of the company for which it is protected by liability insurance.

## **SECTION 705. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY.**

(a) A dissolved limited liability company ~~may publish~~that has filed a notice of ~~its dissolution and request~~winding up may require persons having claims against the company to present them in accordance with ~~the~~a notice to claimants in conformity with this section.

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

(1) be filed with the commission and published at least once in a newspaper of general circulation in the ~~{county}~~ in this state in which the dissolved limited liability company's principal ~~office~~address is located or, if the principal ~~office~~address is not located in this state, in the ~~{county}~~ in which the office of the company's ~~registered~~'s statutory agent is or was last located;

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

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

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

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

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

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

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

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

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

(e) This section does not affect or prevent the enforcement of any mortgage, pledge, or other lien upon the limited liability company's property or, to the limits of the insurance protection only, any proceeding to establish liability of the company for which it is protected by liability insurance.

#### **SECTION 706. COURT PROCEEDINGS.**

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

(1) at the time of application:

(A) are contingent; or

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

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

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

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

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

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

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

#### **SECTION 707. DISPOSITION OF ASSETS IN WINDING UP.**

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

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

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

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

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

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

#### **SECTION 708. ADMINISTRATIVE DISSOLUTION.**

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

(1) pay any fee,~~tax, interest,~~ or penalty required to be paid to the ~~[Secretary of State]~~commission not later than ~~[six months]~~sixty days after it is due;

(2) ~~deliver [an annual] [a biennial] report to the [Secretary of State] not later than [six months] after it is due; or~~have a statutory agent in this state for at least sixty consecutive days;

(3) have a ~~registered agent~~principal address in this state for ~~[60]~~at least sixty consecutive days;

(4) notify the commission within sixty days after its statutory agent or principal address has changed or its statutory agent has resigned;

(5) fails to amend its articles of organization as required by Section 202(b); or

(6) fails to respond to interrogatories as prescribed in Section 212.

(b) If the ~~[Secretary of State]~~commission determines that one or more grounds exist for administratively dissolving a limited liability company, the ~~[Secretary of State]~~commission shall ~~serve~~deliver to the company ~~with~~ notice in a record of the ~~[Secretary of State's]~~commission's determination. by delivering the notice to the address of the company's statutory agent, or, if the company does not have a statutory agent or the statutory agent address is invalid, to the company's principal address.

(c) If a limited liability company, not later than ~~[60]~~sixty days after ~~service~~delivery of the notice under subsection (b), does not cure or demonstrate to the satisfaction of the ~~[Secretary of State]~~commission the nonexistence of each ground determined by the ~~[Secretary of State], the [Secretary of State]~~commission, the commission shall administratively dissolve the company by



~~signing~~issuing a statement of administrative dissolution that recites the grounds for dissolution and the effective date of dissolution. The ~~{Secretary of State}~~commission shall file the statement and ~~serve a copy on the company pursuant to Section 210.~~deliver a copy to the company by delivering the statement to the address of the company's statutory agent, or, if the company does not have a statutory agent or the statutory agent address is invalid, to the company's principal address.

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

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

#### **SECTION 709. REINSTATEMENT.**

(a) A limited liability company that is administratively dissolved under Section 708 may apply to the ~~{Secretary of State}~~commission for reinstatement ~~{not later than {two}six~~ years after the effective date of dissolution~~}~~.

(b) If the limited liability company has not applied for reinstatement within six months after the effective date of the administrative dissolution, the commission shall release the company's name for use in accordance with this act or by a person intending to register the name as a trademark pursuant to A.R.S. § 44-1460.

(c) The application must state:

(1) the name of the company at the time of its administrative dissolution ~~and, if needed, a different name that satisfies Section 112;~~

(2) the name and address of the company's statutory agent and, if different, the principal office address of the company ~~and the name and street and mailing addresses of its registered agent; and~~

(3) ~~the effective date of the company's administrative dissolution; and~~  
~~(4) that the grounds for dissolution did not exist or have been cured.~~

(b) If another person has adopted the name of the limited liability company as an entity or partnership name or as a trade name or trademark, the company shall deliver for filing, simultaneously with delivery of the application for reinstatement, articles of amendment that adopt a new name for the company.

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

(ef) If the ~~{Secretary of State}~~commission determines that an application under subsection (a) contains the required information, is satisfied that the information is correct, and, if applicable, determines that subsection (d) has been complied with, and determines that all payments required to be made to the ~~{Secretary of State}~~commission by subsection (be) have been made, the ~~{Secretary of State}~~commission shall:

(1) cancel the statement of administrative dissolution and ~~prepare~~issue a statement of reinstatement that states the ~~{Secretary of State's}~~commission's determination and the effective date of reinstatement; ~~and~~

(2) file the statement of reinstatement; and ~~serve~~

(3) ~~deliver~~ a copy ~~of~~ of the statement of reinstatement to the limited liability company.

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

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

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

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

## SECTION 710. JUDICIAL REVIEW OF DENIAL OF REINSTATEMENT.

(a) If the ~~{Secretary of State}~~commission denies a limited liability company's application for reinstatement following administrative dissolution, the ~~{Secretary of State}~~commission shall ~~serve~~deliver to the company ~~with~~ a notice in a record that explains the reasons for the denial to the address of the company's statutory agent, or, if the company does not have a statutory agent or the statutory agent's address is invalid, to the company's principal address. ~~(b) A limited liability company may seek judicial review of denial of reinstatement in [the appropriate court] not later than [30] days after service of the notice of denial.~~

(b) A limited liability company that has been administratively dissolved pursuant to this section may bring an action against the commission in Superior Court to review the commission's refusal to reinstate the company. The action by the company shall be brought within six months after the commission's refusal becomes final. The Superior Court shall hear and determine the action as a trial de novo. In any such action the burden of proof shall be on the company.

## ~~{ARTICLE} 8~~

### ACTIONS BY MEMBERS

**SECTION 801. DIRECT ACTION BY MEMBER.** ~~(a) Subject to subsection (b), a~~ A member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement or this ~~{act}~~ or arising independently of the membership relationship.

~~(b) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.~~ **SECTION 802. DERIVATIVE ACTION.** A

member or transferee may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, ~~and the managers or other members do not bring the action within a reasonable time; or~~ and ninety days have expired from the date the demand was made unless:

(A) the member has earlier been notified that the demand has been rejected by the company;

(B) the statute of limitations will expire within the ninety days;

(C) irreparable injury to the company would result by waiting for the expiration of the ninety day period; or

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

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

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

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

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

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

(2) why demand should be excused as futile.

**SECTION 805. SPECIAL LITIGATION COMMITTEE.**

(a) If a limited liability company has received a demand under Section 802 or is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the demand or proceeding and determine whether pursuing ~~the action~~those claims is in the best interests of the company. If a derivative proceeding is commenced and the company appoints or has appointed a special litigation committee, on motion by the committee made in the name of the company, except for good cause shown, the court shall stay ~~discovery~~the derivative proceeding for the time reasonably necessary to permit the committee to make its investigation, make a determination under subsection (d), and file with the court a statement of its determination and supporting report under subsection (e). This subsection does not prevent the court from:

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

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

(b) A special litigation committee must be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

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

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

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

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

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

or

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

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

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

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

(4) be dismissed.

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

the determination of the committee. Otherwise, the court shall dissolve the stay of ~~discovery~~the derivative proceeding entered under subsection (a) and allow the action to continue under the control of the plaintiff.

**SECTION 806. PROCEEDS AND EXPENSES; REMEDIES.**

(a) Except as otherwise provided in subsection (b), (c), or (d):

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

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

(b) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney<sup>2</sup>'s fees and costs, from the recovery of the limited liability company.

(c) If the court finds that the derivative action was brought without reasonable cause, the court may require the plaintiff to pay to the defendants their reasonable expenses, including reasonable attorney's fees and costs, incurred in the defense of such action.

(d) The court, in its discretion, at any stage in the proceeding, may:

(1) treat a direct action as a derivative action subject to, or exempt from, such provisions of this Article 8 as the court chooses and order recovery to be paid to the limited liability company if the court finds that doing so is reasonably necessary to avoid:

(i) unfairly exposing the company or the defendants to a multiplicity of actions;

(ii) materially adversely affecting the interests of the company's creditors;

or



(iii) interfering with a fair distribution of any recovery among interested persons; or

(2) treat a derivative action as a direct action subject to, or exempt from, such provisions of this Article 8 as the court chooses and order recovery to be paid to the plaintiff if the court finds that justice so requires.

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

## **{ARTICLE} 9**

### **FOREIGN LIMITED LIABILITY COMPANIES**

#### **SECTION 901. GOVERNING LAW.**

(a) ~~The~~Subject to subsection (d), the law of the jurisdiction of formation of a foreign limited liability company governs:

(1) the internal affairs of the company; and

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

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

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

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

(d) A foreign limited liability company, its members and managers, and its foreign series, if any, have no greater rights and privileges than a domestic limited liability company and its members and managers with respect to transactions in this state and relationships with persons in this state who are not managers or members. A foreign series is liable for the debts, obligations, or other liabilities of the designating foreign company, and of any other foreign series of that designating foreign company, arising out of transactions in this state or relationships with persons in this state, and a designating foreign company is liable for such debts, obligations, or other liabilities of each foreign series of that designating foreign company.

#### **SECTION 902. REGISTRATION TO DO BUSINESS IN THIS STATE.**

(a) A foreign limited liability company may not, and a foreign series may not, do business in this state until it registers with the ~~{Secretary of State}~~commission under this ~~{article}~~.

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

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

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

(e) Section 901 ~~(a) and (b)~~ applies even if a foreign limited liability company or foreign series fails to register under this ~~{article}~~.

#### **SECTION 903. FOREIGN REGISTRATION STATEMENT.**

(a) To register to do business in this state, a foreign limited liability company must deliver a foreign registration statement to the ~~[Secretary of State]~~commission for filing. The statement must state:

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

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

(3) the jurisdiction of formation of the company;

(4) the principal address of the company and, if the law of the jurisdiction of formation requires the company to maintain an office in that jurisdiction, the address of the office or, if no office is required to be maintained, the name and the street address of the statutory agent in the jurisdiction of formation;

(5) the name and street address of the statutory agent in this state;

(6) either of the following:

(i) management of the company is vested in a manager or managers; or

(ii) management of the company is reserved to the members; and

(7) the name and address of either of the following:

(i) if management of the company is vested in a manager or managers, each person who is a manager and each member who owns a twenty percent or greater interest in the capital or profits of the company; or

(ii) if management of the company is reserved to the members, each person who is a member of the company.

(b) To register to do business in this state, a foreign series must deliver a foreign registration statement to the commission for filing. The statement must state:

(1) that the registrant is a foreign series;

(2) all of the information required in subsection (a) in connection with the foreign series; and

(3) all of the information required in subsection (a)(1), (a)(2), (a)(3), (a)(6), and (a)(7) in connection with the designating foreign company of the foreign series.

(c) An application for a foreign registration statement that a foreign limited liability company or foreign series submits to the commission under this Section 903 shall include a certified copy of its organizational documents on file in its jurisdiction of formation and proof that the company or foreign series existed in the state or country in which it organized within sixty days prior to delivering the application for filing with the commission.

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

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

~~—— (5) the name and street and mailing addresses of the company's registered agent in this state.~~ **SECTION 904. AMENDMENT OF FOREIGN REGISTRATION STATEMENT.**

A registered foreign limited liability company or foreign series shall deliver to the ~~[Secretary of State]~~commission for filing an amendment to its foreign registration statement if there is a change in: any of the information required under Section 903.

~~(1) the name of the company;~~

~~—— (2) the company's jurisdiction of formation;~~

~~—— (3) an address required by Section 903(4); or~~

~~—— (4) the information required by Section 903(5).~~

**SECTION 905. ACTIVITIES**

## **NOT CONSTITUTING DOING BUSINESS.**

(a) Activities of a foreign limited liability company or foreign series which do not constitute doing business in this state under this {article} include:

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

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

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

### **SECTION 906. NONCOMPLYING NAME OF FOREIGN LIMITED LIABILITY COMPANY.**

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

- (1) the alternate name;
- (2) the company<sup>2</sup>'s 's or foreign series' name, with the addition of its jurisdiction of formation; or
- (3) a name the company or foreign series is authorized to use under ~~[this state's assumed or fictitious name statute]~~ A.R.S. § 44-1460.

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

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

SECTION 907. RESERVED.

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

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

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

~~(A) its name and jurisdiction of formation;~~

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

and

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

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

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

~~(C) that the converted entity surrenders the converting company's registration to do business in this state and revokes the authority of the converting company's~~

~~registered agent to act as registered agent in this state on behalf of the company or the converted entity; and~~

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

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

(2) the jurisdiction of formation of the company or foreign series;

(3) that the company or foreign series surrenders its registration to do business in this state; and

(4) that the company or foreign series has dissolved and completed winding up or otherwise has ceased to exist.

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

#### **SECTION 909. ~~TRANSFER OF REGISTRATION~~RESERVED.**

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

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

~~(2) that before the merger or conversion the registration pertained to a foreign~~



~~limited liability company;~~

~~(3) the name of the applicant foreign entity into which the foreign limited liability company has merged or to which it has been converted and, if the name does not comply with Section 112, an alternate name adopted pursuant to Section 906(a);~~

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

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

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

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

#### **SECTION 910. TERMINATION OF REGISTRATION.**

(a) The ~~[Secretary of State]~~commission may terminate the registration of a registered foreign limited liability company or foreign series in the manner provided in subsections (b) and (c) if the ~~company~~commission receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the company is organized stating that it has ceased to exist, or if the company or foreign series does not:

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

(2) ~~deliver to the [Secretary of State] for filing, not later than [60] days after the due date, [an annual] [a biennial] report required under Section 212~~have a statutory agent as required by Section 115;

(3) have a ~~registered agent as required by Section 115; or~~principal address for at least sixty consecutive days;

(4) ~~deliver to the [Secretary of State] for filing a statement of a change under Section 116 not later than [30] days after a change has occurred in the name or address of the registered agent.~~notify the commission within sixty days after its statutory agent or principal address has changed or within sixty days after its statutory agent has resigned;

(5) amend its foreign registration statement as required by Section 904; or

(6) respond to interrogatories as prescribed in Section 212.

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

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

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

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

(1) the effective date of the termination, which must be at least ~~{60}~~sixty days after the date the ~~{Secretary of State}~~commission delivers the copy; and

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

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

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

(a) A registered foreign limited liability company or foreign series may withdraw its registration by delivering a statement of withdrawal to the ~~{Secretary of State}~~commission for filing. The statement of withdrawal must state:

(1) the name of the company ~~and its~~or foreign series and the name of the designating foreign company of the foreign series and the jurisdiction of formation of the company or designating foreign company;

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

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

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

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

## **SECTION 912. ACTION BY ~~{ATTORNEY GENERAL}~~.**

The ~~{Attorney General}~~ may maintain an action to enjoin a foreign limited liability company or foreign series from doing business in this state in violation of this ~~{article}~~.

## **~~{ARTICLE}~~ 10**

### **MERGER, INTEREST EXCHANGE, CONVERSION, ~~AND DOMESTICATION~~, AND**

#### **DIVISION**

#### **~~{PART}~~ 1**

#### **~~GENERAL PROVISIONS~~**

### **SECTION 1001. DEFINITIONS.**

(a) In this ~~{article}~~, unless the context otherwise requires:

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

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

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

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

~~——(5) “Converting entity” means the domestic entity that approves a plan of conversion pursuant to Section 1043 or the foreign entity that approves a conversion pursuant to the law of~~

~~its jurisdiction of formation.~~

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

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

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

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

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

~~——(11) “Entity”:~~

~~(A) means:~~

~~——(i) a business corporation;~~

~~——(ii) a nonprofit corporation;~~

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

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

~~——(v) a limited liability company;~~

~~——[(vi) a general cooperative association;]~~

~~——(vii) a limited cooperative association;~~

~~——(viii) an unincorporated nonprofit association;~~

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

~~\_\_\_\_\_ (x) any other person that has:~~

~~\_\_\_\_\_ (I) a legal existence separate from any interest holder of that person; or~~

~~\_\_\_\_\_ (II) the power to acquire an interest in real property in its own name; and~~

~~(B) does not include:~~

~~\_\_\_\_\_ (i) an individual;~~

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

~~\_\_\_\_\_ (iii) an association or relationship that is not an entity listed in subparagraph A and is not a partnership under the rules stated in [Section 202(c) of the Uniform Partnership Act (1997) (Last Amended 2013)] [Section 7 of the Uniform Partnership Act (1914)] or a similar provision of the law of another jurisdiction;~~

~~\_\_\_\_\_ (iv) a decedent's estate; or~~

~~\_\_\_\_\_ (v) a government or a governmental subdivision, agency, or instrumentality.~~

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

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

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

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

~~\_\_\_\_\_ (B) vote for or consent to the election of the governors of the entity; or~~  
~~\_\_\_\_\_ (C) receive notice of or vote on or consent to an issue involving the internal affairs of the entity.~~

~~\_\_\_\_\_ (15) “Governor” means:~~

~~\_\_\_\_\_ (A) a director of a business corporation;~~  
~~\_\_\_\_\_ (B) a director or trustee of a nonprofit corporation;~~  
~~\_\_\_\_\_ (C) a general partner of a general partnership;~~  
~~\_\_\_\_\_ (D) a general partner of a limited partnership;~~  
~~\_\_\_\_\_ (E) a manager of a manager-managed limited liability company;~~  
~~\_\_\_\_\_ (F) a member of a member-managed limited liability company;~~  
~~\_\_\_\_\_ [(G) a director of a general cooperative association;]~~  
~~\_\_\_\_\_ (H) a director of a limited cooperative association;~~  
~~\_\_\_\_\_ (I) a manager of an unincorporated nonprofit association;~~  
~~\_\_\_\_\_ (J) a trustee of a statutory trust, business trust, or common-law business trust; or~~  
~~\_\_\_\_\_ (K) any other person under whose authority the powers of an entity are exercised and under whose direction the activities and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.~~

~~\_\_\_\_\_ (16) “Interest” means:~~

~~\_\_\_\_\_ (A) a share in a business corporation;~~  
~~\_\_\_\_\_ (B) a membership in a nonprofit corporation;~~  
~~\_\_\_\_\_ (C) a partnership interest in a general partnership;~~  
~~\_\_\_\_\_ (D) a partnership interest in a limited partnership;~~  
~~\_\_\_\_\_ (E) a membership interest in a limited liability company;~~

~~\_\_\_\_\_ [(F) a share in a general cooperative association;]~~

~~\_\_\_\_\_ (G) a member's interest in a limited cooperative association;~~

~~\_\_\_\_\_ (H) a membership in an unincorporated nonprofit association;~~

~~\_\_\_\_\_ (I) a beneficial interest in a statutory trust, business trust, or common-law business trust; or~~

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

~~\_\_\_\_\_ (17) "Interest exchange" means a transaction authorized by [Part] 3.~~

~~\_\_\_\_\_ (18) "Interest holder" means:~~

~~\_\_\_\_\_ (A) a shareholder of a business corporation;~~

~~\_\_\_\_\_ (B) a member of a nonprofit corporation;~~

~~\_\_\_\_\_ (C) a general partner of a general partnership;~~

~~\_\_\_\_\_ (D) a general partner of a limited partnership;~~

~~\_\_\_\_\_ (E) a limited partner of a limited partnership;~~

~~\_\_\_\_\_ (F) a member of a limited liability company;~~

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

~~\_\_\_\_\_ (H) a member of a limited cooperative association;~~

~~\_\_\_\_\_ (I) a member of an unincorporated nonprofit association;~~

~~\_\_\_\_\_ (J) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or~~

~~\_\_\_\_\_ (K) any other direct holder of an interest.~~

~~\_\_\_\_\_ (19) "Interest holder liability" means:~~

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



~~\_\_\_\_\_ (i) solely by reason of the status of the person as an interest holder; or~~  
~~\_\_\_\_\_ (ii) by the organic rules of the entity which make one or more specified interest holders or categories of interest holders liable in their capacity as interest holders for all or specified liabilities of the entity; or~~

~~\_\_\_\_\_ (B) an obligation of an interest holder under the organic rules of an entity to contribute to the entity.~~

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

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

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

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

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

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

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

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

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

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

~~\_\_\_\_\_ (A) the bylaws of a business corporation;~~

- ~~\_\_\_\_\_ (B) the bylaws of a nonprofit corporation;~~
- ~~\_\_\_\_\_ (C) the partnership agreement of a general partnership;~~
- ~~\_\_\_\_\_ (D) the partnership agreement of a limited partnership;~~
- ~~\_\_\_\_\_ (E) the operating agreement of a limited liability company;~~
- ~~\_\_\_\_\_ [(F) the bylaws of a general cooperative association;]~~
- ~~\_\_\_\_\_ (G) the bylaws of a limited cooperative association;~~
- ~~\_\_\_\_\_ (H) the governing principles of an unincorporated nonprofit association; and~~
- ~~\_\_\_\_\_ (I) the trust instrument of a statutory trust or similar rules of a business trust or common-law business trust.~~

~~\_\_\_\_\_ (30) “Protected agreement” means:~~

- ~~\_\_\_\_\_ (A) a record evidencing indebtedness and any related agreement in effect on [the effective date of this [act]];~~
- ~~\_\_\_\_\_ (B) an agreement that is binding on an entity on [the effective date of this [act]];~~
- ~~\_\_\_\_\_ (C) the organic rules of an entity in effect on [the effective date of this [act]]; or~~
- ~~\_\_\_\_\_ (D) an agreement that is binding on any of the governors or interest holders of an entity on [the effective date of this [act]].~~

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

- ~~\_\_\_\_\_ (A) the articles of incorporation of a business corporation;~~
- ~~\_\_\_\_\_ (B) the articles of incorporation of a nonprofit corporation;~~
- ~~\_\_\_\_\_ (C) the certificate of limited partnership of a limited partnership;~~
- ~~\_\_\_\_\_ (D) the certificate of organization of a limited liability company;~~

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

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

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

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

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

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

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

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

~~\_\_\_\_\_ (37) “Surviving entity” means the entity that continues in existence after or is created by a merger.~~

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

~~\_\_\_\_\_ (A) recognized at common law; or~~

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

(1) “Plan” means a plan of merger, interest exchange, conversion, domestication, or division, as applicable.

(2) “Transaction” means a merger, an interest exchange, a conversion, a domestication, or a division, as applicable.

(b) Except for terms defined in Section 102 or unless the context otherwise requires, terms used in this article have the same meanings prescribed in chapter 6 of this title.

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

**APPRAISAL RIGHTS.**

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

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

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

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

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

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

~~—(b) Property held for a charitable purpose under the law of this state by a domestic or foreign entity immediately before a transaction under this [article] becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred unless, to the extent required by or pursuant to the law of this state concerning cy pres or other law dealing with nondiversion of charitable assets, the entity~~

obtains an appropriate order of ~~[the appropriate court]~~ ~~[the Attorney General]~~ specifying the disposition of the property.

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

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

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

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

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

~~**SECTION 1005. REFERENCE TO EXTERNAL FACTS.** A plan may refer to facts ascertainable outside the plan if the manner in which the facts will operate upon the plan is specified in the plan. The facts may include the occurrence of an event or a determination or action by a person, whether or not the event, determination, or action is within the control of a party to the transaction.~~

~~**SECTION 1006. APPRAISAL RIGHTS.** An interest holder of a domestic limited liability company that is a merging, ~~acquired,~~ converting, ~~or domesticating~~ limited liability company, or dividing entity or the acquired entity in an interest exchange is entitled to~~

contractual appraisal rights in connection with a transaction under this [article] to the extent provided in: ~~—————(1) the operating agreement; or —————(2) the plan.~~

~~**[SECTION 1007. EXCLUDED ENTITIES AND TRANSACTIONS.**~~

~~—————(a) The following entities may not participate in a transaction under this [article]:~~

~~—————(1)~~

~~—————(2).~~

~~—————(b) This [article] may not be used to effect a transaction that:~~

~~—————(1)~~

~~—————(2).]~~

~~*Legislative Note: Subsection (a) may be used by states that have special statutes restricted to the organization of certain types of entities. A common example is banking statutes that prohibit banks from engaging in transactions other than pursuant to those statutes.*~~

**SECTION 1003. ENTITY RESTRUCTURING TRANSACTIONS.**

(a) If a plan is approved as provided by Section 1004, a domestic limited liability company may be a party to or otherwise undertake a transaction by adopting a plan and otherwise complying with this article and:

(1) chapter 6, article 2 of this title for a merger;

(2) chapter 6, article 3 of this title for an interest exchange;

(3) chapter 6, article 4 of this title for a conversion;

(4) chapter 6, article 5 of this title for a domestication; or

(5) chapter 6, article 6 of this title for a division.

(b) The effective time and date of the transaction are as provided in chapter 6 of this title.

Except as expressly set forth in this article, the procedures regarding the effect of and all other aspects of the transaction are governed by chapter 6 of this title.

(c) This section does not limit the power of a limited liability company to acquire all or part of the interests of another entity through a voluntary exchange or otherwise.

#### **SECTION 1004. ACTION ON PLAN.**

If a domestic limited liability company is a merging, converting, domesticating, or dividing entity or the acquired entity in an interest exchange, a plan must be approved by all the members of the company entitled to vote on or consent to any matter.

#### **SECTION 1005. STATEMENT OF MERGER OR OTHER TRANSACTION; PUBLICATION OR POSTING.**

(a) A statement of merger, conversion, domestication, or division shall serve as articles of termination for a domestic limited liability company that is not the surviving or resulting business entity in a transaction.

(b) If a statement of merger includes amendments to the articles of organization of a domestic limited liability company, the document shall be published as provided in Section 202(g)(1) or the commission shall input the information into the database as prescribed by Section 202(g)(2). The document required to be filed and published or posted shall be styled “statement of merger.”

### **ARTICLE 11**

#### **PROFESSIONAL LIMITED LIABILITIES COMPANIES**

##### **SECTION 1101. DEFINITIONS.**

In this article, unless the context otherwise requires:

(1) “License” means a license, certificate of registration, or any other evidence of the satisfaction of the requirements of a licensing authority for the practice of a professional service.

(2) “Licensed person” means a person who is duly licensed by at least one licensing authority to provide at least one of the categories of professional service rendered by the professional limited liability company.

(3) “Licensing authority” means the officer, board, agency, court, or other authority empowered by law to license or otherwise authorize the rendition of a professional service.

(4) “Professional limited liability company” means a limited liability company organized under this chapter for purposes that include rendering one or more categories of professional services.

(5) “Professional service” means a service that may be lawfully rendered only by a person licensed or otherwise authorized by a licensing authority to render the service.

## **SECTION 1102. PROFESSIONAL LIMITED LIABILITY COMPANY FORMATION.**

(a) One or more persons may form a professional limited liability company by filing articles of organization with the commission that, in addition to the information required under Section 201, specify both of the following:

(1) that the company is a professional limited liability company; and

(2) the professional service or services that the professional limited liability company is organized to provide.

(b) A limited liability company organized under a law of this state other than this article may elect professional limited liability company status by amending its articles of organization pursuant to Section 202 to comply with subsection (a) and with Section 1106.

*Nonprofit entities may participate in transactions under this act with for profit entities, subject to compliance with Section 1003. If a state desires, however, to exclude entities with a*



~~charitable purpose or to exclude other types of entities from the scope of this article, that may be done by referring to those entities in Subsection (a).~~ **SECTION 1103. EXCLUSIONS FROM**

**ARTICLE.**

~~Subsection (b) may be used to exclude certain types of transactions governed by more specific statutes. A common example is the conversion of an insurance company from mutual to stock form. There may be other types of transactions that vary greatly among the states.~~

**[PART] 2**

**MERGER**

~~**SECTION 1021. MERGER AUTHORIZED.**~~

~~(a) By complying with this [part]:~~

~~(1) one or more domestic limited liability companies may merge with one or more domestic or foreign entities into a domestic or foreign surviving entity; and~~

~~(2) two or more foreign entities may merge into a domestic limited liability company.~~

~~(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity may be a party to a merger under this [part] or may be the surviving entity in such a merger if the merger is authorized by the law of the foreign entity's jurisdiction of formation.~~

**SECTION 1022. PLAN OF MERGER.**

~~(a) A domestic limited liability company may become a party to a merger under this [part] by approving a plan of merger. The plan must be in a record and contain:~~

~~(1) as to each merging entity, its name, jurisdiction of formation, and type of entity;~~

~~(2) if the surviving entity is to be created in the merger, a statement to that effect and the entity's name, jurisdiction of formation, and type of entity;~~

~~\_\_\_\_\_ (3) the manner of converting the interests in each party to the merger into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;~~

~~\_\_\_\_\_ (4) if the surviving entity exists before the merger, any proposed amendments to:~~

~~\_\_\_\_\_ (A) its public organic record, if any; and~~

~~\_\_\_\_\_ (B) its private organic rules that are, or are proposed to be, in a record;~~

~~\_\_\_\_\_ (5) if the surviving entity is to be created in the merger:~~

~~\_\_\_\_\_ (A) its proposed public organic record, if any; and~~

~~\_\_\_\_\_ (B) the full text of its private organic rules that are proposed to be in a record;~~

~~\_\_\_\_\_ (6) the other terms and conditions of the merger; and~~

~~\_\_\_\_\_ (7) any other provision required by the law of a merging entity's jurisdiction of formation or the organic rules of a merging entity.~~

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

### **~~SECTION 1023. APPROVAL OF MERGER.~~**

~~\_\_\_\_\_ (a) A plan of merger is not effective unless it has been approved:~~

~~\_\_\_\_\_ (1) by a domestic merging limited liability company, by all the members of the company entitled to vote on or consent to any matter; and~~

~~\_\_\_\_\_ (2) in a record, by each member of a domestic merging limited liability company which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the merger becomes effective, unless:~~

~~\_\_\_\_\_ (A) the operating agreement of the company provides in a record for the~~

~~approval of a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and~~

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

~~\_\_\_\_\_ (b) A merger involving a domestic merging entity that is not a limited liability company is not effective unless the merger is approved by that entity in accordance with its organic law.~~

~~\_\_\_\_\_ (c) A merger involving a foreign merging entity is not effective unless the merger is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.~~

#### **~~SECTION 1024. AMENDMENT OR ABANDONMENT OF PLAN OF MERGER.~~**

~~\_\_\_\_\_ (a) A plan of merger may be amended only with the consent of each party to the plan, except as otherwise provided in the plan.~~

~~\_\_\_\_\_ (b) A domestic merging limited liability company may approve an amendment of a plan of merger:~~

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

~~\_\_\_\_\_ (2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the merger is entitled to vote on or consent to any amendment of the plan that will change:~~

~~\_\_\_\_\_ (A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by the interest holders of any party to the plan;~~

~~\_\_\_\_\_ (B) the public organic record, if any, or private organic rules of the~~

~~surviving entity that will be in effect immediately after the merger becomes effective, except for changes that do not require approval of the interest holders of the surviving entity under its organic law or organic rules; or~~

~~\_\_\_\_\_ (C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.~~

~~\_\_\_\_\_ (c) After a plan of merger has been approved and before a statement of merger becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic merging limited liability company may abandon the plan in the same manner as the plan was approved.~~

~~\_\_\_\_\_ (d) If a plan of merger is abandoned after a statement of merger has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by a party to the plan, must be delivered to the [Secretary of State] for filing before the statement of merger becomes effective. The statement of abandonment takes effect on filing, and the merger is abandoned and does not become effective. The statement of abandonment must contain:~~

~~\_\_\_\_\_ (1) the name of each party to the plan of merger;~~

~~\_\_\_\_\_ (2) the date on which the statement of merger was filed by the [Secretary of State]; and~~

~~\_\_\_\_\_ (3) a statement that the merger has been abandoned in accordance with this section.~~

#### **~~SECTION 1025. STATEMENT OF MERGER; EFFECTIVE DATE OF MERGER.~~**

~~\_\_\_\_\_ (a) A statement of merger must be signed by each merging entity and delivered to the [Secretary of State] for filing.~~

~~\_\_\_\_\_ (b) A statement of merger must contain:~~

~~\_\_\_\_\_ (1) the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity;~~

~~\_\_\_\_\_ (2) the name, jurisdiction of formation, and type of entity of the surviving entity;~~

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

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

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

~~\_\_\_\_\_ (6) if the surviving entity is created by the merger and is a domestic limited liability partnership, its statement of qualification, as an attachment.~~

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

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

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

~~\_\_\_\_\_ (f) If the surviving entity is a domestic limited liability company, the merger becomes effective when the statement of merger is effective. In all other cases, the merger becomes effective on the later of:~~

~~\_\_\_\_\_ (1) the date and time provided by the organic law of the surviving entity; and~~

~~\_\_\_\_\_ (2) when the statement is effective.~~

#### **~~SECTION 1026. EFFECT OF MERGER.~~**

~~\_\_\_\_\_ (a) When a merger becomes effective:~~

~~\_\_\_\_\_ (1) the surviving entity continues or comes into existence;~~

~~\_\_\_\_\_ (2) each merging entity that is not the surviving entity ceases to exist;~~

~~\_\_\_\_\_ (3) all property of each merging entity vests in the surviving entity without transfer, reversion, or impairment;~~

~~\_\_\_\_\_ (4) all debts, obligations, and other liabilities of each merging entity are debts, obligations, and other liabilities of the surviving entity;~~

~~\_\_\_\_\_ (5) except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of each merging entity vest in the surviving entity;~~

~~\_\_\_\_\_ (6) if the surviving entity exists before the merger:~~

~~\_\_\_\_\_ (A) all its property continues to be vested in it without transfer, reversion, or impairment;~~

~~\_\_\_\_\_ (B) it remains subject to all its debts, obligations, and other liabilities; and~~

~~\_\_\_\_\_ (C) all its rights, privileges, immunities, powers, and purposes continue to be vested in it;~~

~~\_\_\_\_\_ (7) the name of the surviving entity may be substituted for the name of any merging entity that is a party to any pending action or proceeding;~~

~~\_\_\_\_\_ (8) if the surviving entity exists before the merger:~~

~~\_\_\_\_\_ (A) its public organic record, if any, is amended to the extent provided in the statement of merger; and~~

~~\_\_\_\_\_ (B) its private organic rules that are to be in a record, if any, are amended to the extent provided in the plan of merger;~~

~~\_\_\_\_\_ (9) if the surviving entity is created by the merger, its private organic rules are effective and:~~

~~\_\_\_\_\_ (A) if it is a filing entity, its public organic record becomes effective; and~~

~~\_\_\_\_\_ (B) if it is a limited liability partnership, its statement of qualification becomes effective; and~~

~~\_\_\_\_\_ (10) the interests in each merging entity which are to be converted in the merger are converted, and the interest holders of those interests are entitled only to the rights provided to them under the plan of merger and to any appraisal rights they have under Section 1006 and the merging entity's organic law.~~

~~\_\_\_\_\_ (b) Except as otherwise provided in the organic law or organic rules of a merging entity, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of the merging entity.~~

~~\_\_\_\_\_ (c) When a merger becomes effective, a person that did not have interest holder liability with respect to any of the merging entities and becomes subject to interest holder liability with respect to a domestic entity as a result of the merger has interest holder liability only to the extent provided by the organic law of that entity and only for those debts, obligations, and other liabilities that are incurred after the merger becomes effective.~~

~~\_\_\_\_\_ (d) When a merger becomes effective, the interest holder liability of a person that ceases~~

~~to hold an interest in a domestic merging limited liability company with respect to which the person had interest holder liability is subject to the following rules:~~

~~—————(1) The merger does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the merger became effective.~~

~~—————(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that is incurred after the merger becomes effective.~~

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

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

~~—————(e) When a merger becomes effective, a foreign entity that is the surviving entity may be served with process in this state for the collection and enforcement of any debts, obligations, or other liabilities of a domestic merging limited liability company as provided in Section 119.~~

~~—————(f) When a merger becomes effective, the registration to do business in this state of any foreign merging entity that is not the surviving entity is canceled.~~



### **~~[PART] 3~~**

#### **~~INTEREST EXCHANGE~~**

##### **~~SECTION 1031. INTEREST EXCHANGE AUTHORIZED.~~**

~~————(a) By complying with this [part]:~~

~~————(1) a domestic limited liability company may acquire all of one or more classes or series of interests of another domestic entity or a foreign entity in exchange for interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing; or~~

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

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

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

##### **~~SECTION 1032. PLAN OF INTEREST EXCHANGE.~~**

~~————(a) A domestic limited liability company may be the acquired entity in an interest exchange under this [part] by approving a plan of interest exchange. The plan must be in a~~

~~record and contain:~~

~~\_\_\_\_\_ (1) the name of the acquired entity;~~

~~\_\_\_\_\_ (2) the name, jurisdiction of formation, and type of entity of the acquiring entity;~~

~~\_\_\_\_\_ (3) the manner of converting the interests in the acquired entity into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;~~

~~\_\_\_\_\_ (4) any proposed amendments to:~~

~~\_\_\_\_\_ (A) the certificate of organization of the acquired entity; and~~

~~\_\_\_\_\_ (B) the operating agreement of the acquired entity that are, or are proposed to be, in a record;~~

~~\_\_\_\_\_ (5) the other terms and conditions of the interest exchange; and~~

~~\_\_\_\_\_ (6) any other provision required by the law of this state or the operating agreement of the acquired entity.~~

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

### **~~SECTION 1033. APPROVAL OF INTEREST EXCHANGE.~~**

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

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

~~\_\_\_\_\_ (2) in a record, by each member of the domestic acquired limited liability company that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the interest exchange becomes effective, unless:~~

~~\_\_\_\_\_ (A) the operating agreement of the company provides in a record for the~~

~~approval of an interest exchange or a merger in which some or all of its members become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and~~

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

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

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

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

#### **~~SECTION 1034. AMENDMENT OR ABANDONMENT OF PLAN OF INTEREST EXCHANGE.~~**

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

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

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

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

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

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

~~\_\_\_\_\_ (C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.~~

~~\_\_\_\_\_ (c) After a plan of interest exchange has been approved and before a statement of interest exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic acquired limited liability company may abandon the plan in the same manner as the plan was approved.~~

~~\_\_\_\_\_ (d) If a plan of interest exchange is abandoned after a statement of interest exchange has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the acquired limited liability company, must be delivered to the [Secretary of State] for filing before the statement of interest exchange becomes effective. The statement of abandonment takes effect on filing, and the interest exchange is abandoned and does not become effective. The statement of abandonment must contain:~~

~~\_\_\_\_\_ (1) the name of the acquired company;~~

~~\_\_\_\_\_ (2) the date on which the statement of interest exchange was filed by the [Secretary of State]; and~~

~~\_\_\_\_\_ (3) a statement that the interest exchange has been abandoned in accordance with~~

~~this section.~~

~~**SECTION 1035. STATEMENT OF INTEREST EXCHANGE; EFFECTIVE DATE OF INTEREST EXCHANGE.**~~

~~——(a) A statement of interest exchange must be signed by a domestic acquired limited liability company and delivered to the [Secretary of State] for filing.~~

~~——(b) A statement of interest exchange must contain:~~

~~————(1) the name of the acquired limited liability company;~~

~~————(2) the name, jurisdiction of formation, and type of entity of the acquiring entity;~~

~~————(3) a statement that the plan of interest exchange was approved by the acquired company in accordance with this [part]; and~~

~~————(4) any amendments to the acquired company's certificate of organization approved as part of the plan of interest exchange.~~

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

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

~~——(e) An interest exchange becomes effective when the statement of interest exchange is effective.~~

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

~~——(a) When an interest exchange in which the acquired entity is a domestic limited liability~~

company becomes effective:

~~—————(1) the interests in the acquired company which are the subject of the interest exchange are converted, and the members holding those interests are entitled only to the rights provided to them under the plan of interest exchange and to any appraisal rights they have under Section 1006;~~

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

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

~~—————(4) the provisions of the operating agreement of the acquired company that are to be in a record, if any, are amended to the extent provided in the plan of interest exchange.~~

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

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

~~————(d) When an interest exchange becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic acquired limited liability company with respect to~~

which the person had interest holder liability is subject to the following rules:

~~—————(1) The interest exchange does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the interest exchange became effective.~~

~~—————(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that is incurred after the interest exchange becomes effective.~~

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

~~—————(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the operating agreement of the acquired company with respect to any interest holder liability preserved under paragraph (1) as if the interest exchange had not occurred.~~

## **[PART] 4**

### **CONVERSION**

#### **SECTION 1041. CONVERSION AUTHORIZED.**

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

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

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

~~—————(b) By complying with the provisions of this [part] applicable to foreign entities, a foreign entity that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign entity's jurisdiction of~~

formation.

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

#### **~~SECTION 1042. PLAN OF CONVERSION.~~**

~~——(a) A domestic limited liability company may convert to a different type of entity under this [part] by approving a plan of conversion. The plan must be in a record and contain:~~

~~——(1) the name of the converting limited liability company;~~

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

~~——(3) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;~~

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

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

~~——(6) the other terms and conditions of the conversion; and~~

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

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

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



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

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

~~—————(2) in a record, by each member of a domestic converting limited liability company which will have interest holder liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:~~

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

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

~~—————(b) A conversion involving a domestic converting entity that is not a limited liability company is not effective unless it is approved by the domestic converting entity in accordance with its organic law.~~

~~—————(c) A conversion of a foreign converting entity is not effective unless it is approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.~~

#### **~~SECTION 1044. AMENDMENT OR ABANDONMENT OF PLAN OF CONVERSION.~~**

~~—————(a) A plan of conversion of a domestic converting limited liability company may be amended:~~

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

~~—————(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or~~

~~consent to any amendment of the plan that will change:~~

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

~~—————(B) the public organic record, if any, or private organic rules of the converted entity which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted entity under its organic law or organic rules; or~~

~~—————(C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.~~

~~————(b) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.~~

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

~~—————(1) the name of the converting limited liability company;~~

~~—————(2) the date on which the statement of conversion was filed by the [Secretary of State]; and~~

~~\_\_\_\_\_ (3) a statement that the conversion has been abandoned in accordance with this section.~~

**SECTION 1045. STATEMENT OF CONVERSION; EFFECTIVE DATE OF CONVERSION.**

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

~~\_\_\_\_\_ (b) A statement of conversion must contain:~~

~~\_\_\_\_\_ (1) the name, jurisdiction of formation, and type of entity of the converting entity;~~

~~\_\_\_\_\_ (2) the name, jurisdiction of formation, and type of entity of the converted entity;~~

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

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

~~\_\_\_\_\_ (5) if the converted entity is a domestic limited liability partnership, its statement of qualification, as an attachment.~~

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

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

~~\_\_\_\_\_ (e) A plan of conversion that is signed by a domestic converting limited liability company~~

~~and meets all the requirements of subsection (b) may be delivered to the [Secretary of State] for filing instead of a statement of conversion and on filing has the same effect. If a plan of conversion is filed as provided in this subsection, references in this [article] to a statement of conversion refer to the plan of conversion filed under this subsection.~~

~~———(f) If the converted entity is a domestic limited liability company, the conversion becomes effective when the statement of conversion is effective. In all other cases, the conversion becomes effective on the later of:~~

~~———(1) the date and time provided by the organic law of the converted entity; and~~

~~———(2) when the statement is effective.~~

**SECTION 1046. EFFECT OF CONVERSION.**

~~\_\_\_\_\_ (a) When a conversion becomes effective:~~

~~\_\_\_\_\_ (1) the converted entity is:~~

~~\_\_\_\_\_ (A) organized under and subject to the organic law of the converted entity;~~

~~and~~

~~\_\_\_\_\_ (B) the same entity without interruption as the converting entity;~~

~~\_\_\_\_\_ (2) all property of the converting entity continues to be vested in the converted entity without transfer, reversion, or impairment;~~

~~\_\_\_\_\_ (3) all debts, obligations, and other liabilities of the converting entity continue as debts, obligations, and other liabilities of the converted entity;~~

~~\_\_\_\_\_ (4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting entity remain in the converted entity;~~

~~\_\_\_\_\_ (5) the name of the converted entity may be substituted for the name of the converting entity in any pending action or proceeding;~~

~~\_\_\_\_\_ (6) the certificate of organization of the converted entity becomes effective;~~

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

~~\_\_\_\_\_ (8) the interests in the converting entity are converted, and the interest holders of the converting entity are entitled only to the rights provided to them under the plan of conversion and to any appraisal rights they have under Section 1006.~~

~~\_\_\_\_\_ (b) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member,~~

~~manager, or third party would have upon a dissolution, liquidation, or winding up of the converting entity.~~

~~—————(c) When a conversion becomes effective, a person that did not have interest holder liability with respect to the converting entity and becomes subject to interest holder liability with respect to a domestic entity as a result of the conversion has interest holder liability only to the extent provided by the organic law of the entity and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.~~

~~—————(d) When a conversion becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic converting limited liability company with respect to which the person had interest holder liability is subject to the following rules:~~

~~—————(1) The conversion does not discharge any interest holder liability under this [act] to the extent the interest holder liability was incurred before the conversion became effective;~~

~~—————(2) The person does not have interest holder liability under this [act] for any debt, obligation, or other liability that arises after the conversion becomes effective.~~

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

~~—————(4) The person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the organic rules of the converting entity with respect to any interest holder liability preserved under paragraph (1) as if the conversion had not occurred.~~

~~—————(e) When a conversion becomes effective, a foreign entity that is the converted entity may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 119.~~

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

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

## **[PART] 5**

### **DOMESTICATION**

#### **SECTION 1051. DOMESTICATION AUTHORIZED.**

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

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

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

#### **SECTION 1052. PLAN OF DOMESTICATION.**

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

~~——(1) the name of the domesticating limited liability company;~~

~~\_\_\_\_\_ (2) the name and jurisdiction of formation of the domesticated limited liability company;~~

~~\_\_\_\_\_ (3) the manner of converting the interests in the domesticating limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;~~

~~\_\_\_\_\_ (4) the proposed certificate of organization of the domesticated limited liability company;~~

~~\_\_\_\_\_ (5) the full text of the provisions of the operating agreement of the domesticated limited liability company that are proposed to be in a record;~~

~~\_\_\_\_\_ (6) the other terms and conditions of the domestication; and~~

~~\_\_\_\_\_ (7) any other provision required by the law of this state or the operating agreement of the domesticating limited liability company.~~

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

### **~~SECTION 1053. APPROVAL OF DOMESTICATION.~~**

~~\_\_\_\_\_ (a) A plan of domestication of a domestic domesticating limited liability company is not effective unless it has been approved:~~

~~\_\_\_\_\_ (1) by all the members entitled to vote on or consent to any matter; and~~

~~\_\_\_\_\_ (2) in a record, by each member that will have interest holder liability for debts, obligations, and other liabilities that are incurred after the domestication becomes effective, unless:~~

~~\_\_\_\_\_ (A) the operating agreement of the domesticating company in a record provides for the approval of a domestication or merger in which some or all of its members~~



~~become subject to interest holder liability by the affirmative vote or consent of fewer than all the members; and~~

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

~~—————(b) A domestication of a foreign domesticating limited liability company is not effective unless it is approved in accordance with the law of the foreign limited liability company's jurisdiction of formation.~~

#### **~~SECTION 1054. AMENDMENT OR ABANDONMENT OF PLAN OF DOMESTICATION.~~**

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

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

~~—————(2) by its managers or members in the manner provided in the plan, but a member that was entitled to vote on or consent to approval of the domestication is entitled to vote on or consent to any amendment of the plan that will change:~~

~~—————(A) the amount or kind of interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing, to be received by any of the members of the domesticating limited liability company under the plan;~~

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

~~\_\_\_\_\_ (C) any other terms or conditions of the plan, if the change would adversely affect the member in any material respect.~~

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

~~\_\_\_\_\_ (c) If a plan of domestication is abandoned after a statement of domestication has been delivered to the [Secretary of State] for filing and before the statement becomes effective, a statement of abandonment, signed by the domesticating limited liability company, must be delivered to the [Secretary of State] for filing before the statement of domestication becomes effective. The statement of abandonment takes effect on filing, and the domestication is abandoned and does not become effective. The statement of abandonment must contain:~~

~~\_\_\_\_\_ (1) the name of the domesticating limited liability company;~~

~~\_\_\_\_\_ (2) the date on which the statement of domestication was filed by the [Secretary of State]; and~~

~~\_\_\_\_\_ (3) a statement that the domestication has been abandoned in accordance with this section.~~

#### ~~**SECTION 1055. STATEMENT OF DOMESTICATION; EFFECTIVE DATE OF DOMESTICATION.**~~

~~\_\_\_\_\_ (a) A statement of domestication must be signed by the domesticating limited liability company and delivered to the [Secretary of State] for filing.~~

~~\_\_\_\_\_ (b) A statement of domestication must contain:~~

~~\_\_\_\_\_ (1) the name and jurisdiction of formation of the domesticating limited liability~~

company;

~~\_\_\_\_\_ (2) the name and jurisdiction of formation of the domesticated limited liability~~

~~company;~~

~~\_\_\_\_\_ (3) if the domesticating limited liability company is a domestic limited liability company, a statement that the plan of domestication was approved in accordance with this [part]~~

~~or, if the domesticating limited liability company is a foreign limited liability company, a statement that the domestication was approved in accordance with the law of its jurisdiction of formation; and~~

~~\_\_\_\_\_ (4) the certificate of organization of the domesticated limited liability company, as an attachment.~~

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

~~\_\_\_\_\_ (d) The certificate of organization of a domestic domesticated limited liability company must satisfy the requirements of this [act], but the certificate does not need to be signed.~~

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

~~\_\_\_\_\_ (f) If the domesticated entity is a domestic limited liability company, the domestication becomes effective when the statement of domestication is effective. If the domesticated entity is a foreign limited liability company, the domestication becomes effective on the later of:~~

~~\_\_\_\_\_ (1) the date and time provided by the organic law of the domesticated entity; and~~

~~\_\_\_\_\_ (2) when the statement is effective.~~

**SECTION 1056. EFFECT OF DOMESTICATION.**

~~\_\_\_\_\_ (a) When a domestication becomes effective:~~

~~\_\_\_\_\_ (1) the domesticated entity is:~~

~~\_\_\_\_\_ (A) organized under and subject to the organic law of the domesticated entity; and~~

~~\_\_\_\_\_ (B) the same entity without interruption as the domesticating entity;~~

~~\_\_\_\_\_ (2) all property of the domesticating entity continues to be vested in the domesticated entity without transfer, reversion, or impairment;~~

~~\_\_\_\_\_ (3) all debts, obligations, and other liabilities of the domesticating entity continue as debts, obligations, and other liabilities of the domesticated entity;~~

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

~~\_\_\_\_\_ (5) the name of the domesticated entity may be substituted for the name of the domesticating entity in any pending action or proceeding;~~

~~\_\_\_\_\_ (6) the certificate of organization of the domesticated entity becomes effective;~~

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

~~\_\_\_\_\_ (8) the interests in the domesticating entity are converted to the extent and as approved in connection with the domestication, and the members of the domesticating entity are entitled only to the rights provided to them under the plan of domestication and to any appraisal rights they have under Section 1006.~~

~~————(b) Except as otherwise provided in the organic law or operating agreement of the domesticating limited liability company, the domestication does not give rise to any rights that a member, manager, or third party would otherwise have upon a dissolution, liquidation, or winding up of the domesticating company.~~

~~————(c) When a domestication becomes effective, a person that did not have interest holder liability with respect to the domesticating limited liability company and becomes subject to interest holder liability with respect to a domestic company as a result of the domestication has interest holder liability only to the extent provided by this [act] and only for those debts, obligations, and other liabilities that are incurred after the domestication becomes effective.~~

~~————(d) When a domestication becomes effective, the interest holder liability of a person that ceases to hold an interest in a domestic domesticating limited liability company with respect to which the person had interest holder liability is subject to the following rules:~~

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

~~————(2) A person does not have interest holder liability under this [act] for any debt, obligation, or other liability that is incurred after the domestication becomes effective.~~

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

~~————(4) A person has whatever rights of contribution from any other person as are provided by this [act], law other than this [act], or the operating agreement of the domestic domesticating limited liability company with respect to any interest holder liability preserved under paragraph (1) as if the domestication had not occurred.~~

~~————(e) When a domestication becomes effective, a foreign limited liability company that is the domesticated company may be served with process in this state for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in Section 119.~~

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

~~————(g) A domestication does not require a domestic domesticating limited liability company to wind up its affairs and does not constitute or cause the dissolution of the company.~~

(a) Nothing contained in this article shall alter the right of persons licensed to perform professional services from so doing in any other business form permitted them by law.

(b) Nothing contained in this article shall be construed to prohibit a professional limited liability company from employing persons who are not licensed to perform professional services that are rendered by the company if those persons:

(1) work at the direction or under the supervision of those who are licensed persons;

(2) do not hold themselves out to the public generally as being authorized to perform the professional services rendered by the company; and

(3) are not prohibited by the licensing authority regulating any of the professional services rendered by the professional limited liability company from being so employed.

#### **SECTION 1104. APPLICATION OF GENERAL LIMITED LIABILITY COMPANY LAW.**

Professional limited liability companies shall be governed by the laws applicable to other limited liability companies except insofar as such laws shall be limited or enlarged by or contrary to the provisions of this act, in any of which events this article shall be controlling.

#### **SECTION 1105. SPECIAL RESTRICTIONS.**

(a) A professional limited liability company may render a category of professional services in this state only through its members, managers, officers, agents, and employees who are themselves licensed persons qualified in this state to perform that category of professional services. This article does not limit or restrict the operation of any limited liability company or its members, including any licensed person, to the extent the company is otherwise authorized

under applicable law administered by the licensing authority to render professional services through a limited liability company that is not subject to this article.

(b) A professional limited liability company may issue a transferable interest or admit as a member any person unless prohibited by the licensing authority.

(c) A transferable interest in a professional limited liability company may be transferred to any person unless prohibited by the licensing authority. A member who transfers a transferable interest in violation of this subsection shall be deemed to have dissociated as a member under Section 602.

#### **SECTION 1106. NAME.**

The name of a professional limited liability company authorized to transact business in this state shall satisfy the requirements of Section 112, except that the name shall contain the words “professional limited liability company” or the abbreviations “P.L.L.C.”, “P.L.C.”, “PLLC”, or “PLC”, in uppercase or lowercase letters.

#### **SECTION 1107. PROFESSIONAL RELATIONS AND RESPONSIBILITY.**

This article shall not alter any law applicable to the relationship between a person performing professional services and a person receiving those services, including liability arising out of those professional services.

#### **SECTION 1108. DISCIPLINARY POWERS OF REGULATING LICENSING AUTHORITIES.**

(a) No professional limited liability company may do any act which is prohibited to be done by individuals licensed to perform professional services that are rendered by the company.



(b) Each member, manager, officer, agent, and employee of a professional limited liability company who is a licensed person in the jurisdiction in which the person performs professional services shall be subject to the rules and regulations adopted by and the disciplinary powers of the licensing authority or licensing authorities regulating the professional services rendered by the company in the jurisdiction in which the person performs professional services.

~~[ARTICLE] 11~~ 12

**MISCELLANEOUS PROVISIONS**

**SECTION ~~1101.~~1201. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION ~~1102.~~1202. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This ~~[act]~~ modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

**SECTION ~~1103.~~1203. SAVINGS CLAUSE.** This ~~[act]~~ does not affect an action commenced, proceeding brought, or right accrued before ~~[the effective date of this [act]].~~

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

*Legislative Note: Include this section only if this state lacks a general severability statute or decision by the highest court of this state stating a general rule of severability.* **SECTION 1105, SECTION 1204, REPEALS.** The following are repealed: (1) ~~the state limited liability company act~~ Arizona Limited Liability Company Act, as ~~amended, and as~~ in effect immediately before ~~the effective date of this {act}};~~ act, is hereby repealed effective as of September 1, 2020.

~~(2) . . . .~~

~~(3) . . . .~~ **SECTION 1106-1205, EFFECTIVE DATE.** This ~~{act}~~ takes effect ~~. . . .~~

on September 1, 2019.