

No. 17. An act relating to limited liability companies.

(H.310)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. REPEAL

11 V.S.A. chapter 21, containing §§ 3001–3184, is repealed.

Sec. 2. 11 V.S.A. chapter 25 is added to read:

CHAPTER 25. LIMITED LIABILITY COMPANIES

Subchapter 1. General Provisions

§ 4001. DEFINITIONS

As used in this chapter:

(1) “Articles of organization” means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed in the Office of the Secretary of State, or comparable office, of the company’s jurisdiction of organization.

(2) “Business” includes every trade, occupation, profession, and other lawful purpose, whether or not carried on for profit.

(3) “Debtor in bankruptcy” means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state, or foreign law governing insolvency.

(4) “Delivery” means transmission by surface mail or by a method of electronic transmission the Secretary of State may prescribe.

(5) “Designated office” means the office of a limited liability company designated pursuant to section 4007 of this title or the principal office of a foreign limited liability company.

(6) “Dissolution” means an event under section 4101 of this title which requires a limited liability company to wind up its affairs and to terminate its existence as a legal entity.

(7) “Dissociation” means a complete termination of a member’s continued membership in a limited liability company for any reason.

(8) “Distribution” means a transfer of money or property from a limited liability company to a member in the member’s capacity as a member or to a transferee of the member’s distributional interest.

(9) “Distributional interest” means the right of a member or transferee to receive a distribution from a limited liability company.

(10) “Document” 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.

(11) “Entity” means a person other than an individual.

(12) “Foreign limited liability company” means an unincorporated entity organized under laws, other than the laws of this State, which afford limited

liability to its owners comparable to the liability under section 4042 of this title.

(13) “Limited liability company” or “company,” except in the phrase “foreign limited liability company,” means an organization formed under this chapter or subject to this chapter following a merger, conversion, or domestication pursuant to subchapter 10 of this chapter.

(14) “L3C” or “low-profit limited liability company” means a limited liability company that elects to be a low-profit limited liability company pursuant to section 4161 of this title and meets the requirements of section 4162 of this title.

(15) “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 subsection 4054(c) of this title.

(16) “Manager-managed limited liability company” means a limited liability company that qualifies under subsection 4054(a) of this title.

(17) “Meeting” means any structured communication conducted by participants in person or through an electronic or telecommunications medium that permits simultaneous or sequentially structured communications.

(18) “Member” means a person that has become a member of a limited liability company under section 4051 of this title and has not dissociated under section 4081 of this title.

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

(20) “Operating agreement” means any form of description of membership rights and obligations under section 4003 of this title, stored or depicted in any tangible or electronic medium, which is agreed to by the members, including amendments to the agreement.

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

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

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

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

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

(24) “Transfer” includes an assignment, a conveyance, a sale, a lease, an encumbrance, including a mortgage or security interest, a gift, and a transfer by operation of law.

(25) “Writing” means a written communication, including a letter, fax, e-mail, or other electronic format that may be prescribed by the Secretary of State.

§ 4002. KNOWLEDGE AND NOTICE

(a) A person knows a fact if the person has actual knowledge of it.

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

(1) has received a notification of the fact;

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

(3) is deemed to have notice of the fact under subsection (d) of this section.

(c) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person in the ordinary course, whether or not they cause the other person to know the fact.

(d) In the case of a limited liability company’s dissolution, termination, or merger or conversion, a person who is not a member of the company is deemed to have notice as follows:

(1) for a dissolution, 90 days after a statement of dissolution under section 4103 of this title becomes effective;

(2) for a termination, 90 days after the articles of termination under section 4105 of this title become effective; and

(3) for a merger or conversion, upon the effective date of articles of merger or a statement of conversion filed with the Secretary of State.

(e) A person receives a notification when the notification:

(1) comes to the person's attention; or

(2) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(f) A member's knowledge, notice, or receipt of a notification of a fact in the member's capacity as a member does not impute knowledge, notice, or receipt of notification of the fact to the limited liability company.

§ 4003. EFFECT OF OPERATING AGREEMENT; NONWAIVABLE

PROVISIONS

(a) Except as otherwise provided in subsection (b) of this section, an operating agreement regulates the affairs of the company and the conduct of its business and governs relations among the members, among the managers, and among the members, managers, and the limited liability company. To the extent the operating agreement does not otherwise provide, this chapter regulates the affairs of the company, the conduct of its business, and governs relations among the members, among the managers, and among members, managers, and the limited liability company.

(b) An operating agreement may not:

(1) vary a limited liability company's capacity under subsection 4011(e) of this title to sue and be sued in its own name;

(2) except as provided in subchapter 8 of this chapter, vary the law applicable under subsection 4011(g) of this title;

(3) vary the power of the court under section 4030 of this title;

(4) subject to subsections (c) through (f) of this section, eliminate or restrict the duty of loyalty, the duty of care, or any other fiduciary duty;

(5) subject to subsections (c) through (f) of this section, eliminate or restrict the contractual obligation of good faith and fair dealing under subsection 4059(d) of this title;

(6) unreasonably restrict the duties and rights with respect to books, records, and other information stated in section 4058 of this title, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, or a breach of any reasonable restriction on use;

(7) vary the power of a court to decree dissolution in the circumstances specified in subdivision 4101(4) of this title;

(8) vary the requirement to wind up a limited liability company's business as specified in section 4102 of this title;

(9) unreasonably restrict the right of a member to maintain an action under subchapter 9 of this chapter;

(10) restrict the right to approve a merger, conversion, or domestication under section 4152 of this title to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(11) restrict the rights under this title of a person other than a member, manager, or transferee of any interest in a limited liability company.

(c) Unless unreasonable, the operating agreement may:

(1) restrict the duty:

(A) as required in subdivision 4059(b)(1) and subsection 4059(h) of this title, 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 subdivision 4059(b)(3) and subsection 4059(h) of this title, 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 in subdivision 4059(b)(3) and subsection 4059(h) of this title, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company;

(2) identify the 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 subsection 4059(d) of this title.

(d) 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.

(e) 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 chapter 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.

(f) The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 4060 of this title 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 subsection 4059(d) of this title;

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

(5) an intentional violation of criminal law.

(g)(1) The court shall decide any claim under subsection (c) of this section that a term of an operating agreement is manifestly unreasonable.

(2) The court:

(A) 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

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

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

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

(h) 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.

(i) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(j)(1) 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.

(2) 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.

(k)(1) 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.

(2) An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(l)(1) 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.

(2) Subject only to any court order issued under subdivision 4074(b)(2) of this title, 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.

(m) 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 subsection 4003(b) of this title if contained in the operating agreement, the provision is likewise ineffective in the record.

(n) Subject to subsection (c) of this section, 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 title 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.

§ 4004. SUPPLEMENTAL PRINCIPLES OF LAW

(a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate shall be 12 percent per annum computed by the actuarial method.

§ 4005. NAME

(a)(1) Except for a low-profit limited liability company, the name of a limited liability company as set forth in its articles of organization shall contain the words “limited liability company” or “limited company” or the abbreviation “L.L.C.,” “LLC,” “L.C.,” or “LC.” The word “limited” may be

abbreviated as “Ltd.” and “company” may be abbreviated as “Co.” in a limited liability company name.

(2) The name of a low-profit limited liability company shall contain the abbreviation L3C.

(b) Unless authorized under subsection (c) of this section, the name of a limited liability company shall 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; and

(2) each name reserved under:

(A) sections 1621a, 4006, and 3403 of this title;

(B) 11A V.S.A. § 4.02;

(C) 11B V.S.A. § 4.02; and

(D) 11C V.S.A. § 112.

(c) A person may apply to the Secretary of State for authorization to use a name that does not comply with subsection (b) of this section. 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 name consents to the applicant’s use of the name in a signed record and submits an undertaking in a form satisfactory to the Secretary of State to change its name to a new name that complies with subsection (b) of this section; or

(2) the applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this State the name applied for.

(d) Subject to section 4116 of this title, this section applies to a foreign limited liability company transacting business in this State that has a certificate of authority to transact business in this State or which has applied for a certificate of authority.

(e) A person intending to operate a postsecondary school, as defined in 16 V.S.A. §§ 176 and 176a, shall apply for a certificate of approval from the State Board of Education prior to registering a name under this section.

§ 4006. RESERVED NAME

(a)(1) 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.

(2) The application shall state the name and address of the applicant and the name proposed to be reserved.

(3) If the Secretary of State finds that the name applied for is available, the Secretary shall reserve that name for the applicant's exclusive use for a 120-day period.

(b) The owner of a reserved limited liability company name may renew the reservation for successive periods of 120 days each by delivering a renewal

application to the Secretary of State during the 45-day period preceding the date of expiration of the reservation.

(c) The owner of a name reserved for a limited liability company may assign the reservation to another person by delivering to the Secretary of State for filing a signed notice of the assignment that states the name and address of the assignee.

(d) The owner of a reserved limited liability company name may terminate the name reservation by delivering to the Secretary of State for filing a signed notice of withdrawal of name reservation.

§ 4007. DESIGNATED OFFICE AND AGENT

(a) A limited liability company and a foreign limited liability company authorized to do business in this State shall designate and continuously maintain:

(1) a designated office for notification purposes, which may but need not be a place of its business, and may but need not be located in this State; and

(2) an agent and street address of the agent for service of process on the limited liability company in this State.

(b) An agent for service of process shall be an individual resident of this State, a domestic corporation, another limited liability company, or a foreign corporation or foreign limited liability company authorized to do business in this State.

§ 4008. CHANGE OF DESIGNATED OFFICE OR AGENT FOR

SERVICE OF PROCESS

(a) A limited liability company or foreign limited liability company may change its designated office or agent for service of process by delivering to the Secretary of State for filing a statement of change that sets forth:

(1) the name of the company;

(2) the street address, and the mailing address if different from the street address, of its current designated office;

(3) if the current designated office is to be changed, the street address, and the mailing address if different from the street address, of the new designated office;

(4) the name and address of its current agent for service of process; and

(5) if the current agent for service of process is to be changed, the name of the new agent for service of process and the new agent's written consent, either on the statement or attached to it, to the appointment.

(b) If an agent for service of process changes the street address of the agent's business office, the agent may change the street address of the designated office of any limited liability company or foreign limited liability company for which the agent is the agent for service of process by notifying the company in writing of the change and signing, either manually or in facsimile, and filing with the Secretary of State a statement that complies with

the requirements of subsection (a) of this section and recites that the company has been notified of the change.

§ 4009. RESIGNATION OF AGENT FOR SERVICE OF PROCESS

(a) To resign as an agent for service of process of a limited liability company or foreign limited liability company, the agent shall 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) of this section and mail or otherwise deliver a copy to the designated office of the limited liability company.

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

(1) the 41st day after the Secretary of State files the statement of resignation; or

(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.

§ 4010. SERVICE OF PROCESS

(a) An agent for service of process appointed by a limited liability company or a 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 upon the company.

(b) If a limited liability company or foreign limited liability company fails to 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 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 may be made by delivering to and leaving with the Secretary of State duplicate copies of the process, notice, or demand. If the 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 registered office. Service on the Secretary of State shall be returnable in not less than 30 days.

(d) The Secretary of State shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section shall not affect the right to serve process, notice, or demand upon a limited liability company or foreign limited liability company in any manner otherwise provided by law.

§ 4011. NATURE OF BUSINESS AND POWERS; GOVERNING

LAW

(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 for profit.

(c) A limited liability company has perpetual duration.

(d)(1) A limited liability company or a foreign limited liability company engaging in a business subject to any other provisions of law of this State governing or regulating business may be formed or authorized to transact business under this chapter only if permitted by, and subject to all limitations of, the other statute.

(2) The following shall not be formed or authorized to transact business under this chapter:

(A) a credit union regulated under Title 8;

(B) an insurance company regulated under Title 8, except that a captive insurance company regulated under 8 V.S.A. chapter 141 may be formed as a limited liability company;

(C) a railroad company regulated under Title 19.

(e) A limited liability company shall possess and may exercise all the powers and privileges granted by this chapter, any other law, its articles of organization, or its operating agreement, together with any powers incidental thereto, so far as the powers and privileges are necessary or convenient to the conduct, promotion, or attainment of the business purposes or activities of the limited liability company, including power to sue and to be sued, complain and

defend in its company name, and the power to do all things necessary or convenient to carry on its activities.

(f) 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.

(g)(1) Notwithstanding the provisions of subsections (a) and (b) of this section, a limited liability company or foreign limited liability company shall engage in rendering professional services only to the extent that, and subject to the conditions and limitations under which, a professional corporation may engage in rendering professional services under chapter 4 of this title.

(2) For purposes of applying the provisions, conditions, and limitations of chapter 4 of this title, unless the licensing laws of this State expressly prohibit the provision of professional services by domestic and foreign limited liability companies:

(A) unless the context clearly requires otherwise, references to 11A V.S.A. chapters 1–20, relating to business corporations shall be treated as references to this chapter, and references to a “corporation” shall be treated as references to a limited liability company or foreign limited liability company;

(B) the members shall be treated in the same manner as shareholders of a professional corporation;

(C) managers shall be treated in the same manner as directors of a professional corporation;

(D) the persons signing the articles of organization of the company shall be treated in the same manner as the incorporators of a professional corporation; and

(E) the name shall comply with sections 4005 and 4116 of this title and, in addition, shall contain the word "Professional" or the abbreviation "P.L.C.," "PLC," "P.L.L.C.," or "PLLC."

§ 4012. FEES

(a) The Secretary of State shall collect the following fees when a document described in this section is delivered to the Office of the Secretary of State for filing:

| | |
|--|-----------------|
| <u>(1) Articles of organization</u> | <u>\$125.00</u> |
| <u>(2) Application for certificate of authority</u> | <u>\$125.00</u> |
| <u>(3) Amendment of articles or certificate of authority</u> | <u>\$25.00</u> |
| <u>(4) Cancellation of certificate of authority</u> | <u>\$20.00</u> |
| <u>(5) Application for reserved name</u> | <u>\$20.00</u> |
| <u>(6) Notice of transfer of reserved name</u> | <u>No fee</u> |
| <u>(7) Application for registered name</u> | <u>\$25.00</u> |
| <u>(8) Application for renewal of registered name</u> | <u>\$25.00</u> |

| | |
|---|-------------------|
| <u>(9) Statement of change of designated agent or designated</u> | |
| <u>office, or both</u> | <u>\$25.00</u> |
| | <u>and</u> |
| | <u>not to</u> |
| | <u>exceed</u> |
| | <u>\$1,000.00</u> |
| | <u>per</u> |
| | <u>filer</u> |
| | <u>per</u> |
| | <u>calendar</u> |
| | <u>year</u> |
| <u>(10) Agent's statement of resignation</u> | <u>no fee</u> |
| <u>(11) Restatement of articles of organization</u> | <u>\$25.00</u> |
| <u>(12) Articles of correction</u> | <u>\$25.00</u> |
| <u>(13) Application for certificate of existence or authorization</u> | <u>\$25.00</u> |
| <u>(14) Articles of merger</u> | <u>\$50.00</u> |
| <u>(15) Annual report of a domestic limited liability company</u> | <u>\$35.00</u> |
| <u>(16) Annual report of a foreign limited liability company</u> | <u>\$140.00</u> |
| <u>(17) Reinstatement</u> | <u>\$25.00</u> |
| <u>(18) Any other document required or permitted to be filed</u> | |
| <u>by this chapter</u> | <u>\$20.00</u> |

(b) The Secretary of State shall collect the following fees:

(1) \$25.00 each time process is served on the Secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if he or she prevails in the proceeding; and

(2) \$25.00 for the certificate certifying the copy of any filed document relating to a limited liability company or a foreign limited liability company.

Subchapter 2. Organization

§ 4021. LIMITED LIABILITY COMPANY AS LEGAL ENTITY

A limited liability company is a legal entity distinct from its members.

§ 4022. ORGANIZATION

(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the Office of the Secretary of State for filing. The organizers need not be members of the limited liability company at the time of formation or after formation has occurred.

(b) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the Secretary of State is conclusive proof that the organizers satisfied all conditions precedent to the creation of the organization.

(d) The Secretary of State shall maintain a separate record of the number of limited liability companies that deliver articles of organization to the Secretary for filing by electronic transmission.

§ 4023. ARTICLES OF ORGANIZATION

(a) Articles of organization of a limited liability company shall set forth:

(1) the name of the company;

(2) the address of the initial designated office;

(3) the name and street address of the initial agent for service of process;

(4) the name and address of each organizer;

(5) if the company has no members at the time of filing, a statement to that effect; and

(6) whether the company is an L3C.

(b) Articles of organization of a limited liability company may set forth:

(1) provisions permitted to be set forth in an operating agreement; and

(2) other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of subsection 4003(b) of this title. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) the operating agreement controls as to managers, members, and members' transferees; and

(2) the articles of organization control as to persons other than managers, members, and their transferees who relied on the articles to their detriment.

§ 4024. AMENDMENT OR RESTATEMENT OF ARTICLES OF

ORGANIZATION

(a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Secretary of State for filing. The articles of amendment shall set forth the:

- (1) name of the limited liability company;
- (2) date of filing of the articles of organization; and
- (3) amendment to the articles.

(b) The articles of organization of a limited liability company may be amended at any time but shall be amended if:

- (1) there is a change in the name of the company;
- (2) there is a change in any other matter set forth in the articles of organization under subsection 4023(b) of this title; or
- (3) the articles of organization contain a false or erroneous statement.

(c) A limited liability company may restate its articles of organization at any time. Restated articles of organization shall be signed and filed in the same manner as articles of amendment. Restated articles of organization shall be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it

has been changed, all of its former names and the date of the filing of its initial articles of organization.

§ 4025. SIGNING OF DOCUMENTS

(a) Except as otherwise provided in this chapter, a document to be filed by or on behalf of a limited liability company in the Office of the Secretary of State must be signed in the name of the company by:

(1) a person authorized by the company;

(2) a person organizing the company, if it is the company's initial articles of organization; or

(3) a fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary.

(b) A document signed under subsection (a) of this section shall state adjacent to the signature the name and capacity of the signer.

(c) Any record filed under this chapter may be signed by an agent.

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

§ 4026. FILING IN OFFICE OF SECRETARY OF STATE

(a) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or conformed copy, of the articles of organization or any other document required to be filed pursuant to this chapter shall be delivered to the Secretary of State. If the Secretary of State determines that a

document conforms to the filing provisions of this chapter, the Secretary of State shall, when all required filing fees have been paid:

(1) endorse each signed original and duplicate copy with the word “filed” and the date and time of the acceptance for filing;

(2) retain the signed original in the Office of the Secretary of State; and

(3) return the duplicate copy to the limited liability company or to its representative.

(b) If the Secretary of State is unable to make the determination required under subsection (a) of this section for filing the articles of organization at the time a document is delivered for filing, the document is deemed to have been filed at the time of delivery if the Secretary of State subsequently determines that:

(1) the document as delivered conforms to the filing provisions of this chapter; or

(2) within 20 days after notification of nonconformance is given by the Secretary to the limited liability company or its representative, the document is brought into conformance.

(c) If the filing and determination requirements of this chapter are not satisfied within the time prescribed in subdivision (b)(2) of this section, the document shall not be filed.

(d) A document accepted for filing by the Secretary of State is effective:

- (1) on the date it is filed, as evidenced by the Secretary of State maintaining a record of the date and time of the filing;
- (2) at the time specified in the document as its effective time; or
- (3) on the date and at the time specified in the document if the document specifies a delayed effective date and time.

(e) If a delayed effective date for a document is specified but no time is specified, the document is effective at 12:01 a.m. on that date. A delayed effective date that is later than the 90th day after the document is filed makes the document effective as of the 90th day.

(f) An original copy may consist of an electronic communication received by the Secretary of State's office, endorsement may consist of an attached electronic record, and the delivery of a duplicate may be done electronically.

§ 4027. CORRECTING FILED DOCUMENT

(a) A limited liability company or foreign limited liability company may correct a document filed by the Secretary of State if the document contains a false or erroneous statement or was defectively signed.

(b) A document is corrected:

(1) by preparing articles of correction that:

(A) describe the document, including its filing date, or attach a copy of it to the articles of correction;

(B) specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective;

(C) correct the incorrect statement or defective signing; and

(2) by delivering the corrected document to the Secretary of State for filing.

(c) When filed by the Secretary of State, articles of correction filed under subsection (a) of this section are effective retroactively as of the effective date of the record the articles correct, but the articles are effective when filed as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

§ 4028. CERTIFICATE OF EXISTENCE OR AUTHORIZATION

(a) A person may request the Secretary of State to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence for a limited liability company shall set forth:

(1) the company's name;

(2) that it is duly organized under the laws of this State and the date of organization; and

(3) that articles of termination have not been filed.

(c) A certificate of authorization for a foreign limited liability company shall set forth:

(1) the company's name used in this State;

(2) that it is authorized to transact business in this State; and

(3) that a certificate of cancellation has not been filed.

(d) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign limited liability company is in existence or is authorized to transact business in this State.

§ 4029. LIABILITY FOR FALSE STATEMENT IN FILED DOCUMENT

If a document filed with the Secretary of State contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the document or caused another to sign it on the person's behalf and knew the statement to be false at the time the document was signed.

§ 4030. FILING BY JUDICIAL ACT

If a person required by section 4025 of this title to sign any document fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the Superior Court to direct the signing of the document. If the Court finds that it is proper for the document to be signed and that a person so designated has failed or refused to sign the document, it shall order the Secretary of State to sign and file an appropriate document.

§ 4031. LIMITED LIABILITY COMPANY PROPERTY

Property transferred to or otherwise acquired by a limited liability company is property of the limited liability company and not of the members individually.

§ 4032. WHEN PROPERTY IS LIMITED LIABILITY COMPANY PROPERTY

(a) Property is limited liability company property if acquired in the name of:

(1) the limited liability company; or

(2) one or more members with an indication in the instrument transferring title to the property of the person's capacity as a member or of the existence of a limited liability company, but without an indication of the name of the limited liability company.

(b) Property is presumed to be limited liability company property if purchased with limited liability company assets, even if not acquired in the name of the limited liability company or of one or more members with an indication in the instrument transferring title to the property of the person's capacity as a member or of the existence of a limited liability company.

(c) Property acquired in the name of one or more of the members, without an indication in the instrument transferring title to the property of the person's capacity as a member or of the existence of a limited liability company and

without use of limited liability company assets, is presumed to be separate property, even if used for limited liability company purposes.

§ 4033. ANNUAL REPORT FOR SECRETARY OF STATE

(a) Each domestic limited liability company and each foreign limited liability company authorized to transact business in this State shall file an annual report with the Secretary of State. The annual report shall set forth the following information:

(1) the name of the company and the state or country under whose law it is organized;

(2) the address of its designated office and the name of its designated agent at that office in this State.

(b) Information in the annual report shall be current as of the date the annual report is signed on behalf of the company.

(c) The annual report shall be delivered to the Secretary of State within three months after the expiration of the company's fiscal year.

§ 4034. INVOLUNTARY TERMINATION

(a)(1) The articles of organization of a limited liability company that fails to file an annual report required by section 4033 of this title shall terminate and the provisions of this section shall apply to the limited liability company.

(2) The certificate of authority of a foreign limited liability company that fails to file an annual report required by section 4033 of this title shall

terminate and the Secretary of State shall notify the company of the termination.

(3) If a company that has had its articles of organization terminated or had its certificate of authority terminated files its annual report together with the annual report filing fee and the reinstatement fee for each year the company failed to file its annual report, its articles of organization or certificate of authority, as the case may be, shall be reinstated by the Secretary of State.

(b) When the reinstatement becomes effective, it relates back to and takes effect as of the effective date of termination of the company's articles of organization or the date the company's certificate of authority was terminated under subsection (a) of this section as if the termination never occurred.

(c) A limited liability company or a foreign limited liability company shall lose the right to retain its name if the annual report required under subsection (a) of this section is not filed on or before five years after the date when the report is due.

(d) Involuntary termination under this section does not:

(1) prevent commencement of a proceeding against the limited liability company or the foreign limited liability company in its company name; provided that a proceeding is subject to dismissal unless the company is reinstated in accordance with subsections (a) and (b) of this section;

(2) abate or suspend a proceeding pending by or against the limited liability company or foreign limited liability company on the effective date of involuntary termination; or

(3) terminate the authority of the designated agent of the limited liability company or foreign limited liability company;

(4) alter the limited liability status of members or managers of the limited liability company or foreign limited liability company; or

(5) impair the validity of acts of the limited liability company during the period between involuntary termination and reinstatement.

Subchapter 3. Relations of Members and Managers to Persons

Dealing with Limited Liability Company

§ 4041. NO AGENCY POWER OF MEMBER AS MEMBER

(a) A member is not an agency 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 title from imposing liability on a limited liability company because of the person's conduct.

§ 4042. LIABILITY OF MEMBERS AND MANAGERS

(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 the manager acting as a manager.

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

Subchapter 4. Relations of Members to Each Other
and to Limited Liability Company

§ 4051. BECOMING A MEMBER

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

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

(c) If articles of organization filed with the Secretary of State contain the statement required by subdivision 4023(a)(5) of this title, 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 subchapter 10 of this chapter;

(3) with the affirmative vote or 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 distributional interest and without making or being obligated to make a contribution to the limited liability company.

§ 4052. FORM OF CONTRIBUTION

A contribution may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, agreements to contribute money or property, or contracts for services to be performed.

§ 4053. MEMBER'S LIABILITY FOR CONTRIBUTIONS

(a) A person's obligation to make a contribution to a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a person does not make the required contribution, the person's estate is obligated at the option of the company to contribute money equal to that portion of the value of the part of the contribution which has not been made.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, and without notice of any compromise under subdivision 4054(d)(4) of this title, may enforce the original obligation.

§ 4054. MANAGEMENT OF LIMITED LIABILITY COMPANY

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

(1) expressly provides that:

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

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

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

(2) includes words of similar import.

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

(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; and

(3) except as otherwise provided in subsection (d) of this section, any matter relating to the activities of the company may be decided by a majority of the members.

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

(1) Except as otherwise provided in subsection (d) of this section, the managers have the exclusive authority to manage and conduct the company's activities.

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

(3) Except as specified in subsection (d) of this section, any matter relating to the activities of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers.

(4)(A) A manager may be chosen at any time by the affirmative vote or consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates.

(B) A manager may be removed at any time by the affirmative vote or consent of a majority of the members without notice or cause.

(5)(A) 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.

(B) If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

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

(d) Except as provided in the operating agreement, the affirmative vote or consent of all the members is required to:

(1) amend the operating agreement of a limited liability company;

(2) amend the articles of organization under section 4024 of this title;

(3) compromise an obligation to make a contribution under section 4053 of this title;

(4) compromise, as among members, an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;

(5) make interim distributions under subsection 4055(a) of this title;

(6) admit a new member;

(7) use the company's property to redeem an interest subject to a charging order;

(8) waive the right to have the company's business wound up and the company terminated under subsection 4102(b) of this title; and

(9) sell, lease, exchange or otherwise dispose of all, or substantially all, of the company's property with or without goodwill.

(e)(1) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

(2) An appointment of a proxy is valid for 11 months unless a different time is specified in the appointment instrument.

(3) An appointment is revocable by the member or manager unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest, in which case the appointment is revoked when the coupled interest is extinguished.

(f)(1) An action requiring the affirmative vote or consent of members under this title may be taken without a meeting, if the action is approved in a consent by members having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all members entitled to vote thereon were present and voted.

(2) 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.

(g)(1) An action that may be taken at a meeting of the managers may be taken without a meeting if the action is approved by consent of all managers entitled to vote on the action.

(2) The action must be evidenced by one or more consents reflected in a record describing the action taken and signed by all managers entitled to vote on the action.

(h) 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.

(i) This chapter 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.

§ 4055. SHARING OF PROFITS AND LOSSES AND RIGHT TO

DISTRIBUTIONS

(a) The profits and losses of a limited liability company shall be allocated among the members or the holders of distributional interests, as the case may be, in proportion to the agreed value, as stated in the limited liability company

records required to be kept under this chapter, of the contributions made by each member, taking into account variations in the capital contributions of each member during the period for which such allocations are made.

(b) Any distributions made by a limited liability company before its dissolution and winding up shall be made among the members or the holders of distributional interests, as the case may be, in proportion to the agreed value of the contributions made by each member as of the date of such distribution.

(c)(1) A member 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.

(2) A person's dissociation does not entitle the person to a distribution.

(d) A member has no right to receive, and may not be required to accept, a distribution in kind.

(e) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

§ 4056. LIMITATIONS ON DISTRIBUTIONS

(a) A distribution shall not be made if:

(1) the limited liability company would not be able to pay its debts as they become due in the ordinary course of business; 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 receiving the distribution.

(b) A limited liability company may base a determination that a distribution is not prohibited under subsection (a) of this section on financial statements prepared on the basis of:

(1) generally accepted accounting practices and principles;

(2) a fair valuation; or

(3) another method that is reasonable under the circumstances.

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

(1) in the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability 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 the:

(A) distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(B) payment is made if it occurs more than 120 days after the date of authorization.

(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) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness and not the issuance of the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

§ 4057. LIABILITY FOR UNLAWFUL DISTRIBUTIONS

(a) A member of a member-managed limited liability company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section 4056 of this title, the articles of organization or a written operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating section 4056 of this title, the articles of organization or a written operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with section 4059 of this title.

(b) A member of a manager-managed limited liability company who knew a distribution was made to such member in violation of section 4056 of this title is personally liable to the limited liability company, but only to the extent that the distribution received by such member exceeded the amount that could properly have been paid under section 4056 of this title.

(c) A member or manager against whom an action is brought under this section may implead in the action all:

(1) other members or managers who voted for or assented to the distribution in violation of subsection (a) of this section and may compel contribution from them; and

(2) members who received a distribution in violation of subsection (b) of this section and may compel contribution from the member in the amount received in violation of subsection (b) of this section.

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.

§ 4058. INFORMATION RIGHTS

(a) In a member-managed limited liability company, each member has the right, subject to such reasonable standards, including standards governing what information and documents are to be furnished and at what time and location, as may be set forth in the articles of organization, an operating agreement, or otherwise established by the members to obtain from the company from time to time and upon reasonable demand for any purpose reasonably related to the

member's interest as a member of the limited liability company during the period in which he or she was a member:

(1) information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and duties under the operating agreement or this chapter; and

(2) other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

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

(1) the right to receive information as stated in subdivision (a)(1) of this section shall apply to the managers and not the members;

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

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

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

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

(3) the managers shall have the right to keep confidential from members who are not managers, for such period of time as the managers deem reasonable, any information which the managers reasonably believe to be in the nature of trade secrets or other information the disclosure of which the managers in good faith believe is not in the best interest of the company.

(c) A company may impose a reasonable charge, limited to the costs of labor and material, for copies of records or other information furnished under this section.

(d) A company may maintain its records in other than written form if such form is capable of conversion into written form within a reasonable time or into an electronic form that may be prescribed by the Secretary of State.

(e) Any demand under this section shall:

(1) be in writing;

(2) be made in good faith and for a proper purpose; and

(3) describe with reasonable particularity the purpose and the records or information desired.

(f)(1) A member or person dissociated as a member may exercise the rights under this section through an agent or, in the case of an individual under legal disability, a legal representative.

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

(g) Subject to section 4075 of this title, the rights under this section do not extend to a person who is a transferee of an interest in a limited liability company, except that a transferee is entitled to an account of the company's transactions only from the date of dissolution.

(h)(1) In addition to any restriction or condition stated in this section or the company's operating agreement, a limited liability company 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.

(2) In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

(i) Failure of the company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any person for the debts and obligations of the company.

§ 4059. GENERAL STANDARDS OF MEMBER'S AND MANAGER'S

CONDUCT

(a) The only fiduciary duties a member owes to a member-managed limited liability company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c) of this section.

(b) A member's duty of loyalty to a member-managed limited liability company and its other members is limited to the following:

(1) to account to the 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 or derived from a use by the member of the company's property, including the appropriation of the company's opportunity;

(2) 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

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

(c) A member's duty of care to a member-managed limited liability company and its other members in the conduct of and winding up of the company's business is limited to refrain from engaging in grossly negligent or reckless conduct, or a knowing violation of the law.

(d) A member shall discharge the duties to a member-managed limited liability company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A member of a member-managed limited liability company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) All the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full

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

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

(h) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member of the company as if the person were a member.

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

(1) subsections (a), (b), (c), and (g) of this section apply to the manager or managers and not the members, and the duty stated in subdivision (b)(3) of this section continues until winding up is completed;

(2) subsection (d) of this section applies to managers and members;

(3) subsection (e) of this section applies only to members;

(4) the power to ratify under subsection (f) of this section applies only to members;

(5) subject to subsection (d) of this section, a member does not have any duty to the company or to the other members solely by reason of being a member;

(6) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (a), (b),

(c), and (g) of this section to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(7) a manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (a), (b), (c), and (g) of this section to the extent of the managerial authority delegated to the members by the operating agreement.

(j) In discharging his or her duties, a member or a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) one or more members, managers, officers, or employees of the company whom the member or manager reasonably believes to be reliable and competent in the matter presented;

(2) legal counsel, public accountants, or other persons as to matters the member or manager reasonably believes are within the person's professional or expert competence; or

(3) a committee of the members or managers of which the member or manager is not a member if the member or manager reasonably believes the committee merits confidence.

(k) A member or manager is not acting in good faith if he or she has knowledge concerning the matter if the matter in question that makes reliance permitted by subsection (j) of this section unwarranted.

(l)(1) A member of a member-managed limited liability company or a manager of a manager-managed limited liability company may lend money to and transact other business with the company.

(2) As to each loan or transaction, the rights and obligations of the member or manager, as applicable, are the same as those of a person who is not a member or manager, subject to other applicable law.

(m) A member or manager is not liable for any action taken as a member or manager or any failure to take any action, if the member or manager performed the duties of his or her office in compliance with this section.

§ 4060. REIMBURSEMENT, INDEMNIFICATION, AND INSURANCE

(a) A member-managed limited liability company shall reimburse a member, and a manager-managed limited liability company shall reimburse a manager, for payments made and indemnify the member or manager for liabilities reasonably incurred by the member or manager in the ordinary and proper conduct of the activities of the limited liability company or for the preservation of its activities or property.

(b) A limited liability company may purchase and maintain insurance on behalf of a member or manager against liability asserted against or incurred by the member or manager in that capacity or arising from that status whether or not the operation agreement is permitted to provide for the member or manager to be indemnified against the liability.

(c) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make.

(d) A payment or advance that gives rise to an obligation of a limited liability company under subsections (a) through (c) of this section constitutes a loan to the company, which accrues interest from the date of the payment or advance.

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

Subchapter 5. Transferees and Creditors of Member

§ 4071. MEMBER'S DISTRIBUTIONAL INTEREST

(a) A distributional interest in a limited liability company is personal property and, subject to sections 4072 and 4073 of this title, may be transferred in whole or in part.

(b) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to section 4073 of this title, may also provide for the transfer of any interest represented by the certificate by a transfer of the certificate.

§ 4072. TRANSFER OF DISTRIBUTIONAL INTEREST

(a) A transfer, in whole or in part, of a distributional interest:

(1) is permissible;

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

(3) subject to section 4075 of this title, does not entitle the transferee to:

(A) become or to exercise any rights of a member:

(B) participate in the management or conduct of the company's activities; or

(C) except as otherwise provided in subsection 4073(d) of this title, have access to records or other information concerning the company's activities.

(b) A transfer of a distributional interest entitles the transferee to receive, in accordance with the transfer, the distributions to which the transferor would otherwise be entitled with respect to the interest.

(c) Except as otherwise provided in subdivision 4081(4)(B) of this title, if a member transfers a distributional interest, the transferor retains the rights of a member other than the distributional interest transferred and retains all duties and obligations of a member.

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

§ 4073. RIGHTS OF TRANSFEREE

(a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that all other members consent.

(b)(1) A transferee who has become a member, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement and this chapter to the extent of the membership interest transferred.

(2) A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under section 4053 of this title and for obligations under section 4057 of this title to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member and which could not be ascertained from the articles of organization or the operating agreement made available to the transferee, and is not personally liable for any obligation of the limited liability company incurred before the transferee's admission as a member.

(c) Whether or not a transferee of a distributional interest becomes a member under subsection (a) of this section, the transferor retains all duties and obligations of a member and is not released from liability to the limited liability company and the other members under the operating agreement or this chapter unless all other members consent.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business or affairs, require access to information concerning the company's transactions, or inspect or copy any of the company's books and other records, except that 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.

(e) A transferee who does not become a member is entitled to:

(1) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) receive, upon dissolution and winding up of the limited liability company's business:

(A) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(B) a statement of account only from the date of the latest statement of account agreed to by all the members.

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

§ 4074. CHARGING ORDER

(a)(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the distributional interest of the judgment debtor for the unsatisfied amount of the judgment.

(2) Except as provided in subsection (f) of this section, a charging order constitutes a lien on a judgment debtor's distributional 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) of this section, 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)(1) 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 distributional interest.

(2) Except as provided in subsection (f) of this section, the purchaser at the foreclosure sale obtains only the distributional interest, does not thereby become a member, and is subject to section 4073 of this title.

(d) At any time before foreclosure under subsection (c) of this section, the member or transferee whose distributional interest is subject to a charging order under subsection (a) of this section 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) of this section, a limited liability company or one or more members whose distributional 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 section does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's distributional interest.

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

(1) the court shall confirm the sale;

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

(3) the purchaser thereby becomes a member; and

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

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

§ 4075. POWER OF ESTATE OF DECEASED MEMBER

If a member who is an individual dies, the member's legal representative may exercise the rights of a transferee under section 4073 of this title, and, for purposes of settling the estate, the member's legal representative may exercise the rights the deceased member had under section 4058 of this title.

Subchapter 6. Member's Dissociation

§ 4081. EVENTS CAUSING MEMBER'S DISSOCIATION

A person is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or, if a later withdrawal date is specified by the member, on the later date;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) the member's expulsion pursuant to the operating agreement;

(4) the member's expulsion by unanimous vote of the other members if:

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

(B) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;

(C) a corporation that is a member fails to obtain a revocation of its certificate of dissolution or a reinstatement of its charter or its right to conduct business within 90 days after the company notifies such member that it will be expelled because it 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; or

(D) a partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

(5) on application by the company or another member, the member's expulsion by judicial determination because the member:

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

(B) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 4059 of this title; or

(C) engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the person as a member;

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

(A) becomes a debtor in bankruptcy;

(B) executes an assignment for the benefit of creditors;

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

(D) fails, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or fails within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a member who is an individual:

(A) the member's death; or

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

(i) the appointment of a guardian or general conservator for the member; or

(ii) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(8) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's

entire distributional interest in the company, but not merely the substitution of a successor personal representative;

(10) termination of the existence of a member if the member is not an individual, partnership, limited liability company, corporation, estate, or trust;

(11) the company participates in a merger under subchapter 10 of this chapter and:

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

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

(12) the company participates in a conversion under subchapter 10 of this chapter;

(13) the company participates in a domestication under subchapter 10 of this chapter, and, the person ceases to be a member as a result of the domestication; or

(14) termination of a member's continued membership in a limited liability company for any other reason.

§ 4082. MEMBER'S POWER TO DISSOCIATE; WRONGFUL

DISSOCIATION

(a) A person has the power to dissociate as a member from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to subdivision 4081(1) of this title.

(b) A member'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 articles of organization; or

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

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

(B) the member is expelled as a member by judicial determination under subdivision 4081(5) of this title;

(C) the member is dissociated under subdivision 4081(6)(A) of this title by becoming a debtor in bankruptcy; or

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

(c)(1) A person that wrongfully dissociates as a member from a limited liability company is liable to the company and, subject to section 4131 of this title, to the other members for damages caused by the dissociation.

(2) The liability is in addition to any other debt, obligation, or other liability of the member to the company or to the other members.

§ 4083. EFFECT OF MEMBER'S DISSOCIATION

(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 business 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 4075 of this title and subchapter 10 of this chapter, any distributional 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 that the person incurred while a member.

Subchapter 7. Winding Up Of Company Business

§ 4101. EVENTS CAUSING DISSOLUTION AND WINDING UP OF COMPANY BUSINESS

(a) A limited liability company is dissolved, and its business shall be wound up, upon the occurrence of any of the following events:

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

(2) consent of the number or percentage of members specified in the operating agreement, or in the absence of a provision governing approval of a

dissolution or winding up of the company contained in an operating agreement,
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 the Superior 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 conformance with the certificate of organization and the operating
agreement; or

(5) on application by a member, the entry by the Superior 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 acted, 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 an action brought under subdivision (a)(5) of this section, the Court
may order a remedy other than dissolution.

§ 4102. LIMITED LIABILITY COMPANY CONTINUES AFTER

DISSOLUTION

(a) Subject to subsection (b) of this section, a limited liability company continues after dissolution only for the purpose of winding up its business.

(b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, all of the members, or, if different, the number or percentage of members specified in the operating agreement to dissolve or liquidate the company may waive the right to have the company's business wound up and the company terminated, in which case:

(1) the limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined shall be subject to the same limitations on liability as if the dissolution had never occurred; and

(2) the rights of a third party accruing under section 4104 of this title or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

§ 4103. RIGHT TO WIND UP LIMITED LIABILITY COMPANY'S

BUSINESS

(a) After dissolution, a member may participate in winding up a limited liability company's business, but on application of any member, member's

legal representative, or transferee, the Superior Court, for good cause shown, may order judicial supervision of the 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; and

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

(c) If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under subsection 4054(c) of this title and is deemed to be a manager for the purposes of subdivision 4042(a)(2) of this title.

(d)(1) If the legal representative under subsection (c) of this section declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees who own a majority of the rights to receive distributions as transferees at the time the consent is to be effective.

(2) A person appointed under this subsection:

(A) has the powers of a sole manager under subsection 4054(c) of this title and is deemed to be a manager for purposes of subdivision 4042(a)(2) of this title; and

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

(i) state that the company has no members;

(ii) state that the person has been appointed pursuant to this subsection (d) to wind up the company; and

(iii) provide the street and mailing addresses of the person.

(e) The Superior 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 (c) of this section; or

(3) in connection with a proceeding under subdivision 4101(a)(4) or (5) of this title.

§ 4104. MEMBER'S OR MANAGER'S POWER AND LIABILITY AS

AGENT AFTER DISSOLUTION

A limited liability company is bound by a member's or manager's act after dissolution that:

(1) is appropriate for winding up the company's business; or

(2) would have bound the company under section 4041 of this title

before dissolution, if the other party to the transaction did not have notice of the dissolution.

§ 4105. ARTICLES OF TERMINATION

(a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary of State articles of termination stating:

(1) the name of the company;

(2) the date of the dissolution; and

(3) that the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination, or upon a later effective date, if specified in the articles of termination.

§ 4106. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED

LIABILITY COMPANY'S BUSINESS

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in proportion to each member's capital contributions.

§ 4107. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY

(a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice shall:

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

(2) provide a mailing address where 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 written 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) of this section are met, and:

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

(2) in the case of a claim that is timely received but rejected by the company:

(A) the company causes the claimant to receive 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.

§ 4108. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY

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

(b) The notice shall:

(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 its designated office is or was last located, and sent to the Office of the Attorney General;

(2) describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and

(3) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within five years after publication of the notice.

(c)(1) If the dissolved limited liability company sends notice to the Attorney General and publishes a newspaper notice in accordance with subsection (b) of this section, a cause of action against a dissolved limited liability company, whether arising before or after the dissolution of the limited liability company, may be enforced only as follows:

(A) against the dissolved limited liability company; and

(B) if any of the assets of the dissolved limited liability company have been distributed to its members, against members of the dissolved limited liability company.

(2) A cause of action against a dissolved limited liability company arising under subdivision (1)(A) of this subsection is extinguished unless the claimant commences a proceeding to enforce the cause of action against the

dissolved limited liability company prior to the expiration of the statute of limitations applicable to the cause of action.

(3) A cause of action against a dissolved limited liability company arising under subdivision (1)(B) of this subsection is extinguished unless the claimant commences a proceeding to enforce the cause of action against a member of a dissolved limited liability company prior to the earlier of the following:

(A) the expiration of the statute of limitations applicable to the cause of action;

(B) five years after the effective date of the dissolution of the limited liability company.

§ 4109. ENFORCEMENT OF CLAIMS AGAINST DISSOLVED LIMITED LIABILITY COMPANY

A claim not barred under section 4108 of this title may be enforced against the dissolved limited liability company:

(1) to the extent of its undistributed assets, including any insurance assets held by the limited liability company that may be available to satisfy claims; or

(2) if the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation,

whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

Subchapter 8. Foreign Limited Liability Companies

§ 4111. LAW GOVERNING FOREIGN LIMITED LIABILITY

COMPANIES

(a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of a member as a member, and a manager as a manager, for the debts, obligations, or other liabilities of the foreign limited liability company or series thereof.

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

§ 4112. APPLICATION FOR CERTIFICATE OF AUTHORITY

(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 shall set forth:

(1) the name of the foreign company and, if its name is unavailable for use in this State, an alternate name that satisfies the requirements of section 4116 of this title;

(2) the name of the state or country under whose law it is organized;

(3) the address of its initial designated office;

(4) the name and street address, and the mailing address if different from the street address, of its designated agent for service of process in this State.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a document of similar import, authenticated by the Secretary of State or other official having custody of company records in the state or country under whose law it is organized, dated no earlier than 90 days prior to filing of the application.

§ 4113. ACTIVITIES NOT CONSTITUTING TRANSACTING

BUSINESS

(a) A foreign limited liability company may not transact business in this State until it obtains a certificate of authority from the Secretary of State.

(b) Except as provided in subsection (c) of this section, “doing business” or “transacting business” shall mean and include each act, power, or privilege exercised or enjoyed in this State by a foreign limited liability company.

(c) Among others, the following activities without more do not constitute transacting business for the purpose of determining whether a foreign limited

liability company is required to obtain a certificate of authority under subsection (a) of this section:

(1) maintaining, defending, or settling any proceeding;

(2) holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of the foreign 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, and maintaining property so acquired;

(9) owning real or personal property;

(10) conducting an isolated transaction that is not one in the course of repeated transactions of a like nature; or

(11) transacting business in interstate commerce.

§ 4114. ISSUANCE OF CERTIFICATE OF AUTHORITY

If the Secretary of State determines that an application for a certificate of authority complies as to form with the filing requirements of this chapter, and if all filing fees have been paid, the Secretary of State shall file the application and issue a certificate of authority to the foreign limited liability company or its representative.

§ 4115. AMENDED CERTIFICATE OF AUTHORITY

(a) A foreign limited liability company authorized to transact business in this State must obtain an amended certificate of authority from the Secretary of State if it:

(1) changes its name; and

(2) changes the state or country under whose law it is organized.

(b) The requirements of section 4134 of this title for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

§ 4116. NAME OF FOREIGN LIMITED LIABILITY COMPANY

(a)(1) A foreign limited liability company whose name does not comply with section 4005 of this title 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 4005 of this title.

(2) A foreign limited liability company that adopts an alternate name under this subsection and obtains a certificate of authority with the alternate name need not comply with chapter 15 of this title.

(3) 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 chapter 15 of this title 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 satisfy the requirements of section 4005 of this title, it may not transact business in this State until it complies with subsection (a) of this section and obtains an amended certificate of authority.

§ 4117. REVOCATION OF CERTIFICATE OF AUTHORITY

(a) The Secretary of State may revoke a certificate of authority of a foreign limited liability company to transact business in this State in the manner provided in subsections (b) and (c) of this section if:

(1) the company does not:

(A) pay, within 60 days after the due date, any fee, tax, or penalty due to the Secretary of State under this chapter;

(B) appoint and maintain an agent for service of process as required by section 4008 of this title; or

(C) deliver for filing a statement of change under section 4009 of this title within 30 days after a change has occurred in the name or address of the agent; or

(2) the Commissioner of Taxes notifies the Secretary of State that a foreign limited liability company has failed to make a return, to pay a tax, to file a bond, or to do any other act required under 32 V.S.A. chapter 211.

(b)(1) To revoke a certificate of authority of a foreign limited liability company, the Secretary of State shall 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.

(2) A notice of revocation shall state:

(A) the effective date of the revocation, which shall be at least 60 days after the date the Secretary of State sends the copy; and

(B) the grounds for revocation under subsection (a) of this section.

(c) The authority of a foreign limited liability company to transact business in this State shall cease 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) of this section. If the company cures each ground, the Secretary of State shall file a record so stating.

§ 4118. CANCELLATION OF AUTHORITY

A foreign limited liability company may cancel its authority to transact business in this State by filing a certificate of cancellation with the Secretary of State. Cancellation does not terminate the authority of the Secretary of State to accept service of process on the company for claims arising out of the transactions of business in this State.

§ 4119. EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF AUTHORITY

(a) A foreign limited liability company transacting business in this State may not maintain a proceeding or raise a counterclaim, cross-claim, or affirmative defense in any court in this State until it obtains 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 foreign limited liability 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, it appoints the Secretary of State as its agent

for service of process for claims arising out of the transaction of business in this State.

§ 4120. ACTION BY ATTORNEY GENERAL

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this State in violation of this chapter.

§ 4121. ELECTION

A limited liability company formed under this chapter may elect to be a foreign law limited liability company by complying with all the following:

(1) designating itself as a foreign law limited liability company in its articles of organization filed pursuant to section 4023 of this title;

(2) including in its name either the term “foreign law limited liability company,” the term “Foreign Law Company,” or the abbreviation “F.L.L.L.C.” or “F.L.C.” in lieu of the words or abbreviations required under subsection 4005(a) of this title; and

(3) complying with the requirements of this subchapter and paying the filing fees pursuant to section 4013 of this title.

§ 4122. DESIGNATION OF CONTROLLING FOREIGN LAW

(a) A foreign law limited liability company shall designate in its articles of organization all the following:

(1) a specific law or body of law of a foreign jurisdiction, either within or outside the United States of America, that will control the internal governance affairs of the company;

(2) the type of organization that will control how the foreign law limited liability company is treated under the foreign law and all matters that are required to be included in the constituent filing for that type of organization under that foreign law;

(3) any variations or limitations on the applicability of the foreign law and any mechanisms for amending, rescinding, or limiting the designation in the future;

(4) the courts, if any, that, in addition to the courts of the State of Vermont and the United States, will have jurisdiction over disputes relating to the internal governance affairs of the foreign law limited liability company; and

(5) a designation of those classes of individuals or officers within the chosen legal structure who shall have authority to act on behalf of the foreign law limited liability company equivalent to the authority of managers under subsections 4054(b) and (c) of this title, and any limitations on or clarification of that authority.

(b) Any bylaws, agreements, or other statements of principles governing the internal governance affairs of the foreign law limited liability company addressed in the applicable foreign law but not required to be in the constituent

filing shall be set forth as part of, or in lieu of, the operating agreement required by section 4003 of this title. The prohibitions on a waiver under subsection 4003(b) shall not apply to foreign law limited liability companies.

§ 4123. SCOPE OF DESIGNATED FOREIGN LAW

(a) In any disputes over the internal governance affairs of a foreign law limited liability company, the designated foreign law or body of law shall be applied by any court having jurisdiction over the parties as the binding authority governing these matters, provided that no designated law shall be enforced that:

(1) is contrary to provisions of Vermont or United States law or public policy;

(2) cause fraud or manifest injustice under Vermont or United States law;

(3) purports to limit the civil or criminal liability of an individual, partnership, or entity under Vermont or United States law; or

(4) varies or limits the filing procedures for creating a limited liability company required by this title.

(b) As used in this subchapter, “internal governance affairs” means the relations among the limited liability company, its members, and managers. Whether an issue is a matter of internal governance affairs of the company shall be determined under Vermont law.

(c) If a court determines that the designated law does not address an internal governance matter or addresses it in a manner that is unenforceable pursuant to subsection (a) of this section, or a limitation or variation relating to the issue is specified in the articles of organization, Vermont law shall apply to the matter at issue.

(d) All the external affairs of the foreign law limited liability company shall be governed by the general provisions of this chapter, the articles of organization other than choice of foreign law, the operating agreement, and applicable Vermont and federal laws.

§ 4124. JURISDICTION

(a) Vermont and other courts designated pursuant to section 4122 of this title shall have jurisdiction over all disputes relating to the internal governance affairs of a foreign law limited liability company.

(b) In adjudicating any dispute relating to the internal governance affairs of a foreign law limited liability company, the court may rely on its own English translation of the designated law and on testimony of experts, opinions of counsel, advisory opinions, or declaratory or binding judgments, and other appropriate evidence.

Subchapter 9. Actions by Members

§ 4131. DIRECT ACTION BY MEMBER

(a) Subject to subsection (b) of this section, a member may maintain a direct action against another member, a manager, or the limited liability

company to enforce the member's rights and protect the member's interests, including rights and interests under the operating agreement, under this title, or arising independently of the membership relationship.

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

§ 4132. DERIVATIVE ACTION

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

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

(2) a demand under subsection (a) of this section would be futile.

§ 4133. PROPER PLAINTIFF

A derivative action under section 4132 of this title may be maintained only by a person that is a member of the company at the time the action is commenced, and:

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

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

§ 4134. PLEADING

In a derivative action, the complaint must state with particularity:

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

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

§ 4135. SPECIAL LITIGATION COMMITTEE

(a)(1) 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.

(2) 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.

(3) This subsection shall not prevent the court from:

(A) enforcing a person's right to information under section 4033 of this title; or

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

(b) A special litigation committee shall be composed of one or more disinterested and independent individuals, who may be members.

(c) A special litigation committee may be appointed:

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

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

(B) if all members are named as 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 parties in the proceeding; or

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

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

(1) continue under the control of the plaintiff;

(2) continue under the control of the committee;

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

(4) be dismissed.

(e)(1) After making a determination under subsection (d) of this section, a special litigation committee shall file with the court a statement of its

determination and its report supporting its determination, and shall serve each party with a copy of the determination and report.

(2) 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.

(3) 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.

(4) Otherwise, the court shall dissolve the stay of discovery entered under subsection (a) of this section and allow the action to continue under the control of the plaintiff.

§ 4136. PROCEEDS AND EXPENSES

(a) Except as otherwise provided in subsection (b) of this section:

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

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

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

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

Subchapter 10. Conversions, Mergers, and Domestications

§ 4141. DEFINITIONS

In this subchapter:

(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) "Conversion" means a transaction authorized sections by 4142 through 4147 of this title.

(4) "Converted organization" means the converting organization as it continues in existence after a conversion.

(5) "Converting organization" means the domestic organization that approves a plan of conversion pursuant to section 4144 of this title or the foreign organization that approves a conversion pursuant to the law of its jurisdiction of formation.

(6) "Domestic," with respect to an organization, means an organization governed as to its internal affairs by the law of this State.

(7) “Domesticated company” means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 4152 through 4155 of this title.

(8) “Domesticating company” means the company that effects a domestication pursuant to sections 4152 through 4155 of this title.

(9) “General partner” means a partner in a partnership and a general partner in a limited partnership.

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

(11) “Interest holder” means:

(A) a shareholder of a business corporation;

(B) a member of a nonprofit corporation;

(C) a general partner of a general partnership;

(D) a general partner of a limited partnership;

(E) a limited partner of a limited partnership;

(F) a member of a limited liability company;

(G) a shareholder of a general cooperative association;

(H) a member of a limited cooperative association or mutual benefit enterprise;

(I) a member of an unincorporated nonprofit association;

(J) a beneficiary or beneficial owner of a statutory trust, business trust, or common-law business trust; or

(K) any other direct holder of an interest.

(12) "Limited partner" means a limited partner in a limited partnership.

(13) "Limited partnership" means a limited partnership created under chapter 11 of this title, a predecessor law, or comparable law of another jurisdiction.

(14) "Organization":

(A) means any of the following, whether a domestic or foreign organization, and regardless of whether organized for profit:

(i) a business corporation;

(ii) a nonprofit corporation;

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

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

(v) a limited liability company;

(vi) a general cooperative association;

(vii) a limited cooperative association or mutual benefit enterprise;

(viii) an unincorporated nonprofit association;

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

(x) any other person that has:

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

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

(B) does not include:

(i) an individual;

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

(iii) an association or relationship that is not an organization listed in subdivision (A) of this subdivision (14) and is not a partnership under chapter 22 or 23 of this title, or a similar provision of the law of another jurisdiction;

(iv) a decedent's estate; or

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

(15) "Organizational documents" means, whether or not in a record, documents governing the internal affairs of an organization that are binding on all its interest holders, including:

(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 certificate or 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.

(16) “Partner” includes a general partner and a limited partner.

(17) “Partnership” means a general partnership under chapter 9 of this title, a predecessor law, or comparable law of another jurisdiction.

(18) “Partnership agreement” means an agreement among the partners concerning the partnership or limited partnership.

(19) “Personal liability” means:

(A) any 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:

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

(ii) 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; or

(B) an obligation of an interest holder under the organizational documents of an organization to contribute to the organization.

(20) "Private organizational documents" means organizational documents or portions thereof that are not part of the organization's public record, if any, and includes:

(A) the bylaws of a business corporation;

(B) the bylaws of a nonprofit corporation;

(C) the partnership agreement of a general partnership;

(D) the partnership agreement of a limited partnership;

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

(F) the bylaws of a general cooperative association;

(G) the bylaws of a limited cooperative association or mutual benefit enterprise;

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

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

(21) “Protected agreement” means:

(A) a record evidencing indebtedness and any related agreement in effect on the effective date set forth in section 4171 of this title;

(B) an agreement that is binding on an organization on the effective date set forth in section 4171 of this title;

(C) the organizational documents of an organization in effect on the effective date set forth in section 4171 of this title; or

(D) an agreement that is binding on any of the governors or interest holders of an organization on the effective date set forth in section 4171 of this title.

(22) “Public organizational documents” means the record of organizational documents required to be filed with the Secretary of State to form an organization, and any amendment to or restatement of that record, and includes:

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

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

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

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

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

(F) the articles of organization of a limited cooperative association or mutual benefit enterprise; and

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

(23) “Registered foreign organization” means a foreign organization that is registered to do business in this State pursuant to a record filed by the Secretary of State.

(24) “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.

§ 4142. CONVERSION AUTHORIZED

(a) By complying with sections 4142 through 4146 of this title, a domestic limited liability company may become a domestic organization that is a different type of organization.

(b) By complying with sections 4142 through 4146 of this title, a domestic partnership or limited partnership may become a domestic limited liability company.

(c) By complying with sections 4142 through 4146 of this title applicable to foreign organizations, a foreign organization that is not a foreign limited liability company may become a domestic limited liability company if the conversion is authorized by the law of the foreign organization’s jurisdiction of formation.

(d) If a protected agreement contains a provision that applies to a merger of a domestic limited liability company but does not refer to a conversion, the

provision applies to a conversion of the company as if the conversion were a merger until the provision is amended after the effective date set forth in section 4171 of this title.

§ 4143. PLAN OF CONVERSION

(a) A domestic limited liability company may convert to a different type of organization under section 4142 of this title, by approving a plan of conversion. The plan shall be in a record and contain:

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

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

(3) the manner of converting the interests in the converting limited liability company into interests, securities, obligations, money, other property, rights to acquire interests or securities, or any combination of the foregoing;

(4) the proposed public organizational documents of the converted organization if it will be an organization with public organizational documents filed with the Secretary of State;

(5) the full text of the private organizational documents of the converted organization which are proposed to be in a record;

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

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

(b) A domestic general partnership or a domestic limited partnership may convert into a domestic limited liability company by approving a plan of conversion setting forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

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

§ 4144. APPROVAL OF CONVERSION

(a) For any conversion of a limited liability company into another type of organization, a plan of conversion is not effective unless it has been approved:

(1) by a domestic converting limited liability company, in accordance with the organizational documents of the limited liability company, or, in the absence of a provision governing approval of conversions, by all the members of the limited liability company entitled to vote on or consent to any matter; and

(2) in a record, by each member of a domestic converting limited liability company which will have personal liability for debts, obligations, and other liabilities that are incurred after the conversion becomes effective, unless:

(A) the operating agreement of the company provides in a record for the approval of a conversion or a merger in which some or all of its members

become subject to personal liability by the affirmative vote or consent of fewer than all the members; and

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

(b) For a conversion of a domestic general partnership or domestic limited partnership into a domestic limited liability company, the plan of conversion shall be approved by all of the partners or by a number or percentage of the partners required for the conversion in the partnership agreement.

(c) A conversion involving a domestic converting organization is not effective unless it is approved by the domestic converting organization in accordance with its governing law and organizational documents.

(d) A conversion of a foreign converting organization is not effective unless it is approved by the foreign organization in accordance with the law of the foreign organization's jurisdiction of formation and its organizational documents.

§ 4145. AMENDMENT OR ABANDONMENT OF PLAN OF

CONVERSION

(a) A plan of conversion of a domestic converting limited liability company may be amended:

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

(2) by its managers or members in the manner provided in the plan of conversion, but a member that was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent to any amendment of the plan that will change:

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

(B) the public organizational documents, if any, or private organizational documents of the converted organization which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted organization under its governing law or organizational documents; or

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

(b) A plan of conversion of a general or limited partnership may be amended:

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

(2) by its general partner or general partners in the manner provided in the plan, but a partner that was entitled to vote on or consent to approval of the

conversion is entitled to vote on or consent to any amendment of the plan that will change:

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

(B) the public organizational documents, if any, or private organizational documents of the converted organization which will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the interest holders of the converted organization under its governing statute or governing documents; or

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

(c)(1) After a plan of conversion has been approved by a domestic converting limited liability company and before a statement of conversion becomes effective, the plan may be abandoned as provided in the plan.

(2) Unless prohibited by the plan, a domestic converting limited liability company may abandon the plan in the same manner as the plan was approved.

(d)(1) If a plan of conversion is abandoned after a statement of conversion has been delivered to the Secretary of State for filing and before the statement becomes effective, a statement of abandonment, signed by the converting

organization, shall be delivered to the Secretary of State for filing before the statement of conversion becomes effective.

(2) The statement of abandonment takes effect on filing, and the conversion is abandoned and does not become effective.

(3) The statement of abandonment must contain:

(A) the name of the converting limited liability company;

(B) the date on which the statement of conversion was filed by the Secretary of State; and

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

§ 4146. STATEMENT OF CONVERSION; EFFECTIVE DATE OF CONVERSION

(a) A statement of conversion must be signed by the converting organization and delivered to the Secretary of State for filing.

(b) A statement of conversion must contain:

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

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

(3) if the converting organization is a domestic limited liability company, a statement that the plan of conversion was approved in accordance with this subchapter, or, if the converting organization is a foreign

organization, a statement that the conversion was approved by the foreign organization in accordance with the law of its jurisdiction of formation;

(4) if the converted organization is a domestic organization, its public organizational documents, as an attachment; and

(5) if the converted organization is a foreign limited liability partnership, its certificate of authority to do business in the State, as an attachment.

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

(d) If the converted organization is a domestic organization, its public organizational documents, if any, shall satisfy the requirements of the law of this State, except that the public organizational documents do not need to be signed.

(e)(1) A plan of conversion that is signed by a domestic converting limited liability company and meets all the requirements of subsection (b) of this section may be delivered to the Secretary of State for filing instead of a statement of conversion and on filing has the same effect.

(2) If a plan of conversion is filed as provided in this subsection, references in this subchapter to a statement of conversion refer to the plan of conversion filed under this subsection.

(f)(1) If the converted organization is a domestic limited liability company, the conversion becomes effective when the statement of conversion is effective.

(2) In all other cases, the conversion becomes effective on the later of:

(A) the date and time provided by the governing statute of the converted organization; or

(B) when the statement is effective.

§ 4147. EFFECT OF CONVERSION

(a) When a conversion becomes effective:

(1) the converted organization is:

(A) organized under and subject to the governing statute of the converted organization; and

(B) the same organization without interruption as the converting organization;

(2) all property of the converting organization continues to be vested in the converted organization without transfer, reversion, or impairment;

(3) all debts, obligations, and other liabilities of the converting organization continue as debts, obligations, and other liabilities of the converted organization;

(4) except as otherwise provided by law or the plan of conversion, all the rights, privileges, immunities, powers, and purposes of the converting organization remain in the converted organization;

(5) the name of the converted organization may be substituted for the name of the converting organization in any pending action or proceeding;

(6) the certificate of organization of the converted organization becomes effective;

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

(8) the interests in the converting organization are converted, and the interest holders of the converting organization are entitled only to the rights provided to them under the plan of conversion.

(b) Except as otherwise provided in the operating agreement of a domestic converting limited liability company, the conversion does not give rise to any rights that a member, manager, or third party would have upon a dissolution, liquidation, or winding up of the converting organization.

(c) When a conversion becomes effective, a person that did not have personal liability with respect to the converting organization and becomes subject to personal liability with respect to a domestic organization as a result of the conversion has personal liability only to the extent provided by the governing statute of the organization and only for those debts, obligations, and other liabilities that are incurred after the conversion becomes effective.

(d) When a conversion becomes effective, the personal liability of a person that ceases to hold an interest in a domestic converting limited liability

company with respect to which the person had personal liability is subject to the following rules:

(1) the conversion does not discharge any personal liability under this title to the extent the personal liability was incurred before the conversion became effective;

(2) the person does not have personal liability under this title for any debt, obligation, or other liability that arises after the conversion becomes effective;

(3) this title continues to apply to the release, collection, or discharge of any personal liability preserved under subdivision (1) of this subsection as if the conversion had not occurred; and

(4) the person has whatever rights of contribution from any other person as are provided by this title, law other than this title, or the organizational documents of the converting organization with respect to any personal liability preserved under subdivision (1) of this subsection as if the conversion had not occurred.

(e) When a conversion becomes effective, a foreign organization that is the converted organization may be served with process in this State for the collection and enforcement of any of its debts, obligations, and other liabilities as provided in section 4010 of this title.

(f) If the converting organization is a registered foreign organization, its registration to do business in this State is canceled when the conversion becomes effective.

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

§ 4148. MERGER OF ENTITIES

(a) A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 4149 through 4151 of this title, 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.

§ 4149. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED

LIABILITY COMPANY

(a) Subject to section 4156 of this title, a plan of merger shall be approved in accordance with the organizational documents of the constituent limited liability company, or, in the absence of a provision governing approval of conversions, by all the members of the limited liability company entitled to vote on or consent to any matter.

(b) Subject to section 4156 of this title and any contractual rights, after a merger is approved, and at any time before the articles of merger are delivered to the Secretary of State for filing under section 4146 of this title, 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.

§ 4150. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE

(a) After each constituent organization has approved a merger, articles of merger shall be signed on behalf of:

(1) each constituent limited liability company, as provided in subsection 4025(a) of this title; and

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

(b) Articles of merger under this section shall 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 subsection 4145(b) of this title; 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 subchapter:

(1) if the surviving organization is a limited liability company, upon the later of:

(A) compliance with subsection (c) of this section; or

(B) subject to section 4026 of this title, 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.

§ 4151. EFFECT OF MERGER

(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 subchapter 7 of this chapter;

(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)(1) 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.

(2) 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.

(3) Service on the Secretary of State under this subsection must be made in the same manner and has the same consequences as in subsections 116(c) and (d) of this title.

§ 4152. DOMESTICATION

(a) A foreign limited liability company may become a limited liability company pursuant to this section, sections 4153 through 4155 of this title, 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 4153 through 4155 of this title, 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.

§ 4153. ACTION ON PLAN OF DOMESTICATION BY

DOMESTICATING LIMITED LIABILITY COMPANY

(a) A plan of domestication must be consented to:

(1) by all the members, subject to section 4156 of this title, 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 4154 of this title, 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.

§ 4154. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE

DATE

(a) After a plan of domestication is approved, a domesticating company shall deliver to the Secretary of State for filing articles of domestication, which shall 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 title;

(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 subsection 4155(b) of this title.

(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.

§ 4155. EFFECT OF DOMESTICATION

(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 subchapter 7 of this chapter.

(b)(1) 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.

(2) 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.

(3) Service on the Secretary of State under this subsection must be made in the same manner and has the same consequences as in section 4010 of this title.

(c) If a limited liability company has adopted and approved a plan of domestication under section 4152 of this title 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 the domestication was approved as required by this title; and

(4) the jurisdiction of formation of the domesticated foreign limited liability company.

§ 4156. RESTRICTIONS ON APPROVAL OF MERGERS,

CONVERSIONS, AND DOMESTICATIONS

(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 are 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) of this section 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.

§ 4157. SUBCHAPTER NOT EXCLUSIVE

This subchapter does not preclude an organization from being converted, merged, or domesticated under law other than this title.

Subchapter 11. Low-Profit Limited Liability Companies

§ 4161. ELECTION

A limited liability company organized pursuant to this title may elect to be a low-profit limited liability company if and for so long as it satisfies the requirements of section 4162 of this title.

§ 4162. REQUIREMENTS

A limited liability company shall be organized for a business purpose that satisfies, and shall at all times be operated to satisfy, each of the following requirements:

(1) The company:

(A) significantly furthers the accomplishment of one or more charitable or educational purposes within the meaning of 26 U.S.C.

§ 170(c)(2)(B); and

(B) would not have been formed but for the company's relationship to the accomplishment of charitable or educational purposes.

(2) No significant purpose of the company is the production of income or the appreciation of property; provided, however, that the fact that a person produces significant income or capital appreciation shall not, in the absence of

other factors, be conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

(3) No purpose of the company is to accomplish one or more political or legislative purposes within the meaning of 26 U.S.C. § 170(c)(2)(D).

§ 4163. FAILURE TO MEET REQUIREMENTS

(a) A limited liability company that elects to be an L3C and subsequently fails to satisfy any one of the requirements set forth in section 4162 of this title shall immediately cease to be a low-profit limited liability company, but by continuing to meet all the other requirements of this chapter, continues to exist as a limited liability company.

(b) In the event an L3C fails to satisfy the requirements of section 4162 of this title, the company shall change its name to conform with subsection 4005(a) of this title.

Sec. 3. 11 V.S.A. § 1621 is amended to read:

§ 1621. REGISTRATION OF BUSINESS NAME BY PERSONS,
PARTNERSHIPS, AND ASSOCIATIONS

(a) A person doing business in this State under any name other than his or her own, and every copartnership or association of individuals, except corporations and limited liability companies, doing business in this State, resident or nonresident, shall cause to be recorded with the Secretary of State a return setting forth the name under which such business is carried on, the name of the town wherein such place of business is located, a brief description of the

kind of business to be transacted under such name, and the individual names and residences of all persons, general partners, or members so doing business thereunder.

(b) Such returns shall be subscribed and sworn to by one or more of the persons so doing business, and shall be filed with the Secretary of State within ten days after commencement of business.

(c) The Secretary of State shall decline to register any business name ~~that is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ unless the name is distinguishable in the records of the Secretary of State from any other business name of any name registered or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the Secretary of State, or any name that would lead a reasonable person to conclude that the business is a type of entity that it is not.

* * *

Sec. 4. 11 V.S.A. § 1623 is amended to read:

§ 1623. REGISTRATION BY CORPORATIONS AND LIMITED

LIABILITY COMPANIES

(a) A corporation or limited liability company doing business in this State under any name other than that of the corporation or limited liability company shall be subject to all the provisions of this chapter; and shall file returns sworn to by some officer or member of such corporation or by some member or

manager of such limited liability company, setting forth the name other than the corporate or limited liability company name under which such business is carried on, the name of the town wherein such business is to be carried on, a brief description of the kind of business transacted under such name, and the corporate or the limited liability company name and location of the principal office of such corporation or limited liability company.

(b) The Secretary of State shall decline to register any business name ~~that is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ unless the name is distinguishable in the records of the Secretary of State from any other business name of any name registered or reserved under this chapter or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the Secretary of State, or any name that would lead a reasonable person to conclude that the business is a type of entity that it is not.

Sec. 5. 11 V.S.A. § 3292 is amended to read:

§ 3292. NAME

(a) The name of a limited liability partnership must end with “Registered Limited Liability Partnership,” “Limited Liability Partnership,” “R.L.L.P.,” “L.L.P.,” “RLLP,” or “LLP.”

(b) Except as authorized by subsections (c) and (d) of this section, a limited liability partnership’s name, ~~based upon the records of the secretary of state,~~ shall be distinguishable in the records of the Secretary of State from, ~~and not~~

~~the same as, deceptively similar to, or likely to be confused with or mistaken~~
~~for~~ any name granted, registered, or reserved under this chapter, or the name of
any other entity, whether domestic or foreign, that is granted, reserved or
registered by or with the ~~secretary of state~~ Secretary of State.

(c) A limited liability partnership may apply to the ~~secretary of state~~
Secretary of State for authorization to use a name that is not distinguishable in
the records of the Secretary of State from ~~or is the same as, deceptively similar~~
~~to, or likely to be confused with or mistaken for~~ one or more of the names
described in subsection (b) of this section, ~~as determined from review of the~~
~~records of the secretary of state~~. The ~~secretary of state~~ Secretary of State shall
authorize use of the name applied for if:

(1) the other entity consents to the use in writing and submits an
undertaking in a form satisfactory to the ~~secretary of state~~ Secretary of State to
change its name to a name that is distinguishable in the records from, ~~and not~~
~~the same as, deceptively similar to, or likely to be confused with or mistaken~~
~~for~~ the name of the applying company; or

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

(d) A limited liability partnership may use the name ~~(including, including~~
the trade ~~name)~~ name, of another domestic or foreign limited liability
partnership that is used in this ~~state~~ State if the other partnership is organized

or authorized to transact business in this ~~state~~ State and the proposed user partnership:

- (1) has merged with the other partnership;
- (2) has been formed by reorganization of the other partnership; or
- (3) has acquired all or substantially all of the assets, including the name, of the other partnership.

(e) Notwithstanding any other provision of law, a limited liability partnership or foreign limited liability partnership that renders professional service may use as its name all or some of the names of individual present or former partners of the partnership or a predecessor partnership, as permitted by the applicable rules of ethics and by the applicable statutory or regulatory provisions governing the rendering of such professional service.

Sec. 6. 11 V.S.A. § 3402 is amended to read:

§ 3402. NAME

(a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) shall contain the words “Limited Partnership,” or the letters “L.P.”;
- (2) may not contain the name of a limited partner unless it is also the name of a general partner or the corporate name of a corporate general partner, or the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) ~~may not be the same as, or deceptively similar to,~~ shall be distinguishable in the records of the Secretary of State from the name of any corporation, limited liability company, limited liability partnership, or limited partnership organized under the laws of this ~~state~~ State or licensed or registered as a foreign corporation, limited liability company, limited liability partnership or limited partnership in this ~~state~~ State; and

(4) may not contain the following words: “corporation,” “incorporated,” “limited” by itself, “limited liability company,” “limited company,” or the abbreviations “corp.,” “Inc.,” or “Ltd.”

(b) A person intending to operate a postsecondary school, as defined in 16 V.S.A. §§ 176 and 176a, shall apply for a certificate of approval from the ~~state board of education~~ State Board of Education prior to registering a name under this chapter.

Sec. 7. 11 V.S.A. § 3484 is amended to read:

§ 3484. NAME

A foreign limited partnership may register with the ~~secretary of state~~ Secretary of State under any name, whether or not it is the name under which it is registered in its state of organization, and it:

(1) shall contain the words “Limited Partnership,” or the letters “L.P.”;

(2) may not contain the name of a limited partner unless it is also the name of a general partner or the corporate name of a corporate general partner,

or the business of the limited partnership had been carried on under the name before the admission of that limited partner;

(3) ~~may not be the same as, or deceptively similar to,~~ shall be distinguishable in the records of the Secretary of State from the name of any corporation, limited liability company, limited liability partnership, or limited partnership organized under the laws of the ~~state~~ State or licensed or registered as a foreign corporation, limited liability company, limited liability partnership or limited partnership in this ~~state~~ State; and

(4) may not contain the following words: “corporation,” “incorporated,” “limited by itself,” “limited liability company,” “limited company,” or the abbreviations “corp.,” “inc.,” or “ltd.”

Sec. 8. 11A V.S.A. § 4.01 is amended to read:

§ 4.01. CORPORATE NAME

(a) A corporate name:

(1) ~~must~~ shall contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another language;

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 of this title and its articles of incorporation;

(3) shall not have the word “cooperative” or any abbreviation thereof as part of its name unless the corporation is a worker cooperative corporation

organized under 11 V.S.A. chapter 8 of Title 11 or the articles of incorporation contain all of the provisions required of a corporation organized as a cooperative association; and

(4) shall not include any word not otherwise authorized by law.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name, ~~based upon the records of the secretary of state,~~ shall be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the ~~secretary of state~~ Secretary of State.

(c) A corporation may apply to the ~~secretary of state~~ Secretary of State for authorization to use a name that is not distinguishable in the records from, ~~or is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ one or more of the names described in subsection (b) of this section, ~~as determined from review of the records of the secretary of state.~~ The ~~secretary of state~~ Secretary of State shall authorize use of the name applied for if:

(1) the other corporation or business consents to the use in writing and submits an undertaking in form satisfactory to the ~~secretary of state~~ Secretary of State to change its name to a name that is distinguishable in the records from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ the name of the applying corporation; or

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

(d) A corporation may use the name (~~including, including~~ including the fictitious ~~name~~) name, of another domestic or foreign corporation that is used in this ~~state~~ State if the other corporation is incorporated or authorized to transact business in this ~~state~~ State and the proposed user corporation:

(1) has merged with the other corporation;

(2) has been formed by reorganization of the other corporation; or

(3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

Sec. 9. 11A V.S.A. § 4.03 is amended to read:

§ 4.03. REGISTERED NAME

(a) A foreign corporation may register its corporate name, or its corporate name with any addition required by section 15.06 of this title, if the name is distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ the corporate or business names that are not available under section 4.01(b)(3) of this title.

(b) A foreign corporation registers its corporate name, or its corporate name with any addition required by section 15.06 of this title, by delivering to the ~~secretary of state~~ Secretary of State for filing an application:

(1) setting forth its corporate name, or its corporate name with any addition required by section 15.06 of this title, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and

(2) accompanied by a certificate of good standing ~~(or~~ or a document of similar ~~import)~~ import from the state or country of incorporation.

(c) The name is registered for the applicant's exclusive use upon the effective date of the application.

(d) A foreign corporation whose registration is effective may renew it for successive years by delivering to the ~~secretary of state~~ Secretary of State for filing a renewal application, which complies with the requirements of subsection (b) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed renews the registration for the following calendar year.

(e) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this title or by another foreign corporation thereafter authorized to transact business in this ~~state~~ State. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

Sec. 10. 11A V.S.A. § 15.06 is amended to read:

§ 15.06. CORPORATE NAME OF FOREIGN CORPORATION

(a) If the corporate name of a foreign corporation does not satisfy the requirements of section 4.01 of this title, the foreign corporation to obtain or maintain a certificate of authority to transact business in this ~~state~~ State:

(1) may add the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” to its corporate name for use in this ~~state~~ State; or

(2) may use an available trade name to transact business in this ~~state~~ State if its corporate name is unavailable and it delivers to the ~~secretary of state~~ Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the trade name.

(b) Except as authorized by subsections (c) and (d) of this section, the corporate name (~~including, including a trade name~~) name, of a foreign corporation ~~must shall~~ be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the ~~secretary of state~~ Secretary of State.

(c) A foreign corporation may apply to the ~~secretary of state~~ Secretary of State for authorization to use in this ~~state~~ State the name of another corporation

incorporated or authorized to transact business in this ~~state~~ State that is not distinguishable in the records from, ~~or is the same as, deceptively similar to, or likely to be confused with or mistaken for~~ one or more of the names described in subsection (b) of this section, ~~as determined from review of the records of the secretary of state,~~ by submitting to the ~~secretary of state~~ Secretary of State a satisfactory written form indicating the other corporation's consent and change of name.

(d) A foreign corporation may use in this ~~state~~ State the name ~~(including, including the trade name)~~ name, of another domestic or foreign corporation that is used in this ~~state~~ State if the other corporation is incorporated or authorized to transact business in this ~~state~~ State and the foreign corporation:

- (1) has merged with the other corporation;
- (2) has been formed by reorganization of the other corporation; or
- (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) If a foreign corporation authorized to transact business in this ~~state~~ State changes its corporate name to one that does not satisfy the requirements of section 4.01 of this title, it may not transact business in this ~~state~~ State under the changed name until it adopts a name satisfying the requirements of section 4.01 and obtains an amended certificate of authority under section 15.04 of this title.

Sec. 11. 11B V.S.A. § 4.01 is amended to read:

§ 4.01. CORPORATE NAME

(a) A corporate name:

(1) ~~must~~ shall contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “corp.,” “inc.,” “co.,” or “ltd.,” or words or abbreviations of like import in another language;

(2) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 3.01 of this title and its articles of incorporation;

(3) shall not have the word “cooperative” or any abbreviation thereof as part of its name; and

(4) shall not include any word not otherwise authorized by law.

(b) Except as authorized by subsections (c) and (d) of this section, a corporate name, ~~based upon the records of the secretary of state,~~ shall be distinguishable in the records of the Secretary of State from, ~~and not the same as, deceptively similar to, or likely to be confused with or mistaken for~~ any name granted, registered, or reserved under this chapter, or the name of any other entity, whether domestic or foreign, that is reserved, registered, or granted by or with the ~~secretary of state~~ Secretary of State.

(c) A corporation may apply to the ~~secretary of state~~ Secretary of State for authorization to use a name that is not distinguishable in the records from, ~~or is the same as, deceptively similar to, or likely to be confused with or mistaken~~

~~for~~ one or more of the names described in subsection (b) of this section, ~~as~~
~~determined from review of the records of the secretary of state.~~ The ~~secretary~~
~~of state~~ Secretary of State shall authorize use of the name applied for if:

(1) the other corporation or business consents to the use in writing and submits an undertaking in form satisfactory to the ~~secretary of state~~ Secretary of State to change its name to a name that is distinguishable in the records from, ~~and not the same as, deceptively similar to, or likely to be confused with~~ ~~or mistaken for~~ the name of the applying corporation; or

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

(d) A corporation may use the name (~~including, including~~ the fictitious ~~name~~) name, of another domestic or foreign corporation that is used in this ~~state~~ State if the other corporation is incorporated or authorized to transact business in this ~~state~~ State and the proposed user corporation:

- (1) has merged with the other corporation;
- (2) has been formed by reorganization of the other corporation; or
- (3) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

Sec. 12. EFFECTIVE DATES; APPLICATION

(a) This section and Secs. 3–11 shall take effect on July 1, 2015.

(b) Sec. 1 shall take effect on July 1, 2016.

(c) Sec. 2 shall take effect on July 1, 2015, and apply only to:

(1) a limited liability company formed on or after July 1, 2015; and

(2) except as otherwise provided in subsection (f) of this section, a

limited liability company formed before July 1, 2015 that elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this act.

(d) This act does not affect an action commenced, a proceeding brought, or a right accrued before July 1, 2015.

(e) Except as otherwise provided in subsection (f) of this section, Sec. 2 shall apply to all limited liability companies on and after July 1, 2016.

(f) For the purposes of applying Sec. 2 to a limited liability company formed before July 1, 2015, for the purposes of applying 11 V.S.A. § 4023 and subject to 11 V.S.A. § 4003, language in the company's articles of organization designating the company's management structure operates as if that language were in the operating agreement.

Date Governor signed bill: May 7, 2015