
Be it enacted by the Legislature of the State of Kansas:

New Section 1. This act may be cited as the revised uniform limited liability company act.

New Sec. 2. In this act:

(a)(1) “Certificate of organization” means the certificate required by section 17, and amendments thereto. The term includes the certificate as amended or restated.

(2) “Contribution” means any benefit provided by a person to a limited liability company:

(A) In order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

(B) in order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

(C) in the person’s capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

(3) “Debtor in bankruptcy” means a person that is the subject
(A) An order for relief under title 11 of the United States Code
or a successor statute of general application; or
(B) a comparable order under federal, state or foreign law
governing insolvency.
(4) “Designated office” means:
(A) The office that a limited liability company is required to
designate and maintain under section 13, and amendments thereto; or
(B) the principal office of a foreign limited liability company.
(5) “Distribution,” except as otherwise provided in section
34(g), and amendments thereto, means a transfer of money or other
property from a limited liability company to another person on account of
a transferable interest.
(6) “Effective,” with respect to a record required or permitted
to be delivered to the secretary of state for filing under this act, means
effective under section 21(c), and amendments thereto.
(7) “Foreign limited liability company” means an
unincorporated entity formed under the law of a jurisdiction other than
this state and denominated by that law as a limited liability company.
(8) “Limited liability company,” except in the phrase “foreign
limited liability company,” means an entity formed under this act.
(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 36(c), and amendments thereto.
(10) “Manager-managed limited liability company” means a
limited liability company that qualifies under section 36(a), and
amendments thereto.
(11) “Member” means a person that has become a member of a
limited liability company under section 30, and amendments thereto, and
has not dissociated under section 46, and amendments thereto.
(12) “Member-managed limited liability company” means a
limited liability company that is not a manager-managed limited liability
company.
(13) “Operating agreement” means the agreement, whether or
not referred to as an operating agreement and whether oral, in a record,
implied or in any combination thereof, of all the members of a limited
liability company, including a sole member, concerning the matters
described in section 10(a), and amendments thereto. The term includes
the agreement as amended or restated.
(14) “Organizer” means a person that acts under section 17,
and amendments thereto, to form a limited liability company.
(15) “Person” means an individual, corporation, business trust,
estate, trust, partnership, limited liability company, association, joint
venture, public corporation, government or governmental subdivision,
agency, or instrumentality, or any other legal or commercial entity.

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

(17) “Record” 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.

(18) “Sign” means, with the 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.

(19) “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.

(20) “Transfer” includes an assignment, conveyance, deed, bill
of sale, lease, mortgage, security interest, encumbrance, gift and transfer
by operation of law.

(21) “Transferable interest” means the right, as originally
associated with a person’s capacity as a member, to receive distributions
from a limited liability company in accordance with the operating
agreement, whether or not the person remains a member or continues to
own any part of the right.

(22) “Transferee” means a person to which all or part of a
transferable interest has been transferred, whether or not the transferor is
a member.

New Sec. 3. (a) A person knows a fact when the person:
(1) Has actual knowledge of it; or
(2) is deemed to know it under subsection (d)(1) or law other
than this act.

(b) A person has notice of a fact when the person:
(1) Has reason to know the fact from all of 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) A person notifies another of a fact by taking steps
reasonably required to inform the other person in ordinary course,
whether or not the other person knows the fact.

(d) A person that is not a member is deemed:
(1) To know of a limitation on authority to transfer real
property as provided in Section 27(g); and
HB 2261  4

(2) to have notice of a limited liability company’s:
(A) Dissolution, 90 days after a statement of dissolution under section 48(b)(2)(A), and amendments thereto, becomes effective;
(B) termination, 90 days after a statement of termination under section 48(b)(2)(F) becomes effective; and
(C) merger, conversion or domestication, 90 days after articles of merger, conversion, or domestication under sections 70 through 84, and amendments thereto, become effective.

New Sec. 4. (a) A limited liability company is an entity distinct from its members.

b) A limited liability company may have any lawful purpose, regardless of whether or not for profit.

c) A limited liability company has perpetual duration.

New Sec. 5. 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.

New Sec. 6. (a) 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 the debts, obligations or other liabilities of a limited liability company.

New Sec. 7. Unless displaced by particular provisions of this act, the principles of law and equity supplement this act.

New Sec. 8. (a) The name of a limited liability company must contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.,” “LLC,” “L.C.” or “LC.” “Limited” may be abbreviated as “Ltd.” and “company” may be abbreviated as “Co.”

(b) Unless authorized by subsection (c), the name of a limited liability company must be distinguishable in the records of the secretary of state from:

(1) The name of each person that is not an individual and that is incorporated, organized or authorized to transact business in this state;
(2) the limited liability company name stated in each certificate of organization that contains the statement as provided in section 17(b)(3), and amendments thereto, and that has not lapsed; and
(3) each name reserved under section 9, and amendments thereto, and K.S.A. 17-7402, 17-6002, 56-1a102, 56-1a103, 56-1a504, and amendments thereto.

(c) A limited liability company may apply to the secretary of state for authorization to use a name that does not comply with subsection (b). The secretary of state shall authorize use of the name applied for if, as to each noncomplying name:

(1) The present user, registrant or owner of the noncomplying
name consents in a signed record to the use and submits an undertaking in
a form satisfactory to the secretary of state to change the noncomplying
name to a name that complies with subsection (b) and is distinguishable
in the records of the secretary of state from the name applied for; or

(2) the applicant delivers to the secretary of state a certified
copy of the final judgment of a court establishing the applicant’s right to
use in this state the name applied for.

(d) Subject to section 59, and amendments thereto, this section
applies to a foreign limited liability company transacting business in this
state which has a certificate of authority to transact business in this state
or which has applied for a certificate of authority.

New Sec. 9. (a) A person may reserve the exclusive use of the name
of a limited liability company, including a fictitious or assumed name for
a foreign limited liability company whose name is not available, by
delivering an application to the secretary of state for filing. The
application must state the name and address of the applicant and the name
proposed to be reserved. If the secretary of state finds that the name
applied for is available, it must be reserved for the applicant’s exclusive
use for a 120-day period.

(b) The owner of a name reserved for a limited liability
company may transfer the reservation to another person by delivering to
the secretary of state for filing a signed notice of the transfer which states
the name and address of the transferee.

New Sec. 10. (a) Except as otherwise provided in subsections (b)
and (c), the operating agreement governs:

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

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

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

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

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

(c) An operating agreement may not:

(1) Vary a limited liability company’s capacity under section 5
to sue and be sued in its own name;

(2) vary the law applicable under section 6, and amendments
thereto;

(3) vary the power of the court under section 20, and
amendments thereto;
subject to subsections (d) through (g), eliminate the duty of
loyalty, the duty of care or any other fiduciary duty;

(5) subject to subsections (d) through (g), eliminate the
contractual obligation of good faith and fair dealing under section 38(d),
and amendments thereto;

(6) unreasonably restrict the duties and rights stated in section
39, and amendments thereto;

(7) vary the power of a court to decree dissolution in the
circumstances specified in section 47(a)(4) and (5), and amendments
thereto;

(8) vary the requirement to wind up a limited liability
company’s business as specified in section 48(a) and (b)(1), and
amendments thereto;

(9) unreasonably restrict the right of a member to maintain an
action under sections 64 through 69, and amendments thereto;

(10) restrict the right to approve a merger, conversion or
domestication under section 83 to a member that will have personal
liability with respect to a surviving, converted or domesticated
organization; or

(11) except as otherwise provided in section 12(b), and
amendments thereto, restrict the rights under this act of a person other
than a member or manager.

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

(1) Restrict or eliminate the duty:

(A) As required in section 38(b)(1) and (g), and amendments
thereto, to account to the limited liability company and to hold as trustee
for it any property, profit or benefit derived by the member in the conduct
or winding up of the company’s business, from a use by the member of
the company’s property, or from the appropriation of a limited liability
company opportunity;

(B) as required in section 38(b)(2) and (g), and amendments
thereto, to refrain from dealing with the company in the conduct or
winding up of the company’s business as or on behalf of a party having
an interest adverse to the company; and

(C) as required by section 38(b)(3) and (g), and amendments
thereto, to refrain from competing with the company in the conduct of the
company’s business before the dissolution of the company;

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

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

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

(5) prescribe the standards by which to measure the
performance of the contractual obligation of good faith and fair dealing
under section 38(d), and amendments thereto.

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

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

(g) The operating agreement may alter or eliminate the
indemnification for a member or manager provided by section 37(a), and
amendments thereto, and may eliminate or limit a member or manager’s
liability to the limited liability company and members for money
damages, except for:

(1) Breach of the duty of loyalty;

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

(3) a breach of a duty under section 35, and amendments
thereto;

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

or

(5) an intentional violation of criminal law.

(h) The court shall decide any claim under subsection (d) that a
term of an operating agreement is manifestly unreasonable. 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 and
activities of the limited liability company, it is readily apparent that:

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

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

New Sec. 11. (a) A limited liability company is bound by and may
enforce the operating agreement, whether or not the company has itself
manifested assent to the operating agreement.

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

New Sec. 12. (a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person’s capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under section 42(b)(2), and amendments thereto, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member 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 dissociated member.

(c) If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this act contains a provision that would be ineffective under section 10(c), and amendments thereto, if contained in the operating agreement, the provision is likewise ineffective in the record.

(d) Subject to subsection (c), if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this act conflicts with a provision of the operating agreement:

1. The operating agreement prevails as to members, dissociated members, transferees, and managers; and
2. the record prevails as to other persons to the extent they reasonably rely on the record.

New Sec. 13. (a) A limited liability company shall designate and continuously maintain in this state:

1. An office, which need not be a place of its activity in this state; and
2. an agent for service of process.

(b) A foreign limited liability company that has a certificate of authority under section 56, and amendments thereto, shall designate and continuously maintain in this state an agent for service of process.

(c) An agent for service of process of a limited liability
company or foreign limited liability company must be an individual who is a resident of this state or other person with authority to transact business in this state.

New Sec. 14. (a) A limited liability company or foreign limited liability company may change its designated office, its agent for service of process, or the address of its agent for service of process by delivering to the secretary of state for filing a statement of change containing:

1. The name of the company;
2. the street and mailing addresses of its current designated office;
3. if the current designated office is to be changed, the street and mailing addresses of the new designated office;
4. the name and street and mailing addresses of its current agent for service of process; and
5. if the current agent for service of process or an address of the agent is to be changed, the new information.

(b) Subject to section 21(c), and amendments thereto, a statement of change is effective when filed by the secretary of state.

New Sec. 15. (a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent must deliver to the secretary of state for filing a statement of resignation containing the company name and stating that the agent is resigning.

(b) The secretary of state shall file a statement of resignation delivered under subsection (a) and mail or otherwise provide or deliver a copy to the designated office of the limited liability company or foreign limited liability company and another copy to the principal office of the company if the mailing addresses of the principal office appears in the records of the secretary of state and is different from the mailing address of the designated office.

(c) An agency for service of process terminates on the earlier of:

1. The 31st day after the secretary of state files the statement of resignation;
2. when a record designating a new agent for service of process is delivered to the secretary of state for filing on behalf of the limited liability company and becomes effective.

New Sec. 16. (a) An agent for service of process appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served on the company.

(b) If a limited liability company or foreign limited liability company does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent’s street address, the secretary of state is an
agent of the company upon whom process, notice or demand may be served.

(c) Service of any process, notice, or demand on the secretary of state as agent for a limited liability company or foreign limited liability company may be made by delivering to the secretary of state duplicate copies of the process, notice or demand. If a process, notice or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office.

(d) Service is effected under subsection (c) at the earliest of:
   (1) The date the limited liability company or foreign limited liability company receives the process, notice or demand;
   (2) the date shown on the return receipt, if signed on behalf of the company; or
   (3) five days after the process, notice or demand is deposited with the United States postal service, if correctly addressed and with sufficient postage.

(e) The secretary of state shall keep a record of each process, notice and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

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

New Sec. 17. (a) One or more persons may act as organizers to form a limited liability company by signing and delivering to the secretary of state for filing a certificate of organization.

(b) A certificate of organization must state:
   (1) The name of the limited liability company, which must comply with section 8;
   (2) the street and mailing addresses of the initial designated office and the name and street and mailing addresses of the initial agent for service of process of the company; and
   (3) if the company will have no members when the secretary of state files the certificate, a statement to that effect.

(c) Subject to section 12(c), and amendments thereto, a certificate of organization may also contain statements as to matters other than those required by subsection (b). However, a statement in a certificate of organization is not effective as a statement of authority.

(d) Unless the filed certificate of organization contains the statement as provided in subsection (b)(3), the following rules apply:
   (1) A limited liability company is formed when the secretary of state has filed the certificate of organization and the company has at least one member, unless the certificate states a delayed effective date pursuant to section 21(c), and amendments thereto.
If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the secretary of state for filing and the secretary of state files the certificate.

Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

If a filed certificate of organization contains a statement as provided in subsection (b)(3), the following rules apply:

1. The certificate lapses and is void unless, within 90 days from the date the secretary of state files the certificate, an organizer signs and delivers to the secretary of state for filing a notice stating:
   A. That the limited liability company has at least one member; and
   B. the date on which a person or persons became the company’s initial member or members.

2. If an organizer complies with paragraph (1), a limited liability company is deemed formed as of the date of initial membership stated in the notice delivered pursuant to paragraph (1).

3. Except in a proceeding by this state to dissolve a limited liability company, the filing of the notice described in paragraph (1) by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

New Sec. 18. (a) A certificate of organization may be amended or restated at any time.

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

1. The name of the company;
2. the date of filing of its certificate of organization; and
3. the changes the amendment makes to the certificate as most recently amended or restated.

(c) To restate its certificate of organization, a limited liability company must deliver to the secretary of state for filing a restatement, designated as such in its heading, stating:

1. In the heading or an introductory paragraph, the company’s present name and the date of the filing of the company’s initial certificate of organization;
2. if the company’s name has been changed at any time since the company’s formation, each of the company’s former names; and
3. the changes the restatement makes to the certificate as most
recently amended or restated.

(d) Subject to sections 12(c) and 21(c), and amendments thereto, an amendment to or restatement of a certificate of organization is effective when filed by the secretary of state.

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

1. Cause the certificate to be amended; or
2. if appropriate, deliver to the secretary of state for filing a statement of change under section 14, and amendments thereto, or a statement of correction under section 22, and amendments thereto.

New Sec. 19. (a) A record delivered to the secretary of state for filing pursuant to this act must be signed as follows:

1. Except as otherwise provided in paragraphs (2) through (4), a record signed on behalf of a limited liability company must be signed by a person authorized by the company.
2. A limited liability company’s initial certificate of organization must be signed by at least one person acting as an organizer.
3. A notice under section 17(e)(1), and amendments thereto, must be signed by an organizer.
4. A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company’s activities under section 48(c), and amendments thereto, or a person appointed under section 48(d), and amendments thereto, to wind up those activities.
5. A statement of cancellation under section 17(d)(2), and amendments thereto, must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.
6. A statement of denial by a person under section 28, and amendments thereto, must be signed by that person.

(b) Any other record must be signed by the person on whose behalf the record is delivered to the secretary of state.

(b) Any record filed under this act may be signed by an agent.

New Sec. 20. (a) If a person required by this act to sign a record or deliver a record to the secretary of state for filing under this act does not do so, any other person that is aggrieved may petition the appropriate court to order:

1. The person to sign the record;
2. the person to deliver the record to the secretary of state for
(3) the secretary of state to file the record unsigned.

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

New Sec. 21. (a) A record authorized or required to be delivered to the secretary of state for filing under this act must be captioned to describe the record’s purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees have been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this act, the secretary of state shall file the record and:

(1) For a statement of denial under section 28, and amendments thereto, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

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

(b) Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

(c) Except as otherwise provided in sections 15 and 22, and amendments thereto, and except for a certificate of organization that contains a statement as provided in section 17(b)(3), and amendments thereto, a record delivered to the secretary of state for filing under this act may specify an effective time and a delayed effective date. Subject to sections 15, 201(d)(1), and 22, and amendments thereto, a record filed by the secretary of state is effective:

(1) If the record does not specify either an effective time or a delayed effective date on the date and at the time the record is filed, as evidenced by the secretary of state's endorsement of the date and time on the record;

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

(3) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

(A) The specified date; or

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

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

(A) The specified date; or

(B) the 90th day after the record is filed.
New Sec. 22. (a) A limited liability company or foreign limited liability company may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the company to the secretary of state and filed by the secretary of state, if at the time of filing the record contained inaccurate information or was defectively signed.

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

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

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

(3) correct the defective signature or inaccurate information.

(c) When filed by the secretary of state, a statement of correction under subsection (a) is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(1) For the purposes of section 3(d), and amendments thereto;

and

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

New Sec. 23. (a) If a record delivered to the secretary of state for filing under this act and filed by the secretary of state contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

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

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

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

(B) the member or manager 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 18, and amendments thereto;

(ii) filed a petition under section 20, and amendments thereto; or

(iii) delivered to the secretary of state for filing a statement of change under section 14, and amendments thereto, or a statement of correction under section 22, and amendments thereto.
(b) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the company to the secretary of state for filing under this act and imposes that responsibility on one or more other members, the liability stated in subsection (a)(2) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

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

New Sec. 24. (a) The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the office of the secretary of state show that the company has been formed under section 17, and amendments thereto, and the secretary of state has not filed a statement of termination pertaining to the company. A certificate of existence must state:

1. The company’s name;
2. that the company was duly formed under the laws of this state and the date of formation;
3. whether all fees, taxes and penalties due under this act or other law to the secretary of state have been paid;
4. whether the company’s most recent annual report required by section 25, and amendments thereto, has been filed by the secretary of state;
5. whether the secretary of state has administratively dissolved the company;
6. whether the company has delivered to the secretary of state for filing a statement of dissolution;
7. that a statement of termination has not been filed by the secretary of state; and
8. other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.

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

1. The company’s name and any alternate name adopted under section 59(a), and amendments thereto, for use in this state;
2. that the company is authorized to transact business in this
state;
(3) whether all fees, taxes and penalties due under this act or
other law to the secretary of state have been paid;
(4) whether the company’s most recent annual report required
by section 25, and amendments thereto, has been filed by the secretary of
state;
(5) that the secretary of state has not revoked the company’s
certificate of authority and has not filed a notice of cancellation; and
(6) other facts of record in the office of the secretary of state
which are specified by the person requesting the certificate.
(c) Subject to any qualification stated in the certificate, a
certificate of existence or certificate of authorization issued by the
secretary of state is conclusive evidence that the limited liability company
is in existence or the foreign limited liability company is authorized to
transact business in this state.
New Sec. 25. (a) Each year, a limited liability company or a foreign
limited liability company authorized to transact business in this state shall
deliver to the secretary of state for filing a report that states:
(1) The name of the company;
(2) the street and mailing addresses of the company’s
designated office and the name and street and mailing addresses of its
agent for service of process in this state;
(3) the street and mailing addresses of its principal office; and
(4) in the case of a foreign limited liability company, the state
or other jurisdiction under whose law the company is formed and any
alternate name adopted under section 59(a), and amendments thereto.
(b) Information in an annual report under this section must be
current as of the date the report is delivered to the secretary of state for
filing.
(c) The first annual report under this section must be delivered
to the secretary of state between January 1 and April 1 of the year
following the calendar year in which a limited liability company was
formed or a foreign limited liability company was authorized to transact
business. A report must be delivered to the secretary of state between
January 1 and April 1 of each subsequent calendar year.
(d) If an annual report under this section does not contain the
information required in subsection (a), the secretary of state shall
promptly notify the reporting limited liability company or foreign limited
liability company and return the report to it for correction. If the report is
corrected to contain the information required in subsection (a) and
delivered to the secretary of state within 30 days after the effective date
of the notice, it is timely delivered.
(e) If an annual report under this section contains an address of
a designated office or the name or address of an agent for service of
process which differs from the information shown in the records of the
secretary of state immediately before the annual report becomes effective,
the differing information in the annual report is considered a statement of
change under section 14, and amendments thereto.

New Sec. 26. (a) A member is not an agent of a limited liability
company solely by reason of being a member.
(b) A person’s status as a member does not prevent or restrict
law other than this act from imposing liability on a limited liability
company because of the person’s conduct.

New Sec. 27. (a) A limited liability company may deliver to the
secretary of state for filing a statement of authority. The statement:
(1) Must include the name of the company and the street and
mailing addresses of its designated office;
(2) with respect to any position that exists in or with respect to
the company, may state the authority, or limitations on the authority, of all
persons holding the position to:
(A) Execute an instrument transferring real property held in
the name of the company; or
(B) enter into other transactions on behalf of, or otherwise act
for or bind, the company; and
(3) may state the authority, or limitations on the authority, of a
specific person to:
(A) Execute an instrument transferring real property held in
the name of the company; or
(B) enter into other transactions on behalf of, or otherwise act
for or bind, the company.
(b) To amend or cancel a statement of authority filed by the
secretary of state under section 21(a), and amendments thereto, 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 street and mailing addresses of the company’s
designated office;
(3) the caption of the statement being amended or cancelled
and the date the statement being affected became effective; and
(4) the contents of the amendment or a declaration that the
statement being affected is cancelled.
(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 3(d), and amendments
thereto, 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 knowledge or notice of the limitation by any person.

(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 cancelled or restrictively amended under subsection (b); or

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

(f) Subject to subsection (c), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy 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 cancelled or restrictively amended under subsection (b) and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

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

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

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

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

(j) Unless earlier cancelled, an effective statement of authority is cancelled 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 the purposes of subsection (f)(1).

New Sec. 28. (a) 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.

New Sec. 29. (a) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort or otherwise:

(1) Are solely the debts, obligations or other liabilities of the company; and

(2) do not become the debts, obligations or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(b) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations or other liabilities of the company.

New Sec. 30. (a) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

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

(c) If a filed certificate of organization contains the statement required by section 17(b)(3), and amendments thereto, a person becomes an initial member of the limited liability company with the consent of a majority of the organizers. The organizers may consent to more than one person simultaneously becoming the company’s initial members.

(d) 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 sections 70 through 84, and amendments thereto;
(3) with the consent of all the members; or
(4) if, within 90 consecutive days after the company ceases to have any members:
   (A) The last person to have been a member, or the legal representative of that person, designates a person to become a member; and
   (B) the designated person consents to become a member.
(e) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

New Sec. 31. A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

New Sec. 32. (a) A person’s obligation to make a contribution to a limited liability company is not excused by the person’s death, disability or other inability to perform personally. If a person does not make a required contribution, the person or the person’s estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.
(b) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection (a) may enforce the obligation.

New Sec. 33. (a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 41, and amendments thereto, and any charging order in effect under section 42, and amendments thereto.
(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 54(c), and amendments thereto, a limited liability company may distribute an asset in kind 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
New Sec. 34. (a) A limited liability company may not make a distribution 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; 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, wound up and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

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

(1) In the case of a distribution by purchase, redemption or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

(2) in all other cases, as of the date:
   (A) The distribution is authorized, if the payment occurs within 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 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.

(e) A limited liability company’s indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection (a) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(f) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(g) In subsection (a), “distribution” does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.
New Sec. 35. (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 34, and amendments thereto, and in consenting to the distribution fails to comply with section 38, and amendments thereto, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 34, and amendments thereto.

(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 authority and responsibility.

(c) A person that receives a distribution knowing that the distribution to that person was made in violation of section 34, and amendments thereto, is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 34, and amendments thereto.

(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 subject to liability under subsection (a) and seek to compel contribution from the person; and

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

(e) An action under this section is barred if not commenced within two years after the distribution.

New Sec. 36. (a) A limited liability company is a member-managed limited liability company unless the operating agreement:

(1) Expressly provides that:

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

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

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

(2) includes words of similar import.

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

(1) The management and conduct of the company are vested in the members.

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

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

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

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

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

(1) Except as otherwise expressly provided in this act, any matter relating to the activities of the company is decided exclusively by the managers.

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

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

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

(A) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company’s property, with or without the good will, outside the ordinary course of the company’s activities;

(B) approve a merger, conversion, or domestication under sections 70 through 84, and amendments thereto;

(C) undertake any other act outside the ordinary course of the company’s activities; and

(D) amend the operating agreement.

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

(6) 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.

(7) 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 consent of members under this act may be taken without a meeting, and a member may appoint a proxy or
other agent to consent or otherwise act for the member by signing an
appointing record, personally or by the member’s agent.

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

(f) This act does not entitle a member 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.

New Sec. 37. (a) A limited liability company shall reimburse for
any payment made and indemnify for any debt, obligation or other
liability incurred by a member of a member-managed company, or the
manager of a manager-managed company in the course of the member’s
or manager’s activities on behalf of the company, if, in making the
payment or incurring the debt, obligation or other liability, the member or
manager complied with the duties stated in sections 34 and 38, and
amendments thereto.

(b) A limited liability company may purchase and maintain
insurance on behalf of a member or manager of the company against
liability asserted against or incurred by the member or manager in that
capacity or arising from that status even if, under section 10(g), and
amendments thereto, the operating agreement could not eliminate or limit
the person’s liability to the company for the conduct giving rise to the
liability.

New Sec. 38. (a) A member of a member-managed limited liability
company owes to the company and, subject to section 64(b), and
amendments thereto, the other members the fiduciary duties of loyalty
and care stated in subsections (b) and (c).

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

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

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

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

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

(2) to refrain from dealing with the company in the conduct or
winding up of the company’s activities 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 before the dissolution of the company.

(c) Subject to the business judgment rule, the duty of care of a
member of a member-managed limited liability company in the conduct
and winding up of the company’s activities is to act with the care that a
person in a like position would reasonably exercise under similar
circumstances and in a manner the member reasonably believes to be in
the best interests of the company. In discharging this duty, a member may
rely in good faith upon opinions, reports, statements or other information
provided by another person that the member reasonably believes is a
competent and reliable source for the information.

(d) A member in a member-managed limited liability company
or a manager-managed limited liability company shall discharge the
duties under this act or under the operating agreement and exercise any
rights consistently with the contractual obligation of good faith and fair
dealing.

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

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

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

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

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

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

(4) Subsection (f) applies only to the members.

(5) A member does not have any fiduciary duty to the
company or to any other member solely by reason of being a member.

New Sec. 39. (a) In a member-managed limited liability company,
the following rules apply:

(1) On reasonable notice, a member may inspect and copy
during regular business hours, at a reasonable location specified by the
company, any record maintained by the company regarding the
company’s activities, 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, financial condition and other circumstances which
the company knows and is material to the proper exercise of the
member’s rights and duties under the operating agreement or this act,
except to the extent the company can establish that it reasonably believes
the member already knows the information; and

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

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

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

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

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

(A) The member seeks the information for a purpose material
to the member’s interest as a member;

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

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

(3) Within 10 days after receiving a demand pursuant to
paragraph (2)(B), the company shall in a record inform the member that
made the demand:

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

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

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

(c) On 10 days’ demand made in a record received by a limited
liability company, a dissociated member may have access to information
to which the person was entitled while a member if the information
p pertains to the period during which the person was a member, the person
seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection (b)(2). The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection (b)(3).

(d) 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.

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

(f) The rights under this section do not extend to a person as transferee.

(g) 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, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

New Sec. 40. A transferable interest is personal property.

New Sec. 41. (a) A transfer, in whole or in part, of a transferable interest:

(1) Is permissible;

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

(3) subject to section 43, and amendments thereto, does not entitle the transferee to:

(A) Participate in the management or conduct of the company’s activities; or

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

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

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

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

(e) A limited liability company need not give effect to a
transferee’s rights under this section until the company 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
as to a person having notice of the restriction at the time of transfer.

(g) Except as otherwise provided in section 45(4)(B), and
amendments thereto, when a member transfers a transferable interest, the
transferor retains the rights of a member other than the interest in
distributions transferred and retains all duties and obligations of a
member.

(h) When 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 32 and
35(c), and amendments thereto, known to the transferee when the
transferee becomes a member.

New Sec. 42. (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. 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
would otherwise 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. The
purchaser at the foreclosure sale obtains only the transferable interest,
does not thereby become a member, and is subject to section 41, and
amendments thereto.

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

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

(f) This act does not deprive any member or transferee of the benefit of any exemption laws applicable to the member’s or transferee’s transferable interest.

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

New Sec. 43. If a member dies, the deceased member’s personal representative or other legal representative may exercise the rights of a transferee provided in section 41(c), and amendments thereto, and, for the purposes of settling the estate, the rights of a current member under section 39, and amendments thereto.

New Sec. 44. (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 45(1), and amendments thereto.

(b) A person’s dissociation from a limited liability company is wrongful only if the dissociation:

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

(2) occurs before the termination of the company and:

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

(B) the person is expelled as a member by judicial order under section 45(5), and amendments thereto;

(C) the person is dissociated under section 45(7)(A), and amendments thereto, by becoming a debtor in bankruptcy; 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 64, and amendments thereto, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation or other liability of the member to the company or the other members.

New Sec. 45. (a) A person is dissociated as a member from a limited liability company when:

(1) The company has notice of the person’s express will to
withdraw as a member, but, if the person specified a withdrawal date later
than the date the company had notice, on that later date;
(2) an event stated in the operating agreement as causing the
person’s dissociation occurs;
(3) the person is expelled as a member pursuant to the
operating agreement;
(4) the person is expelled as a member by the unanimous
consent of the other members if:
   (A) It is unlawful to carry on the company’s activities with the
   person as a member;
   (B) there has been a transfer of all of the person’s transferable
   interest in the company, other than:
   (i) A transfer for security purposes; or
   (ii) a charging order in effect under section 42, and
   amendments thereto, which has not been foreclosed;
   (C) the person is a corporation and, within 90 days after the
   company notifies the person that it will be expelled as a member because
   the person has filed a certificate of dissolution or the equivalent, its
   charter has been revoked, or its right to conduct business has been
   suspended by the jurisdiction of its incorporation, the certificate of
   dissolution has not been revoked or its charter or right to conduct
   business has not been reinstated; or
   (D) the person is a limited liability company or partnership
   that has been dissolved and whose business is being wound up;
(5) on application by the company, the person is expelled as a
member by judicial order because the person:
   (A) Has engaged, or is engaging, in wrongful conduct that has
   adversely and materially affected, or will adversely and materially affect,
   the company’s activities;
   (B) has willfully or persistently committed, or is willfully and
   persistently committing, a material breach of the operating agreement or
   the person’s duties or obligations under section 38; or
   (C) has engaged in, or is engaging, in conduct relating to the
   company’s activities which makes it not reasonably practicable to carry
   on the activities with the person as a member;
(6) in the case of a person who is an individual:
   (A) The person dies; or
   (B) in a member-managed limited liability company:
   (i) A guardian or general conservator for the person is
   appointed; or
   (ii) there is a judicial order that the person has otherwise
   become incapable of performing the person’s duties as a member under
   this act or the operating agreement;
(7) in a member-managed limited liability company, the person:
   (A) becomes a debtor in bankruptcy;
   (B) executes 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, of the person’s property;
(8) in the case of a person that is a trust, or is acting as a member by virtue of being a trustee of a trust, the trust’s entire transferable interest in the company is distributed;
(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 company is distributed;
(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;
(11) the company participates in a merger under sections 70 through 84, and amendments thereto, if:
   (A) the company is not the surviving entity; or
   (B) otherwise as a result of the merger, the person ceases to be a member;
(12) the company participates in a conversion under sections 70 through 84, and amendments thereto;
(13) the company participates in a domestication under sections 70 through 84, and amendments thereto, if, as a result of the domestication, the person ceases to be a member; or
(14) the company terminates.

New Sec. 46. (a) When a person is dissociated as a member of a limited liability company:
   (1) the person’s right to participate as a member in the management and conduct of the company’s activities terminates;
   (2) if the company is member-managed, the person’s fiduciary duties as a member end with regard to matters arising and events occurring after the person’s dissociation; and
   (3) subject to section 43, and amendments thereto, and sections 70 through 84, and amendments thereto, any transferable interest owned by the person immediately before dissociation in the person’s capacity as a member is owned by the person solely as a transferee.
   (b) A person’s dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

New Sec. 47. (a) A limited liability company is dissolved, and its
activities must be wound up, upon the occurrence of any of the following:

(1) An event or circumstance that the operating agreement states causes dissolution;
(2) the consent of all the members;
(3) the passage of 90 consecutive days during which the company has no members;
(4) on application by a member, the entry by appropriate court of an order dissolving the company on the grounds that:
   (A) The conduct of all or substantially all of the company’s activities is unlawful; or
   (B) it is not reasonably practicable to carry on the company’s activities in conformity with the certificate of organization and the operating agreement; or
(5) on application by a member, the entry by appropriate court of an order dissolving the company on the grounds that the managers or those members in control of the company:
   (A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or
   (B) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

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

New Sec. 48. (a) A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

(b) In winding up its activities, a limited liability company:
   (1) Shall discharge the company’s debts, obligations or other liabilities, settle and close the company’s activities, and marshal and distribute the assets of the company; and
   (2) may:
      (A) Deliver to the secretary of state for filing a statement of dissolution stating the name of the company and that the company is dissolved;
      (B) preserve the company activities and property as a going concern for a reasonable time;
      (C) prosecute and defend actions and proceedings, whether civil, criminal or administrative;
      (D) transfer the company’s property;
      (E) settle disputes by mediation or arbitration;
      (F) deliver to the secretary of state for filing a statement of termination stating the name of the company and that the company is terminated; and
      (G) perform other acts necessary or appropriate to the winding
If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under section 36(c), and amendments thereto, and is deemed to be a manager for the purposes of section 29(a)(2), and amendments thereto.

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

1. Has the powers of a sole manager under section 36(c), and amendments thereto, and is deemed to be a manager for the purposes of section 29(a)(2), and amendments thereto; and
2. Shall promptly deliver to the secretary of state for filing an amendment to the company’s certificate of organization to:
   A. State that the company has no members;
   B. State that the person has been appointed pursuant to this subsection to wind up the company; and
   C. Provide the street and mailing addresses of the person.

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

1. On application of a member, if the applicant establishes good cause;
2. On the application of a transferee, if:
   A. The company does not have any members;
   B. The legal representative of the last person to have been a member declines or fails to wind up the company’s activities; and
   C. Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection (D); or
3. In connection with a proceeding under section 47(a)(4) or (5), and amendments thereto.

New Sec. 49. (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 as 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. Provide a mailing address to which the claim is to be sent;
3. State the deadline for receipt of the 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
      within 90 days after the claimant receives the notice; and
      (B) the claimant does not commence the required action within
      the 90 days.

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

New Sec. 50. (a) A dissolved limited liability company may publish
notice of its dissolution and request persons having claims against the
company to present them in accordance with the notice.

   (b) The notice authorized by subsection (a) must:
      (1) Be published at least once in a newspaper of general
      circulation in the county in which the dissolved limited
      liability company’s principal office is located or, if it has none in this
      state, in the county in which the company’s designated office is or was
      last located;
      (2) describe the information required to be contained in a
      claim 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 within five years after
      publication of the notice.

   (c) If a dissolved limited liability company publishes a notice
   in accordance with subsection (b), unless the claimant commences an
   action to enforce the claim against the company within five years after the
   publication date of the notice, the claim of each of the following
   claimants is barred:
      (1) A claimant that did not receive notice in a record under
      section 49, and amendments thereto;
      (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 effective date of dissolution.

   (d) A claim not barred under this section may be enforced:
      (1) Against a dissolved limited liability company, to the extent
of its undistributed assets; and

(2) 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 assets distributed to the member
or transferee after dissolution, whichever is less, but a person’s total
liability for all claims under this paragraph does not exceed the total
amount of assets distributed to the person after dissolution.

New Sec. 51. (a) The secretary of state may dissolve a limited
liability company administratively if the company does not:

(1) Pay, within 60 days after the due date, any fee, tax or
penalty due to the secretary of state under this act or law other than this
act; or

(2) deliver, within 60 days after the due date, its annual report
to the secretary of state.

(b) If the secretary of state determines that a ground exists for
administratively dissolving a limited liability company, the secretary of
state shall file a record of the determination and serve the company with a
copy of the filed record.

(c) If within 60 days after service of the copy pursuant to
subsection (b), a limited liability company does not correct each ground
for dissolution or demonstrate to the reasonable satisfaction of the
secretary of state that each ground determined by the secretary of state
does not exist, the secretary of state shall dissolve the company
administratively by preparing, signing, and filing a declaration of
dissolution that states the grounds for dissolution. The secretary of state
shall serve the company with a copy of the filed declaration.

(d) A limited liability company that has been administratively
dissolved continues in existence but, subject to section 52, and
amendments thereto, may carry on only activities necessary to wind up its
activities and liquidate its assets under sections 48 and 54, and
amendments thereto, and to notify claimants under sections 49 and 50,
and amendments thereto.

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

New Sec. 52. (a) A limited liability company that has been
administratively dissolved may apply to the secretary of state for
reinstatement within two years after the effective date of dissolution. The
application must be delivered to the secretary of state for filing and state:

(1) The name of the company and the effective date of its
dissolution;

(2) that the grounds for dissolution did not exist or have been
eliminated; and
(3) that the company’s name satisfies the requirements of section 8, and amendments thereto.

(b) If the secretary of state determines that an application under subsection (a) contains the required information and that the information is correct, the secretary of state shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(c) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

New Sec. 53. (a) If the secretary of state rejects a limited liability company’s application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

(b) Within 30 days after service of a notice of rejection of reinstatement under subsection (a), a limited liability company may appeal from the rejection by petitioning the appropriate court to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state’s declaration of dissolution, the company’s application for reinstatement, and the secretary of state’s notice of rejection.

(c) The court may order the secretary of state to reinstate a dissolved limited liability company or take other action the court considers appropriate.

New Sec. 54. (a) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(b) After a limited liability company complies with subsection (a), any surplus must be distributed in the following order, subject to any charging order in effect under section 42, and amendments thereto:

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

(2) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 41, and amendments thereto.

(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 their respective unreturned contributions.
All distributions made under subsections (b) and (c) must be paid in money.

New Sec. 55. (a) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:
   (1) The internal affairs of the company; and
   (2) the liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

   (b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

   (c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

New Sec. 56. (a) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:
   (1) The name of the company and, if the name does not comply with section 8, and amendments thereto, an alternate name adopted pursuant to section 59(a), and amendments thereto;
   (2) the name of the state or other jurisdiction under whose law the company is formed;
   (3) the street and mailing addresses of the company’s principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and
   (4) the name and street and mailing addresses of the company’s initial agent for service of process in this state.

   (b) A foreign limited liability company shall deliver with a completed application under subsection (a) a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the company’s publicly filed records in the state or other jurisdiction under whose law the company is formed.

New Sec. 57. (a) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of this article include:
   (1) Maintaining, defending 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 the company’s own securities or maintaining trustees or depositories with respect to those securities;
(5) selling through independent contractors;
(6) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
(7) creating or acquiring indebtedness, mortgages or security interests in real or personal property;
(8) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting or maintaining property so acquired;
(9) conducting an isolated transaction that is completed within 30 days and is not in the course of similar transactions; and
(10) transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this state.

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

New Sec. 58. Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this act, the secretary of state, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

New Sec. 59. (a) A foreign limited liability company whose name does not comply with section 8, and amendments thereto, may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 8, and amendments thereto. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the company is authorized under fictitious or assumed name statute to transact business in this state under another name.

(b) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 8, and amendments thereto, it may not thereafter transact business in this state until it complies with subsection (a) and obtains an amended certificate of authority.

New Sec. 60. (a) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the
secretary of state in the manner provided in subsections (b) and (c) if the company does not:

(1) Pay, within 60 days after the due date, any fee, tax or penalty due to the secretary of state under this act or law other than this act;

(2) deliver, within 60 days after the due date, its annual report required under section 28, and amendments thereto;

(3) appoint and maintain an agent for service of process as required by section 13(b), and amendments thereto; or

(4) deliver for filing a statement of a change under section 14, and amendments thereto, within 30 days after a change has occurred in the name or address of the agent.

(b) To revoke a certificate of authority of a foreign limited liability company, the secretary of state must prepare, sign and file a notice of revocation and send a copy to the company’s agent for service of process in this state, or if the company does not appoint and maintain a proper agent in this state, to the company’s designated office. The notice must state:

(1) The revocation’s effective date, which must be at least 60 days after the date the secretary of state sends the copy; and

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

(c) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection (b). If the company cures each ground, the secretary of state shall file a record so stating.

New Sec. 61. To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the secretary of state for filing a notice of cancellation stating the name of the company and that the company desires to cancel its certificate of authority. The certificate is cancelled when the notice becomes effective.

New Sec. 62. (a) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(b) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

(c) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.
(d) If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

New Sec. 63. The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this article.

New Sec. 64. (a) Subject to subsection (b), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member’s rights and otherwise 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.

New Sec. 65. A member may maintain a derivative action to enforce a right of a limited liability company if:

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

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

New Sec. 66. (a) Except as otherwise provided in subsection (b), a derivative action under section 65, and amendments thereto, may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(b) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

New Sec. 67. In a derivative action under section 65, and amendments thereto, the complaint must state with particularity:

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

(2) if a demand has not been made, the reasons a demand under section 65(1), and amendments thereto, would be futile.

New Sec. 68. (a) If a limited liability company is named as or made a party in a derivative proceeding, the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the
company. If the company appoints a special litigation committee, on
motion by the committee made in the name of the company, except for
good cause shown, the court shall stay discovery for the time reasonably
necessary to permit the committee to make its investigation. This
subsection does not prevent the court from enforcing a person’s right to
information under section 39, and amendments thereto, or, for good cause
shown, granting extraordinary relief in the form of a temporary
restraining order or preliminary injunction.

(b) A special litigation committee may 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 consent of a majority of the members not named as
defendants or plaintiffs in the proceeding; and

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

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

(A) By a majority of the managers not named as defendants or
plaintiffs in the proceeding; and

(B) if all managers are named as defendants or plaintiffs 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, giving notice to
the plaintiff. The court shall determine whether the members of the
committee were disinterested and independent and whether the committee
conducted its investigation and made its recommendation in good faith,
independently, and with reasonable care, with the committee having the
burden of proof. If the court finds that the members of the committee
were disinterested and independent and that the committee acted in good
faith, independently, and with reasonable care, the court shall enforce the
determination of the committee. Otherwise, the court shall dissolve the
stay of discovery entered under subsection (a) and allow the action to
proceed under the direction of the plaintiff.

New Sec. 69. (a) Except as otherwise provided in subsection (b):

(1) Proceeds or other benefits of a derivative action under
section 65, and amendments thereto, 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 under section 65, and amendments thereto, is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

New Sec. 70. In this article:

(1) “Constituent limited liability company” means a constituent organization that is a limited liability company.

(2) “Constituent organization” means an organization that is party to a merger.

(3) “Converted organization” means the organization into which a converting organization converts pursuant to sections 75 through 78, and amendments thereto.

(4) “Converting limited liability company” means a converting organization that is a limited liability company.

(5) “Converting organization” means an organization that converts into another organization pursuant to section 75, and amendments thereto.

(6) “Domesticated company” means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 79 through 82, and amendments thereto.

(7) “Domesticating company” means the company that effects a domestication pursuant to sections 79 through 82, and amendments thereto.

(8) “Governing statute” means the statute that governs an organization’s internal affairs.

(9) “Organization” means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

(10) “Organizational documents” means:

(A) For a domestic or foreign general partnership, its partnership agreement;

(B) for a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(C) for a domestic or foreign limited liability company, its
certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

(D) for a business trust, its agreement of trust and declaration of trust;

(E) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

(F) for any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(11) “Personal liability” means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(A) by the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(B) by the organization’s organizational documents under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

(12) “Surviving organization” means an organization into which one or more other organizations are merged, whether the organization preexisted the merger or was created by the merger.

New Sec. 71. (a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 72 through 74, and amendments thereto, and a plan of merger, if:

(1) The governing statute of each of the other organizations authorizes the merger;

(2) the merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

(3) each of the other organizations complies with its governing statute in effecting the merger.

(b) A plan of merger must be in a record and must include:

(1) The name and form of each constituent organization;

(2) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(3) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;
(4) if the surviving organization is to be created by the merger, the surviving organization’s organizational documents that are proposed to be in a record; and

(5) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization’s organizational documents that are, or are proposed to be, in a record.

New Sec. 72. (a) Subject to section 83, and amendments thereto, a plan of merger must be consented to by all the members of a constituent limited liability company.

(b) Subject to section 83, and amendments thereto, and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the secretary of state for filing under section 73, and amendments thereto, a constituent limited liability company may amend the plan or abandon the merger:

(1) As provided in the plan; or

(2) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

New Sec. 73. (a) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(1) Each constituent limited liability company, as provided in section 19(a), and amendments thereto; and

(2) each other constituent organization, as provided in its governing statute.

(b) Articles of merger under this section must include:

(1) The name and form of each constituent organization and the jurisdiction of its governing statute;

(2) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

(3) the date the merger is effective under the governing statute of the surviving organization;

(4) if the surviving organization is to be created by the merger:

(A) If it will be a limited liability company, the company’s certificate of organization; or

(B) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(5) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

(6) a statement as to each constituent organization that the merger was approved as required by the organization’s governing statute;
(7) if the surviving organization is a foreign organization not
authorized to transact business in this state, the street and mailing
addresses of an office that the secretary of state may use for the purposes
of section 74(b), and amendments thereto; and
(8) any additional information required by the governing
statute of any constituent organization.

c) Each constituent limited liability company shall deliver the
articles of merger for filing in the office of the secretary of state.

d) A merger becomes effective under this article:

(1) If the surviving organization is a limited liability company,
upon the later of:
(A) Compliance with subsection (c); or
(B) subject to section 21(c), and amendments thereto, as
specified in the articles of merger; or

(2) if the surviving organization is not a limited liability
company, as provided by the governing statute of the surviving
organization.

New Sec. 74. (a) When a merger becomes effective:

(1) The surviving organization continues or comes into
existence;

(2) each constituent organization that merges into the surviving
organization ceases to exist as a separate entity;

(3) all property owned by each constituent organization that
ceases to exist vests in the surviving organization;

(4) all debts, obligations or other liabilities of each constituent
organization that ceases to exist continue as debts, obligations or other
liabilities of the surviving organization;

(5) an action or proceeding pending by or against any
constituent organization that ceases to exist may be continued as if the
merger had not occurred;

(6) except as prohibited by other law, all of the rights,
privileges, immunities, powers, and purposes of each constituent
organization that ceases to exist vest in the surviving organization;

(7) except as otherwise provided in the plan of merger, the
terms and conditions of the plan of merger take effect; and

(8) except as otherwise agreed, if a constituent limited liability
company ceases to exist, the merger does not dissolve the limited liability
company for the purposes of sections 47 through 54, and amendments
thereto;

(9) if the surviving organization is created by the merger:
(A) If it is a limited liability company, the certificate of
organization becomes effective; or
(B) if it is an organization other than a limited liability
company, the organizational document that creates the organization becomes effective; and

(10) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(b) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing a debt, obligation or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 16(c) and (d), and amendments thereto.

New Sec. 75. (a) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, sections 76 through 78, and amendments thereto, and a plan of conversion, if:

(1) The other organization’s governing statute authorizes the conversion;

(2) the conversion is not prohibited by the law of the jurisdiction that enacted the other organization’s governing statute; and

(3) the other organization complies with its governing statute in effecting the conversion.

(b) A plan of conversion must be in a record and must include:

(1) The name and form of the organization before conversion;

(2) the name and form of the organization after conversion;

(3) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization and other consideration; and

(4) the organizational documents of the converted organization that are, or are proposed to be, in a record.

New Sec. 76. (a) Subject to section 83, and amendments thereto, a plan of conversion must be consented to by all the members of a converting limited liability company.

(b) Subject to section 83, and amendments thereto, and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing
under section 77, and amendments thereto, a converting limited liability
compact may amend the plan or abandon the conversion:

(1) As provided in the plan; or
(2) except as otherwise prohibited in the plan, by the same
consent as was required to approve the plan.

New Sec. 77. (a) After a plan of conversion is approved:

(1) A converting limited liability company shall deliver to the
secretary of state for filing articles of conversion, which must be signed
as provided in section 19(a), and amendments thereto, and must include:

(A) A statement that the limited liability company has been
converted into another organization;
(B) the name and form of the organization and the jurisdiction
of its governing statute;
(C) the date the conversion is effective under the governing
statute of the converted organization;
(D) a statement that the conversion was approved as required
by this act;
(E) a statement that the conversion was approved as required
by the governing statute of the converted organization; and
(F) if the converted organization is a foreign organization not
authorized to transact business in this state, the street and mailing
addresses of an office which the secretary of state may use for the
purposes of section 78(c), and amendments thereto; and

(2) if the converting organization is not a converting limited
liability company, the converting organization shall deliver to the
secretary of state for filing a certificate of organization, which must
include, in addition to the information required by section 17(b), and
amendments thereto:

(A) A statement that the converted organization was converted
from another organization;
(B) the name and form of that converting organization and the
jurisdiction of its governing statute; and
(C) a statement that the conversion was approved in a manner
that complied with the converting organization’s governing statute.

(b) A conversion becomes effective:

(1) If the converted organization is a limited liability company,
when the certificate of organization takes effect; and

(2) if the converted organization is not a limited liability
company, as provided by the governing statute of the converted
organization.

New Sec. 78. (a) An organization that has been converted pursuant
to this article is for all purposes the same entity that existed before the
conversion.
(b) When a conversion takes effect:

1. All property owned by the converting organization remains vested in the converted organization;
2. all debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization;
3. an action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;
4. except as prohibited by law other than this act, all of the rights, privileges, immunities, powers and purposes of the converting organization remain vested in the converted organization;
5. except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and
6. except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of sections 47 through 54, and amendments thereto.

(c) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 16(c) and (d), and amendments thereto.

New Sec. 79. (a) A foreign limited liability company may become a limited liability company pursuant to this section, sections 80 through 82, and amendments thereto, and a plan of domestication, if:

1. The foreign limited liability company’s governing statute authorizes the domestication;
2. the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
3. the foreign limited liability company complies with its governing statute in effecting the domestication.

(b) A limited liability company may become a foreign limited liability company pursuant to this section, sections 80 through 82, and amendments thereto, and a plan of domestication, if:

1. The foreign limited liability company’s governing statute authorizes the domestication;
(2) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and
(3) the foreign limited liability company complies with its governing statute in effecting the domestication.

c) A plan of domestication must be in a record and must include:
(1) The name of the domesticating company before domestication and the jurisdiction of its governing statute;
(2) the name of the domesticated company after domestication and the jurisdiction of its governing statute;
(3) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company and other consideration; and
(4) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

New Sec. 80. (a) A plan of domestication must be consented to:
(1) By all the members, subject to section 83, and amendments thereto, if the domesticating company is a limited liability company; and
(2) as provided in the domesticating company’s governing statute, if the company is a foreign limited liability company.
(b) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the secretary of state for filing under section 81, a domesticating limited liability company may amend the plan or abandon the domestication:
(1) As provided in the plan; or
(2) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

New Sec. 81. (a) After a plan of domestication is approved, a domesticating company shall deliver to the secretary of state for filing articles of domestication, which must include:
(1) A statement, as the case may be, that the company has been domesticated from or into another jurisdiction;
(2) the name of the domesticating company and the jurisdiction of its governing statute;
(3) the name of the domesticated company and the jurisdiction of its governing statute;
(4) the date the domestication is effective under the governing statute of the domesticated company;
(5) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this act;
(6) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(7) if the domesticated company was a foreign limited liability company not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of section 82(b), and amendments thereto.

(b) A domestication becomes effective:

(1) When the certificate of organization takes effect, if the domesticated company is a limited liability company; and

(2) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

New Sec. 82. (a) When a domestication takes effect:

(1) The domesticated company is for all purposes the company that existed before the domestication;

(2) all property owned by the domesticating company remains vested in the domesticated company;

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

(4) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(5) except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the domesticating company remain vested in the domesticated company;

(6) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(7) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of sections 47 through 54, and amendments thereto.

(b) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 16(c) and (d), and
amendments thereto.

(c) If a limited liability company has adopted and approved a plan of domestication under section 79, and amendments thereto, providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company’s certificate of organization must be delivered to the secretary of state for filing setting forth:

1. The name of the company;
2. a statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction;
3. a statement that the domestication was approved as required by this act; and
4. the jurisdiction of formation of the domesticated foreign limited liability company.

New Sec. 83. (a) If a member of a constituent, converting or domesticating limited liability company will have personal liability with respect to a surviving, converted or domesticated organization, approval or amendment of a plan of merger, conversion or domestication is ineffective without the consent of the member, unless:

1. The company’s operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and
2. the member has consented to the provision of the operating agreement.

(b) A member does not give the consent required by subsection (a) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

New Sec. 84. This article does not preclude an entity from being merged, converted or domesticated under law other than this act.

New Sec. 85. 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.

New Sec. 86. This act modifies, limits and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. § 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).

New Sec. 87. This act does not affect an action commenced, proceeding brought, or right accrued before this act takes effect.

New Sec. 88. (a) Before July 1, 2011, this act governs only:

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

(b) Except as otherwise provided in subsection (c), on and after July 1, 2011 this act governs all limited liability companies.

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

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

(2) for the purposes of applying section 2(10), and amendments thereto, and subject to section 12(d), and amendments thereto, language in the company’s articles of organization designating the company’s management structure operates as if that language were in the operating agreement.

Sec. 89. K.S.A. 2010 Supp. 45-229 is hereby amended to read as follows: 45-229. (a) It is the intent of the legislature that exceptions to disclosure under the open records act shall be created or maintained only if:

(1) The public record is of a sensitive or personal nature concerning individuals;

(2) the public record is necessary for the effective and efficient administration of a governmental program; or

(3) the public record affects confidential information.

The maintenance or creation of an exception to disclosure must be compelled as measured by these criteria. Further, the legislature finds that the public has a right to have access to public records unless the criteria in this section for restricting such access to a public record are met and the criteria are considered during legislative review in connection with the particular exception to disclosure to be significant enough to override the strong public policy of open government. To strengthen the policy of open government, the legislature shall consider the criteria in this section before enacting an exception to disclosure.

(b) Subject to the provisions of subsection (h), all exceptions to disclosure in existence on July 1, 2000, shall expire on July 1, 2005, and any new exception to disclosure or substantial amendment of an existing exception shall expire on July 1 of the fifth year after enactment of the new exception or substantial amendment, unless the legislature acts to continue the exception. A law that enacts a new exception or substantially amends an existing exception shall state that the exception expires at the end of five years and that the exception shall be reviewed by the legislature before the scheduled date.

(c) For purposes of this section, an exception is substantially
amended if the amendment expands the scope of the exception to include
more records or information. An exception is not substantially amended if
the amendment narrows the scope of the exception.

(d) This section is not intended to repeal an exception that has been
amended following legislative review before the scheduled repeal of the
exception if the exception is not substantially amended as a result of the
review.

(e) In the year before the expiration of an exception, the revisor of
statutes shall certify to the president of the senate and the speaker of the
house of representatives, by July 15, the language and statutory citation
of each exception which will expire in the following year which meets the
criteria of an exception as defined in this section. Any exception that is
not identified and certified to the president of the senate and the speaker
of the house of representatives is not subject to legislative review and
shall not expire. If the revisor of statutes fails to certify an exception that
the revisor subsequently determines should have been certified, the
revisor shall include the exception in the following year's certification
after that determination.

(f) "Exception" means any provision of law which creates an
exception to disclosure or limits disclosure under the open records act
pursuant to K.S.A. 45-221, and amendments thereto, or pursuant to any
other provision of law.

(g) A provision of law which creates or amends an exception to
disclosure under the open records law shall not be subject to review and
expiration under this act if such provision:

(1) Is required by federal law;
(2) applies solely to the legislature or to the state court system.

(h) (1) The legislature shall review the exception before its
scheduled expiration and consider as part of the review process the
following:

(A) What specific records are affected by the exception;
(B) whom does the exception uniquely affect, as opposed to the
general public;
(C) what is the identifiable public purpose or goal of the exception;
and

(D) whether the information contained in the records may be
obtained readily by alternative means and how it may be obtained;
(2) an exception may be created or maintained only if it serves an
identifiable public purpose and may be no broader than is necessary to
meet the public purpose it serves. An identifiable public purpose is served
if the legislature finds that the purpose is sufficiently compelling to
override the strong public policy of open government and cannot be
accomplished without the exception and if the exception:
(A) Allows the effective and efficient administration of a governmental program, which administration would be significantly impaired without the exception;

(B) protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. Only information that would identify the individuals may be excepted under this paragraph; or

(C) protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information, which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

(3) Records made before the date of the expiration of an exception shall be subject to disclosure as otherwise provided by law. In deciding whether the records shall be made public, the legislature shall consider whether the damage or loss to persons or entities uniquely affected by the exception of the type specified in paragraph (2)(B) or (2)(C) of this subsection (h) would occur if the records were made public.

HB 2261  55


(j) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) of this section on June 1, 2005, are hereby continued in existence until July 1, 2011, at which time such exceptions shall expire: 1-501, 9-1303, 12-4516a, 38-1692, 39-970, 40-4913, 65-525, 65-5117, 65-6016, 65-6017 and 74-7508.

(k) Exceptions contained in the following statutes as certified by the revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2006, 2007 and 2008 are hereby continued in existence until July 1, 2014, at which time such exceptions shall expire: 8-240, 8-247, 8-255c, 8-1324, 8-1325, 12-17,150, 12-2001, 12-5332, 17-12a607, 38-1008, 38-2209, 40-5006, 40-5108, 41-2905, 41-2906, 44-706, 44-1518, subsections (a)(44), (45), (46) and (47) of 45-221, 56-1a610, 56a-1204, 65-1,243, 65-3239, 66-1233, 74-50,184, 74-8134, 74-99b06 and 82a-2210.

Sec. 90. K.S.A. 65-1522 is hereby amended to read as follows: 65-1522. (a) A licensee may practice optometry under the name of a professional corporation, authorized by K.S.A. 17-2706, and amendments thereto, or a limited liability company authorized by K.S.A. 2002 Supp. 17-7668 and the revised limited liability company act, sections 1 through 90, amendments thereto. Such professional corporate name or limited liability company name may contain a trade name or assumed name approved by the board.

(b) A licensee may practice as a sole practitioner or may associate with other licensees or health care providers licensed under the laws of the state of Kansas and may practice optometry as a sole practitioner or in such associations under a trade or assumed name approved by the board.

(c) A licensee may practice in a medical facility, medical care facility or a governmental institution or agency.

(d) A licensee shall not be limited in the number of locations from which the licensee may engage in the practice of optometry pursuant to subsections (a), (b) and (c).
In all office locations a licensee shall:

(1) Provide adequate staff during the hours of its operation and shall provide the necessary optometric equipment to enable a licensee to provide adequate optometric care on the premises; and

(2) provide that there shall be present at the office location a person licensed by optometry law when optometric practice acts requiring a license are performed at the office location.

Nothing herein contained shall be construed to permit the franchised practice of optometry except that a licensee may purchase a franchise to engage in the business of optical dispensing separate and apart from any of the licensee's offices for the practice of optometry so long as the terms of the franchise agreement do not violate the optometry law.

Sec. 91. K.S.A. 65-1524 is hereby amended to read as follows: 65-1524. Nothing contained herein shall be construed to allow a corporation except as provided in K.S.A. 17-2706, and amendments thereto, or a limited liability company except as provided in K.S.A. 2002 Supp. 17-7668 the revised limited liability company act, sections 1 through 90, and amendments thereto, to practice, offer, or undertake to practice or hold itself out as practicing optometry.


Sec. 93. This act shall take effect and be in force from and after its publication in the statute book.