

1 Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

2 Referred to Committee on

3 Date:

4 Subject: Commerce and trade; business organizations; limited liability

5 company act

6 Statement of purpose of bill as introduced: This bill proposes to implement

7 changes to Vermont law governing limited liability companies.

8 An act relating to limited liability companies

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

10 Sec. 1. 11 V.S.A. chapter 21 is amended to read:

11 CHAPTER 21. LIMITED LIABILITY COMPANIES

12 Subchapter 1. General Provisions

13 § 3001. DEFINITIONS

14 As used in this chapter:

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

1 ~~(2) “At will limited liability company” or “at will company” means a~~
2 ~~limited liability company in which the members have not agreed to remain~~
3 ~~members until the expiration of a term specified in the articles of organization.~~

4 ~~(3)~~(2) “Business” includes every trade, occupation, profession, and other
5 lawful purpose, whether or not carried on for profit.

6 ~~(4)~~(3) “Debtor in bankruptcy” means a person who is the subject of an
7 order for relief under Title 11 of the United States Code or a comparable order
8 under a successor statute of general application or a comparable order under
9 federal, state, or foreign law governing insolvency.

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

12 (5) “Designated office” means the office of a limited liability company
13 designated pursuant to section 3007 of this title or the principal office of a
14 foreign limited liability company.

15 (6) “Dissolution” means an event under section 3101 of this title which
16 requires a limited liability company to wind up its affairs and to terminate its
17 existence as a legal entity.

18 ~~(6)~~(7) “Dissociation” means a complete termination of a member’s
19 continued membership in a limited liability company for any reason.

1 ~~(7)~~(8) “Distribution” means a transfer of money, or property or other
2 ~~benefit~~ from a limited liability company to a member in the member’s capacity
3 as a member or to a transferee of the member’s distributional interest.

4 ~~(8)~~(9) “Distributional interest” means ~~all of a member’s interest in~~
5 distributions by the limited liability company the right of a member or
6 transferee to receive a distribution from a limited liability company.

7 (10) “Document” means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is retrievable in
9 perceivable form.

10 ~~(9)~~(11) “Entity” means a person other than an individual.

11 ~~(40)~~(12) “Foreign limited liability company” means an unincorporated
12 entity organized under laws, other than the laws of this ~~state~~ State, which
13 afford limited liability to its owners comparable to the liability under section
14 ~~3043~~ 3042 of this title.

15 ~~(44)~~(13) “Limited liability company” or ~~“company”~~ “company,” except
16 in the phrase “foreign limited liability company,” means a limited liability
17 company organized an organization formed under this chapter ~~which may~~
18 ~~afford its members and managers limited liability for the obligations of the~~
19 ~~limited liability company to the extent provided in this chapter or subject to~~
20 this chapter following a merger, conversion, or domestication pursuant to
21 subchapter 10 of this chapter.

1 ~~(12) “Manager” means a person, whether or not a member, of a~~
2 ~~manager-managed limited liability company, who is vested with authority~~
3 ~~under section 3041 of this title~~

4 ~~(13) “Manager-managed limited liability company” means a limited~~
5 ~~liability company which is so designated in its articles of organization.~~

6 ~~(14) “Member-managed limited liability company” means a limited~~
7 ~~liability company other than a manager-managed limited liability company.~~

8 ~~“L3C” or “low-profit limited liability company” means a limited liability~~
9 ~~company that elects to be a low-profit limited liability company pursuant to~~
10 ~~section 3161 of this title and meets the requirements of section 3162 of~~
11 ~~this title.~~

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

15 ~~(16) “Operating agreement” means any form of description of~~
16 ~~membership rights and obligations under section 3003 of this title, stored or~~
17 ~~depicted in any tangible or electronic medium, which is agreed to by the~~
18 ~~members, including amendments to the agreement.~~

19 ~~(16) “Person” means an individual, corporation, business trust, estate,~~
20 ~~trust, partnership, limited liability company, association, joint venture,~~

1 ~~government, governmental subdivision, agency or instrumentality or any other~~
2 ~~legal or commercial entity.~~

3 (17) ~~“Principal office” means the office, whether or not in this state,~~
4 ~~where the principal executive office of a domestic or foreign limited liability~~
5 ~~company is located.~~

6 ~~(18)~~(17) “Record” “Record,” used as a noun, means information that is
7 inscribed on a tangible medium or that is stored in an electronic or other
8 medium and is retrievable in perceivable form.

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

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

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

14 ~~(19) “Signed” includes any symbol or electronic schema that may be~~
15 ~~prescribed by the secretary of state that is executed or adopted by a person with~~
16 ~~the present intention to authenticate a record.~~

17 ~~(20)~~(19) “State” means a state of the United States, the District of
18 Columbia, the Commonwealth of Puerto Rico, or any territory or insular
19 possession subject to the jurisdiction of the United States.

1 ~~(21) “Term limited liability company” means a limited liability~~
2 ~~company in which its members have agreed to remain members until the~~
3 ~~expiration of a term specified in the articles of organization.~~

4 ~~(22)~~(20) “Transfer” includes an assignment, a conveyance, deed, bill of
5 ~~sale, a sale, a lease, an encumbrance, including a mortgage, or security interest,~~
6 ~~encumbrance and a gift, and a transfer by operation of law.~~

7 ~~(23) “Document” means information that is inscribed on a tangible~~
8 ~~medium or that is stored in an electronic or other medium and is retrievable in~~
9 ~~perceivable form.~~

10 ~~(24)~~(21) “Writing” means ~~written communications, including letters,~~
11 ~~faxes, e-mails, or other electronic formats~~ a written communication, including
12 ~~a letter, fax, e-mail, or other electronic format~~ that may be prescribed by the
13 ~~secretary of state~~ Secretary of State.

14 ~~(25) “Delivery” means surface mail or methods of electronic~~
15 ~~transmission the secretary of state may prescribe.~~

16 ~~(26) “Meeting” means any structured communications conducted by~~
17 ~~participants in person or through the use of electronic or telecommunications~~
18 ~~medium permitting simultaneous or sequentially structured communications~~
19 ~~for the purpose of reaching a collective agreement.~~

20 ~~(27) “L3C” or “low-profit limited liability company” means a person~~
21 ~~organized under this chapter that is organized for a business purpose that~~

1 ~~satisfies and is at all times operated to satisfy each of the following~~
2 ~~requirements:~~

3 ~~(A) The company:~~

4 ~~(i) significantly furthers the accomplishment of one or more~~
5 ~~charitable or educational purposes within the meaning of Section 170(e)(2)(B)~~
6 ~~of the Internal Revenue Code of 1986, 26 U.S.C. § 170(e)(2)(B); and~~

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

9 ~~(B) No significant purpose of the company is the production of~~
10 ~~income or the appreciation of property; provided, however, that the fact that a~~
11 ~~person produces significant income or capital appreciation shall not, in the~~
12 ~~absence of other factors, be conclusive evidence of a significant purpose~~
13 ~~involving the production of income or the appreciation of property.~~

14 ~~(C) No purpose of the company is to accomplish one or more~~
15 ~~political or legislative purposes within the meaning of Section 170(e)(2)(D) of~~
16 ~~the Internal Revenue Code of 1986, 26 U.S.C. § 170(e)(2)(D).~~

17 ~~(D) If a company that met the definition of this subdivision (27) at its~~
18 ~~formation at any time ceases to satisfy any one of the requirements, it shall~~
19 ~~immediately cease to be a low profit limited liability company, but by~~
20 ~~continuing to meet all the other requirements of this chapter, will continue to~~

1 ~~exist as a limited liability company. The name of the company must be~~
2 ~~changed to be in conformance with subsection 3005(a) of this title.~~

3 § 3002. KNOWLEDGE AND NOTICE

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

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

6 (1) ~~knows of it;~~

7 ~~(2) has received a notification of it~~ the fact; ~~or~~

8 ~~(3)(2) has reason to know it exists~~ of the fact from all of the facts known
9 to the person at the time in question; or

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

12 ~~(c) As a result of the filing or recording of a statement under this chapter, a~~
13 ~~person is deemed to know or have notice of a fact as provided in sections 3041,~~
14 ~~3093, or 3104 of this title.~~

15 ~~(d)~~ A person notifies or gives a notification of a fact to another by taking
16 steps reasonably required to inform the other person in the ordinary course,
17 whether or not ~~the other person knows of it~~ they cause the other person to
18 know the fact.

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

1 (1) for a dissolution, 90 days after a statement of dissolution under
2 section 3103 of this title becomes effective;

3 (2) for a termination, 90 days after the articles of termination under
4 section 3105 of this title become effective; and

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

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

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

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

11 ~~(f) An entity knows, has notice or receives a notification of a fact for~~
12 ~~purposes of a particular transaction when the individual conducting the~~
13 ~~transaction for the entity knows, has notice or receives a notification of the~~
14 ~~fact, or in any event when the fact would have been brought to the individual's~~
15 ~~attention had the entity exercised reasonable diligence. An entity exercises~~
16 ~~reasonable diligence if it maintains reasonable routines for communicating~~
17 ~~significant information to the individual conducting the transaction for the~~
18 ~~entity and there is reasonable compliance with the routines. Reasonable~~
19 ~~diligence does not require an individual acting for the entity to communicate~~
20 ~~information unless the communication is part of the individual's regular duties~~
21 ~~or the individual has reason to know of the transaction and that the transaction~~

1 ~~would be materially affected by the information~~ A member's knowledge,
2 notice, or receipt of a notification of a fact in the member's capacity as a
3 member does not impute knowledge, notice, or receipt of notification of the
4 fact to the limited liability company.

5 § 3003. EFFECT OF OPERATING AGREEMENT; NONWAIVABLE
6 PROVISIONS

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

15 (b) An operating agreement may not:

16 ~~(1) unreasonably restrict a member's or former member's right of access~~
17 ~~to books and records under section 3058 of this title;~~

18 ~~(2) eliminate the duty of loyalty under subsection 3059(b) and~~
19 ~~subdivision 3083(b)(3) of this title, but the agreement may:~~

20 ~~(A) identify specific types or categories of activities that do not~~
21 ~~violate the duty of loyalty, if not manifestly unreasonable; and~~

1 ~~(B) specify the number or percentage of members or disinterested~~
2 ~~managers that may authorize or ratify, after full disclosure of all material facts,~~
3 ~~a specific act or transaction that otherwise would violate the duty of loyalty;~~

4 ~~(3) eliminate from the duty of care the obligations set forth under~~
5 ~~subsection 3059(c) and subdivision 3083(b)(3) of this title;~~

6 ~~(4) eliminate the obligation of good faith and fair dealing under~~
7 ~~subsection 3059(d) of this title, but the operating agreement may determine the~~
8 ~~standards by which the performance of the obligation is to be measured, if the~~
9 ~~standards are not manifestly unreasonable;~~

10 ~~(5) vary the power to withdraw as a member under subdivision 3081(1)~~
11 ~~or (5) of this title;~~

12 ~~(6) vary the right to expel a member in an event specified in subdivision~~
13 ~~3081(4) or (5) of this title;~~

14 ~~(7) vary the requirement to wind up the limited liability company~~
15 ~~business in a case specified in subdivision 3101(4) or (5) of this title; or~~

16 ~~(8) restrict rights of third parties under this chapter other than managers,~~
17 ~~members, or their transferees.~~

18 (1) vary a limited liability company's capacity under subsection 3011(e)
19 of this title to sue and be sued in its own name;

20 (2) except as provided in subchapter 8 of this chapter, vary the law
21 applicable under subsection 3011(g) of this title;

1 (3) vary the power of the court under section 3030 of this title;

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

4 (5) subject to subsections (c) through (f) of this section, eliminate or
5 restrict the contractual obligation of good faith and fair dealing under
6 subsection 3059(d) of this title;

7 (6) unreasonably restrict the duties and rights with respect to books,
8 records, and other information stated in section 3058 of this title, but the
9 operating agreement may impose reasonable restrictions on the availability and
10 use of information obtained under that section and may define appropriate
11 remedies, including liquidated damages, or a breach of any reasonable
12 restriction on use;

13 (7) vary the power of a court to decree dissolution in the circumstances
14 specified in subdivision 3101(4) of this title;

15 (8) vary the requirement to wind up a limited liability company's
16 business as specified in section 3102 of this title;

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

19 (10) restrict the right to approve a merger, conversion, or domestication
20 under section 3152 of this title to a member that will have personal liability
21 with respect to a surviving, converted, or domesticated organization; or

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

3 (c) Unless unreasonable, the operating agreement may:

4 (1) restrict the duty:

5 (A) as required in subdivision 3059(b)(1) and subsection 3059(h) of
6 this title, to account to the limited liability company and to hold as trustee for it
7 any property, profit, or benefit derived by the member in the conduct or
8 winding up of the company's business, from a use by the member of the
9 company's property, or from the appropriation of a limited liability company
10 opportunity;

11 (B) as required in subdivision 3059(b)(3) and subsection 3059(h) of
12 this title, to refrain from dealing with the company in the conduct or winding
13 up of the company's business as or on behalf of a party having an interest
14 adverse to the company; and

15 (C) as required in subdivision 3059(b)(3) and subsection 3059(h) of
16 this title, to refrain from competing with the company in the conduct of the
17 company's business before the dissolution of the company;

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

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

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

3 (5) prescribe the standards by which to measure the performance of the
4 contractual obligation of good faith and fair dealing under subsection 3059(d)
5 of this title.

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

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

17 (f) The operating agreement may alter or eliminate the indemnification for
18 a member or manager provided by section 3060 of this title and may eliminate
19 or limit a member or manager's liability to the limited liability company and
20 members for money damages, except for:

21 (1) breach of the duty of loyalty;

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

3 (3) a breach of a duty under subsection 3059(d) of this title;

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

5 (5) an intentional violation of criminal law.

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

8 (2) The court:

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

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

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

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

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

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

1 (j)(1) Two or more persons intending to become the initial members of a
2 limited liability company may make an agreement providing that upon the
3 formation of the company the agreement will become the operating agreement.

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

7 (k)(1) An operating agreement may specify that its amendment requires the
8 approval of a person that is not a party to the operating agreement or the
9 satisfaction of a condition.

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

12 (l)(1) The obligations of a limited liability company and its members to a
13 person in the person's capacity as a transferee or dissociated member are
14 governed by the operating agreement.

15 (2) Subject only to any court order issued under subdivision 3074(b)(2)
16 of this title, to effectuate a charging order, an amendment to the operating
17 agreement made after a person becomes a transferee or dissociated member is
18 effective with regard to any debt, obligation, or other liability of the limited
19 liability company or its members to the person in the person's capacity as a
20 transferee or dissociated member.

1 (2) The name of a low-profit limited liability company ~~as defined in~~
2 ~~subdivision 3001(11) of this chapter~~ shall contain the abbreviation L3C ~~or L3e~~.

3 (b) ~~Except as authorized by subsections (c) and (d) of this section, a limited~~
4 ~~liability company's name, based upon the records of the secretary of state,~~
5 ~~shall be distinguishable from, and not the same as, deceptively similar to, or~~
6 ~~likely to be confused with or mistaken for any name granted, registered or~~
7 ~~reserved under this chapter, or the name of any other entity, whether domestic~~
8 ~~or foreign, that is granted, reserved or registered by or with the secretary of~~
9 ~~state~~ Unless authorized under subsection (c) of this section, the name of a
10 limited liability company shall be distinguishable in the records of the
11 Secretary of State from:

12 (1) the name of each person that is not an individual and that is
13 incorporated, organized, or authorized to transact business in this State; and

14 (2) each name reserved under:

15 (A) sections 1621a, 3006, and 3403 of this title;

16 (B) 11A V.S.A. § 4.02;

17 (C) 11B V.S.A. § 4.02; and

18 (D) 11C V.S.A. § 112.

19 (c) A ~~limited liability company person~~ may apply to the ~~secretary of state~~
20 Secretary of State for authorization to use a name that is ~~not distinguishable~~
21 ~~from or is the same as, deceptively similar to, or likely to be confused with or~~

1 ~~mistaken for one or more of the names described in~~ does not comply with
2 subsection (b) of this section, ~~as determined from review of the records of the~~
3 ~~secretary of state.~~ The ~~secretary of state~~ Secretary of State shall authorize use
4 of the name applied for if, as to each noncomplying name:

5 (1) ~~the other entity~~ the present user, registrant, or owner of the name
6 consents to the applicant's use of the name in writing a signed record and
7 submits an undertaking in a form satisfactory to the ~~secretary of state~~ Secretary
8 of State to change its name to a new name that ~~is distinguishable from, and not~~
9 ~~the same as, deceptively similar to, or likely to be confused with or mistaken~~
10 ~~for the name of the applying company~~ complies with subsection (b) of this
11 section; or

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

16 (d) ~~A limited liability company may use the name (including the trade~~
17 ~~name) of another domestic or foreign limited liability company that is used in~~
18 ~~this state if the other company is organized or authorized to transact business in~~
19 ~~this state and the proposed user company:~~

20 (1) ~~has merged with the other company;~~

21 (2) ~~has been formed by reorganization of the other company; or~~

1 ~~(3) has acquired all or substantially all of the assets, including the name,~~
2 ~~of the other company.~~

3 Subject to section 3116 of this title, this section applies to a foreign limited
4 liability company transacting business in this State that has a certificate of
5 authority to transact business in this State or which has applied for a certificate
6 of authority.

7 (e) A person intending to operate a postsecondary school, as defined in
8 16 V.S.A. §§ 176 and 176a, shall apply for a certificate of approval from the
9 ~~state board of education~~ State Board of Education prior to registering a name
10 under this section.

11 § 3006. RESERVED NAME

12 ~~(a) The exclusive right to the use of a name may be reserved by any:~~

13 ~~(1) person intending to organize a limited liability company under this~~
14 ~~chapter and to adopt the name;~~

15 ~~(2) domestic or foreign limited liability company registered in this state~~
16 ~~which intends to adopt the name;~~

17 ~~(3) foreign limited liability company intending to register in this state~~
18 ~~and adopt the name; or~~

19 ~~(4) person intending to organize a foreign limited liability company,~~
20 ~~register it in this state, and adopt the name.~~

1 ~~(b) The reservation shall be made by filing with the secretary of state an~~
2 ~~application, executed by the applicant, to reserve a specified name. If the~~
3 ~~secretary of state determines that the name is available for use by a domestic or~~
4 ~~foreign limited liability company, the secretary shall reserve the name for the~~
5 ~~exclusive use of the applicant for a period of 120 days.~~

6 ~~(c) The owner of a name reserved under this section may renew the~~
7 ~~reservation for two successive periods of 120 days each.~~

8 ~~(d) The right to the exclusive use of a reserved name may be transferred to~~
9 ~~any other person by filing with the secretary of state a notice of the transfer~~
10 ~~executed by the applicant for whom the name was reserved and specifying the~~
11 ~~name and address of the transferee.~~

12 (a)(1) A person may reserve the exclusive use of the name of a limited
13 liability company, including a fictitious or assumed name for a foreign limited
14 liability company whose name is not available, by delivering an application to
15 the Secretary of State for filing.

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

18 (3) If the Secretary of State finds that the name applied for is available,
19 the Secretary shall reserve that name for the applicant's exclusive use for a
20 120-day period.

1 (b) The owner of a reserved limited liability company name may renew the
2 reservation for successive periods of 120 days each by delivering a renewal
3 application to the Secretary of State during the 45-day period preceding the
4 date of expiration of the reservation.

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

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

12 ~~§ 3007. REGISTERED NAME~~

13 ~~(a) A foreign limited liability company may register its company name~~
14 ~~subject to the requirements of section 3136 of this title by delivering to the~~
15 ~~secretary of state for filing an application:~~

16 ~~(1) setting forth its company name, or its company name with any~~
17 ~~addition required by section 3136 of this title, the state or country and date of~~
18 ~~its organization, and a brief description of the nature of the business in which it~~
19 ~~is engaged; and~~

20 ~~(2) accompanied by a certificate of existence, or a record of similar~~
21 ~~import, from the state or country of organization.~~

1 ~~(b) A foreign limited liability company whose registration is effective may~~
2 ~~renew it for successive years by delivering for filing in the office of the~~
3 ~~secretary of state a renewal application complying with subsection (a) of this~~
4 ~~section between October 1 and December 31 of the preceding year. The~~
5 ~~renewal application renews the registration for the following calendar year.~~

6 ~~(c) A foreign limited liability company whose registration is effective may~~
7 ~~thereafter qualify as a foreign company under its company name or consent in~~
8 ~~writing to the use of its name by a limited liability company thereafter~~
9 ~~organized under this chapter or by another foreign company thereafter~~
10 ~~authorized to transact business in this state. The registered name terminates~~
11 ~~when the limited liability company is organized or the foreign company~~
12 ~~qualifies or consents to the qualification of another foreign company under the~~
13 ~~registered name.~~

14 § ~~3008~~ 3007. DESIGNATED OFFICE AND AGENT

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

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

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

4 (b) If an agent for service of process changes the street address of the
5 agent's business office, the agent may change the street address of the
6 designated office of any limited liability company or foreign limited liability
7 company for which the agent is the agent for service of process by notifying
8 the company in writing of the change and signing, either manually or in
9 facsimile, and filing with the ~~secretary of state~~ Secretary of State a statement
10 that complies with the requirements of subsection (a) of this section and recites
11 that the company has been notified of the change.

12 § ~~3010~~ 3009. RESIGNATION OF AGENT FOR SERVICE OF PROCESS

13 ~~(a) An agent for service of process may resign an agency appointment by~~
14 ~~signing and filing with the secretary of state the signed original and two exact~~
15 ~~or conformed copies of a statement of resignation which may include a~~
16 ~~statement that the designated office is also discontinued. The statement must~~
17 ~~include or be accompanied by a certification from the agent that written notice~~
18 ~~of the resignation has been mailed or delivered to the limited liability company~~
19 ~~or foreign limited liability company at its last known address. Such~~
20 ~~certification shall include the name of the individual notified, if any, and the~~
21 ~~address to which the notice was mailed or delivered.~~

1 ~~(b) After filing a statement of resignation, the secretary of state shall mail a~~
2 ~~copy to the designated office (if not discontinued) and another copy to the~~
3 ~~limited liability company or foreign limited liability company at the address~~
4 ~~certified in the statement of resignation.~~

5 ~~(c) An agency is terminated on the 31st day after the statement was filed.~~

6 (a) To resign as an agent for service of process of a limited liability
7 company or foreign limited liability company, the agent shall deliver to the
8 Secretary of State for filing a statement of resignation containing the company
9 name and stating that the agent is resigning.

10 (b) The Secretary of State shall file a statement of resignation delivered
11 under subsection (a) of this section and mail or otherwise deliver a copy to the
12 designated office of the limited liability company.

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

14 (1) the 31st day after the Secretary of State files the statement of
15 resignation; or

16 (2) when a record designating a new agent for service of process is
17 delivered to the Secretary of State for filing on behalf of the limited liability
18 company and becomes effective.

19 § ~~3014~~ 3010. SERVICE OF PROCESS

20 (a) An agent for service of process appointed by a limited liability company
21 or a foreign limited liability company is an agent of the company for service of

1 any process, notice or demand required or permitted by law to be served upon
2 the company.

3 (b) If a limited liability company or foreign limited liability company fails
4 to appoint or maintain an agent for service of process in this ~~state~~ State or the
5 agent for service of process cannot with reasonable diligence be found at the
6 agent's address, the ~~secretary of state~~ Secretary of State is an agent of the
7 company upon whom process, notice₂ or demand may be served.

8 (c) Service of any process, notice₂ or demand on the ~~secretary of state~~
9 Secretary of State may be made by delivering to and leaving with the ~~secretary~~
10 ~~of state~~ Secretary of State duplicate copies of the process, notice₂ or demand.
11 If the process, notice₂ or demand is served on the ~~secretary of state~~ Secretary of
12 State, the ~~secretary of state~~ Secretary of State shall forward one of the copies
13 by registered or certified mail, return receipt requested, to the company at its
14 registered office. Service on the ~~secretary of state~~ Secretary of State shall be
15 returnable in not less than 30 days.

16 (d) The ~~secretary of state~~ Secretary of State shall keep a record of all
17 processes, notices₂ and demands served pursuant to this section and record the
18 time of and the action taken regarding the service.

19 (e) This section shall not affect the right to serve process, notice₂ or
20 demand upon a limited liability company or foreign limited liability company
21 in any manner otherwise provided by law.

1 § ~~3012~~ 3011. NATURE OF BUSINESS AND POWERS; GOVERNING

2 LAW

3 ~~(a) A limited liability company may be organized under this chapter for any~~
4 ~~lawful purpose, subject to any provision of laws of this state governing or~~
5 ~~regulating business.~~

6 ~~(b) A limited liability company or a foreign limited liability company~~
7 ~~engaging in a business subject to any other provisions of law of this state~~
8 ~~governing or regulating business may be formed or authorized to transact~~
9 ~~business under this chapter only if permitted by, and subject to all limitations~~
10 ~~of, the other statute. The following shall not be formed or authorized to~~
11 ~~transact business under this chapter:~~

12 ~~(1) credit unions regulated under Title 8;~~

13 ~~(2) insurance companies regulated under Title 8, except that captive~~
14 ~~insurance companies regulated under chapter 141 of Title 8 may be formed as~~
15 ~~limited liability companies;~~

16 ~~(3) railroad companies regulated under Title 19.~~

17 ~~(c) Notwithstanding the provisions of subsections (a) and (b) of this~~
18 ~~section, a limited liability company or foreign limited liability company shall~~
19 ~~engage in rendering professional services only to the extent that, and subject to~~
20 ~~the conditions and limitations under which, a professional corporation may~~
21 ~~engage in rendering professional services under chapter 4 of this title. For~~

1 ~~purposes of applying the provisions, conditions and limitations of chapter 4 of~~
2 ~~this title, unless the licensing laws of this state expressly prohibit the provision~~
3 ~~of professional services by domestic and foreign limited liability companies:~~

4 ~~(1) unless the context clearly requires otherwise, references to chapters~~
5 ~~1-20 of Title 11A relating to business corporations shall be treated as~~
6 ~~references to this chapter, and references to a “corporation” shall be treated as~~
7 ~~references to a limited liability company or foreign limited liability company;~~

8 ~~(2) the members shall be treated in the same manner as shareholders of a~~
9 ~~professional corporation;~~

10 ~~(3) managers shall be treated in the same manner as directors of a~~
11 ~~professional corporation;~~

12 ~~(4) the persons signing the articles of organization of the company shall~~
13 ~~be treated in the same manner as the incorporators of a professional~~
14 ~~corporation; and~~

15 ~~(5) the name shall comply with sections 3005 and 3136 of this title and,~~
16 ~~in addition, shall contain the word “Professional” or the abbreviation “P.L.C.”~~
17 ~~or “PLC.”~~

18 ~~(d) A limited liability company shall possess and may exercise all the~~
19 ~~powers and privileges granted by this chapter, any other law, its articles of~~
20 ~~organization or its operating agreement, together with any powers incidental~~
21 ~~thereto, so far as the powers and privileges are necessary or convenient to the~~

1 ~~conduct, promotion or attainment of the business, purposes or activities of the~~
2 ~~limited liability company, including power to:~~

3 ~~(1) sue and to be sued, complain and defend in its company name. A~~
4 ~~court or other adjudicative body shall permit a limited liability company to~~
5 ~~appear through a nonattorney representative if:~~

6 ~~(A) the proposed nonattorney representative is authorized to~~
7 ~~represent the limited liability company;~~

8 ~~(B) the proposed nonattorney representative demonstrates adequate~~
9 ~~legal knowledge and skills to represent the organization without unduly~~
10 ~~burdening the opposing party or the court; and~~

11 ~~(C) the proposed nonattorney representative shares a common~~
12 ~~interest with the limited liability company;~~

13 ~~(2) purchase, receive, lease, or otherwise acquire, and to own, hold,~~
14 ~~improve, use and otherwise deal with, real or personal property, or any legal or~~
15 ~~equitable interest in property, wherever located;~~

16 ~~(3) sell, convey, mortgage, pledge, lease, exchange and otherwise~~
17 ~~dispose of all or any part of the property;~~

18 ~~(4) purchase, receive, subscribe for or otherwise acquire; own, hold,~~
19 ~~vote, use, sell, mortgage, lend, pledge or otherwise dispose of; and deal in or~~
20 ~~with shares or other interests in, or obligations of, any other entity;~~

1 ~~(5) make contracts, including partnership agreements and guarantees,~~
2 ~~and incur liabilities, borrow money at such rates of interest as the limited~~
3 ~~liability company may determine, issue its notes, bonds and other obligations~~
4 ~~(which may be convertible into or include the option to purchase other~~
5 ~~securities of the limited liability company), and secure any of its obligations by~~
6 ~~covenants requiring the consent of another person to an action to be taken by~~
7 ~~the limited liability company and by mortgage or pledge of any of its property,~~
8 ~~franchises or income;~~

9 ~~(6) lend money, invest and reinvest its funds, and receive and hold real~~
10 ~~and personal property as security for repayment;~~

11 ~~(7) be a promoter, partner, member, associate or manager of any limited~~
12 ~~liability company, partnership, joint venture, trust or other entity;~~

13 ~~(8) conduct its business, locate offices and exercise the powers granted~~
14 ~~by this chapter within or without this state;~~

15 ~~(9) elect managers and appoint employees and agents of the limited~~
16 ~~liability company, define their duties, fix their compensation and lend them~~
17 ~~money and credit;~~

18 ~~(10) pay pensions and establish pension plans, pension trusts, profit~~
19 ~~sharing plans, share bonus plans, share option plans and benefit or incentive~~
20 ~~plans for any or all of its current or former members, managers, employees and~~
21 ~~agents;~~

1 ~~(11) make donations for the public welfare or for charitable, scientific or~~
2 ~~educational purposes;~~

3 ~~(12) transact any lawful business that will aid governmental policy;~~

4 ~~(13) make payments or donations, or do any other act, not inconsistent~~
5 ~~with law, that furthers the business and affairs of the limited liability company;~~

6 and

7 ~~(14) delegate to any other person the authority to act for or in the name~~
8 ~~of the limited liability company.~~

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

10 (b) A limited liability company may have any lawful purpose, regardless of
11 whether for profit.

12 (c) A limited liability company has perpetual duration.

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

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

20 (A) a credit union regulated under Title 8;

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

4 (C) a railroad company regulated under Title 19.

5 (e) A limited liability company shall possess and may exercise all the
6 powers and privileges granted by this chapter, any other law, its articles of
7 organization, or its operating agreement, together with any powers incidental
8 thereto, so far as the powers and privileges are necessary or convenient to the
9 conduct, promotion, or attainment of the business purposes or activities of the
10 limited liability company, including power to sue and to be sued, complain and
11 defend in its company name, and the power to do all things necessary or
12 convenient to carry on its activities.

13 (f) The law of this State governs:

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

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

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

- 1 (a) Articles of organization of a limited liability company shall set forth:
- 2 (1) the name of the company;
- 3 (2) the address of the initial designated office;
- 4 (3) the name and street address of the initial agent for service of process;
- 5 (4) the name and address of each organizer;
- 6 (5) ~~whether the company is a term limited liability company and, if so,~~
7 the duration of the term; if the company has no members at the time of filing, a
8 statement to that effect; and
- 9 (6) whether the company is an L3C;
- 10 ~~(7) whether the company is to be manager managed, and, if so, the name~~
11 ~~and address of each initial manager; and~~
- 12 ~~(8) whether the members of the company are to be liable for its debts~~
13 ~~and obligations under subsection 3043(b) of this title.~~
- 14 (b) Articles of organization of a limited liability company may set forth:
- 15 (1) provisions permitted to be set forth in an operating agreement; and
- 16 (2) other matters not inconsistent with law.
- 17 (c) Articles of organization of a limited liability company may not vary the
18 non-waivable provisions of subsection ~~(b) of section 3003~~ 3003(b) of this title.
19 As to all other matters, if any provision of an operating agreement is
20 inconsistent with the articles of organization:

- 1 (1) there is a change in the name of the company;
- 2 (2) ~~there is a change in the duration of the term;~~
- 3 (3) ~~there is a change in whether the management of the limited liability~~
4 ~~company is vested in managers or members;~~
- 5 (4) ~~there is a change in whether the members of the company are to be~~
6 ~~liable for its debts and obligations under subsection (b) of section 3043 of this~~
7 ~~title;~~
- 8 (5) there is a change in any other matter set forth in the articles of
9 organization under subsection ~~(b) of section 3023~~ 3023(b) of this title; or
- 10 (6)(3) the articles of organization contain a false or erroneous statement.

11 (c) A limited liability company may restate its articles of organization at
12 any time. Restated articles of organization ~~must~~ shall be signed and filed in the
13 same manner as articles of amendment. Restated articles of organization ~~must~~
14 shall be designated as such in the heading and state in the heading or in an
15 introductory paragraph the limited liability company's present name and, if it
16 has been changed, all of its former names and the date of the filing of its initial
17 articles of organization.

18 § 3025. SIGNING OF DOCUMENTS

19 (a) Except as otherwise provided in this chapter, a document to be filed
20 by or on behalf of a limited liability company in the ~~office of the secretary of~~

1 ~~state~~ Office of the Secretary of State must be signed in the name of the
2 company by a:

3 ~~(1) manager of a manager managed company;~~

4 ~~(2) member of a member managed company;~~

5 ~~(3) person organizing the company, if the company has not been~~
6 ~~formed; or~~

7 ~~(4) fiduciary, if the company is in the hands of a receiver, trustee or~~
8 ~~other court appointed fiduciary.~~

9 (1) a person authorized by the company;

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

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

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

16 ~~(c) A person signing a document to be filed under subsection (a) of this~~
17 ~~section may do so as an attorney in fact. An authorization, including a power~~
18 ~~of attorney, to sign a document shall be in writing, but need not be sworn to,~~
19 ~~verified or acknowledged or filed in the office of the secretary of state. The~~
20 ~~authorization shall be retained by the limited liability company. Any record~~
21 filed under this chapter may be signed by an agent.

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

4 § 3026. FILING IN OFFICE OF SECRETARY OF STATE

5 (a) The original signed copy, together with a duplicate copy that may be
6 either a signed, photocopied or conformed copy, of the articles of organization
7 or any other document required to be filed pursuant to this chapter shall be
8 delivered to the ~~secretary of state~~ Secretary of State. If the ~~secretary of state~~
9 Secretary of State determines that a document conforms to the filing provisions
10 of this chapter, the ~~secretary of state~~ Secretary of State shall, when all required
11 filing fees have been paid:

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

14 (2) retain the signed original in the ~~secretary of state’s office~~ Office of
15 the Secretary of State; and

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

18 (b) If the ~~secretary of state~~ Secretary of State is unable to make the
19 determination required under subsection (a) of this section for filing the articles
20 of organization at the time a document is delivered for filing, the document is

1 deemed to have been filed at the time of delivery if the ~~secretary of state~~

2 Secretary of State subsequently determines that:

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

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

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

11 (d) A document accepted for filing by the ~~secretary of state~~ Secretary of
12 State is effective:

13 (1) on the date it is filed, as evidenced by the ~~secretary of state~~ Secretary
14 of State maintaining a record of the date and time of the filing;

15 (2) at the time specified in the document as its effective time; or

16 (3) on the date and at the time specified in the document if the document
17 specifies a delayed effective date and time.

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

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

5 § 3027. CORRECTING FILED DOCUMENT

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

9 (b) A document is corrected:

10 (1) by preparing articles of correction that:

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

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

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

16 (2) by delivering the corrected document to the ~~secretary of state~~
17 Secretary of State for filing.

18 (c) ~~Articles of correction are effective retroactively to the effective date of~~
19 ~~the document they correct. However, a person who has relied on the~~
20 ~~uncorrected document and was adversely affected by the correction is not~~
21 ~~bound by the correction until the articles are filed.~~ When filed by the Secretary

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

6 § 3028. CERTIFICATE OF EXISTENCE OR AUTHORIZATION

7 (a) A person may request the ~~secretary of state~~ Secretary of State to furnish
8 a certificate of existence for a limited liability company or a certificate of
9 authorization for a foreign limited liability company.

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

11 (1) the company's name;

12 (2) that it is duly organized under the laws of this ~~state,~~ State and the
13 date of organization, ~~whether it is an at-will or term company, and, if the latter,~~
14 ~~the duration of the term; and~~

15 (3) that articles of termination have not been filed; ~~and~~

16 (4) ~~other facts of record in the office of the secretary of state which may~~
17 ~~be requested by the applicant.~~

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

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

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

1 (3) that a certificate of cancellation has not been filed;~~and~~
2 ~~(4) other facts of record in the office of the secretary of state which may~~
3 ~~be requested by the applicant.~~

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

9 § 3029. LIABILITY FOR FALSE STATEMENT IN FILED DOCUMENT

10 If a document ~~authorized or required to be filed under this chapter~~ filed with
11 the Secretary of State contains a false statement, one who suffers loss by
12 reliance on the statement may recover damages for the loss from a person who
13 signed the document or caused another to sign it on the person's behalf and
14 knew the statement to be false at the time the document was signed.

15 § 3030. FILING BY JUDICIAL ACT

16 If a person required by section 3025 of this title to sign any document fails
17 or refuses to do so, any other person who is adversely affected by the failure or
18 refusal may petition the ~~superior court~~ Superior Court to direct the signing of
19 the document. If the ~~court~~ Court finds that it is proper for the document to be
20 signed and that a person so designated has failed or refused to sign the

1 document, it shall order the ~~secretary of state~~ Secretary of State to sign and file
2 an appropriate document.

3 * * *

4 § 3033. ANNUAL REPORT FOR SECRETARY OF STATE

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

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

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

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

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

17 § 3034. INVOLUNTARY TERMINATION

18 (a)(1) The articles of organization of a limited liability company that fails
19 to file an annual report required by section 3033 of this title shall terminate and
20 the provisions of this section shall apply to the limited liability company.

1 (2) The certificate of authority of a foreign limited liability company
2 that fails to file an annual report required by section 3033 of this title shall
3 terminate and the Secretary of State shall notify the company of the
4 termination.

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

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

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

18 (d) Involuntary termination under this section does not:

19 (1) prevent commencement of a proceeding against the limited liability
20 company or the foreign limited liability company in its company name;

1 provided that a proceeding is subject to dismissal unless the company is
2 reinstated in accordance with subsections (a) and (b) of this section;

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

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

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

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

12 * * *

13 § 3041. ~~AGENCY OF MEMBERS AND MANAGERS~~ NO AGENCY

14 POWER OF MEMBER AS MEMBER

15 ~~(a) Subject to subsections (b) and (c) of this section:~~

16 ~~(1) each member is an agent of the limited liability company for the~~
17 ~~purpose of its business;~~

18 ~~(2) an act of a member, including the signing of an instrument in the~~
19 ~~company name, for apparently carrying on in the ordinary course the~~
20 ~~company's business or business of the kind carried on by the company binds~~
21 ~~the company, unless the member had no authority to act for the company in the~~

1 particular matter and the person with whom the member was dealing knew or
2 had received notice that the member lacked such authority; and

3 (3) an act of a member which is not apparently for carrying on in the
4 ordinary course the company's business or business of the kind carried on by
5 the company binds the company only if the act was authorized by the other
6 members.

7 (b) Subject to subsection (c) of this section, in a manager-managed limited
8 liability company:

9 (1) a member is not an agent of the company for the purpose of its
10 business solely by reason of being a member;

11 (2) each manager is an agent of the company for the purpose of its
12 business;

13 (3) an act of a manager, including the signing of an instrument in the
14 company name, for apparently carrying on in the ordinary course the
15 company's business or business of the kind carried on by the company binds
16 the company, unless the manager had no authority to act for the company in
17 the particular matter and the person with whom the manager was dealing knew
18 or had notice that the manager lacked such authority; and

19 (4) an act of a manager which is not apparently for carrying on in the
20 ordinary course the company's business or business of the kind carried on by

1 ~~the company binds the company only if the act was authorized under~~
2 ~~subdivision 3054(b)(2) of this title.~~

3 ~~(c) Unless the articles of organization limit their authority, any member of~~
4 ~~a member managed limited liability company, or any manager of a manager-~~
5 ~~managed company, may sign and deliver any instrument transferring or~~
6 ~~affecting the company's interest in real property, which instrument is~~
7 ~~conclusive in favor of a person who gives value without knowledge of the lack~~
8 ~~of the authority of the person signing and delivering the instrument.~~

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

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

14 ~~§ 3042. LIMITED LIABILITY COMPANY LIABLE FOR MEMBER'S OR~~
15 ~~MANAGER'S ACTIONABLE CONDUCT~~

16 ~~A limited liability company is liable for loss or injury caused to a person, or~~
17 ~~for a penalty incurred, as a result of a wrongful act or omission or other~~
18 ~~actionable conduct of a member or manager acting in the ordinary course of~~
19 ~~business of the company or with authority of the company.~~

20 ~~§ 3043~~ 3042. LIABILITY OF MEMBERS AND MANAGERS

1 (a) ~~Except as otherwise provided in subsection (b) of this section, the~~ The
2 debts, obligations ~~and, or other~~ liabilities of a limited liability company,
3 whether arising in contract, tort, or otherwise;

4 (1) are solely the debts, obligations and, or other liabilities of the
5 company. ~~A member or manager is not personally liable for a debt, obligation~~
6 ~~or liability of the company solely by reason of being or acting as a member or~~
7 ~~manager, except that such member or manager may become personally liable~~
8 ~~by reason of his or her own acts or conduct; and~~

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

12 (b) ~~All or specified members of a limited liability company are liable in~~
13 ~~their capacity as members for all or specified debts, obligations or liabilities of~~
14 ~~the company if:~~

15 ~~(1) a provision to that effect is contained in the articles of~~
16 ~~organization; and~~

17 ~~(2) a member so liable has consented in writing to the adoption of the~~
18 ~~provision or to be bound by the provision.~~

19 The failure of a limited liability company to observe any particular formalities
20 relating to the exercise of its power or management of its activities is not a

1 ground for imposing liability on a member or manager for the debts,
2 obligations, or other liabilities of the company.

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

5 § 3051. BECOMING A MEMBER

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

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

15 (c) If articles of organization filed with the Secretary of State contain the
16 statement required by subdivision 3023(a)(5) of this title, a person becomes an
17 initial member of the limited liability company with the consent of a majority
18 of the organizers. The organizers may consent to more than one person
19 simultaneously becoming the company's initial members.

20 (d) After formation of a limited liability company, a person becomes a
21 member:

- 1 (1) as provided in the operating agreement;
2 (2) as the result of a transaction effective under subchapter 10 of this
3 chapter;
4 (3) with the affirmative vote or consent of all the members; or
5 (4) if, within 90 consecutive days after the company ceases to have any
6 members:
7 (A) the last person to have been a member or the legal representative
8 of that person designates a person to become a member; and
9 (B) the designated person consents to become a member.
10 (e) A person may become a member without acquiring a distributional
11 interest and without making or being obligated to make a contribution to the
12 limited liability company.

13 § ~~3054~~ 3052. FORM OF CONTRIBUTION

14 A contribution ~~of a member of a limited liability company~~ may consist of
15 tangible or intangible property or other benefit to the company, including
16 money, promissory notes, services performed ~~or other obligations,~~ agreements
17 to contribute ~~cash~~ money or property, or contracts for services to be performed.

18 § ~~3052~~ 3053. MEMBER'S LIABILITY FOR CONTRIBUTIONS

19 (a) A ~~member's person's~~ obligation to ~~contribute money, property or other~~
20 ~~benefit to, or to perform services for,~~ make a contribution to a limited liability
21 company is not excused by the member's death, disability, or other inability to

1 perform personally. If a ~~member~~ person does not make the required
2 contribution ~~of property or services~~, the ~~member~~ person's estate is obligated at
3 the option of the company to contribute money equal to that portion of the
4 value of the ~~stated contribution~~ part of the contribution which has not been
5 made.

6 (b) A creditor of a limited liability company who extends credit or
7 otherwise acts in reliance on an obligation described in subsection (a) of this
8 section, and without notice of any compromise under subdivision ~~(e)(5)~~ of
9 ~~section 3054~~ 3054(d)(4) of this title, may enforce the original obligation.

10 ~~§ 3053. MEMBER'S AND MANAGER'S RIGHTS TO PAYMENTS AND~~
11 ~~REIMBURSEMENT~~

12 ~~(a) Subject to the provisions of section 3062 of this title, a limited liability~~
13 ~~company shall reimburse a member or manager for payments made and~~
14 ~~indemnify a member or manager for liabilities incurred by the member or~~
15 ~~manager in the ordinary course of the business of the company or for the~~
16 ~~preservation of its business or property.~~

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

19 ~~(c) A payment or advance made by a member which gives rise to an~~
20 ~~obligation of a limited liability company under subsection (a) or (b) of this~~

1 ~~section constitutes a loan to the company upon which interest accrues from the~~
2 ~~date of the payment or advance.~~

3 ~~(d) A member is not entitled to remuneration for services performed for a~~
4 ~~limited liability company, except for reasonable compensation for services~~
5 ~~rendered in winding up the business of the company.~~

6 § 3054. MANAGEMENT OF LIMITED LIABILITY COMPANY

7 ~~(a) In a member managed limited liability company:~~

8 ~~(1) each member has equal rights in the management and conduct of the~~
9 ~~company's business; and~~

10 ~~(2) except as otherwise provided in subsection (c) of this section or in~~
11 ~~subdivision 3101(3)(A) of this title, any matter relating to the business of the~~
12 ~~company may be decided by a majority of the members.~~

13 ~~(b) In a manager managed limited liability company:~~

14 ~~(1) except as otherwise provided in subsection (c) of this section, the~~
15 ~~managers have the exclusive authority to manage and conduct the company's~~
16 ~~business;~~

17 ~~(2) except as specified in subsection (c) of this section or in subdivision~~
18 ~~3101(3)(A) of this title, any matter relating to the business of the company may~~
19 ~~be exclusively decided by the manager or, if there is more than one manager,~~
20 ~~by a majority of the managers; and~~

21 ~~(3) a manager:~~

1 ~~(A) must be designated, appointed, elected, removed or replaced by a~~
2 ~~vote, approval or consent of a majority of the members; and~~

3 ~~(B) holds office until a successor has been elected and qualified,~~
4 ~~unless the manager sooner resigns or is removed.~~

5 ~~(c) Matters of a limited liability company's business requiring the consent~~
6 ~~of all the members are:~~

7 ~~(1) the amendment of the operating agreement under section 3003 of~~
8 ~~this title;~~

9 ~~(2) the authorization or ratification of acts or transactions under~~
10 ~~subdivision 3003(b)(2)(B) of this title which would otherwise violate the duty~~
11 ~~of loyalty;~~

12 ~~(3) an amendment to the articles of organization under section 3024 of~~
13 ~~this title;~~

14 ~~(4) the compromise of an obligation to make a contribution under~~
15 ~~subsection 3052(b) of this title;~~

16 ~~(5) the compromise, as among members, of an obligation of a member~~
17 ~~to make a contribution or return money or other property paid or distributed in~~
18 ~~violation of this chapter;~~

19 ~~(6) the making of interim distributions under subsection (a) of section~~
20 ~~3055 of this title;~~

21 ~~(7) the admission of a new member;~~

1 ~~(8) the use of the company's property to redeem an interest subject to a~~
2 ~~charging order;~~

3 ~~(9) a waiver of the right to have the company's business wound up and~~
4 ~~the company terminated under subsection 3102(b) of this title; and~~

5 ~~(10) the sale, lease, exchange or other disposal of all, or substantially all,~~
6 ~~of the company's property with or without goodwill.~~

7 ~~(d) Action requiring the consent of members or managers under this~~
8 ~~chapter may be taken at a meeting of the members or managers. An action that~~
9 ~~may be taken at a meeting of the members or managers may be taken without a~~
10 ~~meeting if the action is taken by all of the members or managers entitled to~~
11 ~~vote on the action. The action must be evidenced by one or more consents~~
12 ~~reflected in a record describing the action taken and signed by all of the~~
13 ~~members or managers entitled to vote on the action.~~

14 ~~(e) A member or manager may appoint a proxy to vote or otherwise act for~~
15 ~~the member or manager by signing an appointment instrument, either~~
16 ~~personally or by the member's or manager's attorney in fact. An appointment~~
17 ~~of a proxy is valid for 11 months unless a different time is specified in the~~
18 ~~appointment instrument. An appointment is revocable by the member or~~
19 ~~manager unless the appointment form conspicuously states that it is irrevocable~~
20 ~~and the appointment is coupled with an interest, in which case the appointment~~
21 ~~is revoked when the coupled interest is extinguished.~~

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

3 (1) expressly provides that:

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

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

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

8 (2) includes words of similar import.

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

10 (1) the management and conduct of the company are vested in the
11 members;

12 (2) each member has equal rights in the management and conduct of the
13 company’s activities; and

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

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

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

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

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

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

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

12 (5)(A) A person need not be a member to be a manager, but the
13 dissociation of a member that is also a manager removes the person as a
14 manager.

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

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

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

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

2 (2) amend the articles of organization under section 3024 of this title;

3 (3) compromise an obligation to make a contribution under section 3053
4 of this title;

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

8 (5) make interim distributions under subsection 3055(a) of this title;

9 (6) admit a new member;

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

12 (8) waive the right to have the company's business wound up and the
13 company terminated under subsection 3102(b) of this title; and

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

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

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

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

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

10 (2) A member may appoint a proxy or other agent to consent or
11 otherwise act for the member by signing an appointing record, personally or by
12 the member's agent.

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

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

19 (h) The dissolution of a limited liability company does not affect the
20 applicability of this section. However, a person that wrongfully causes

1 dissolution of the company loses the right to participate in management as a
2 member and a manager.

3 (i) This chapter does not entitle a member to remuneration for services
4 performed for a member-managed limited liability company, except for
5 reasonable compensation for services rendered in winding up the activities of
6 the company.

7 § 3055. SHARING OF PROFITS AND LOSSES AND RIGHT TO
8 DISTRIBUTIONS

9 (a) The profits and losses of a limited liability company shall be allocated
10 among the members or the holders of distributional interests, as the case may
11 be, in proportion to the agreed value, as stated in the limited liability company
12 records required to be kept under this chapter, of the contributions made by
13 each member, taking into account variations in the capital contributions of
14 each member during the period for which such allocations are made.

15 (b) Any distributions made by a limited liability company before its
16 dissolution and winding up shall be made among the members or the holders of
17 distributional interests, as the case may be, in proportion to the agreed value,~~as~~
18 ~~stated in the limited liability company records required to be kept under this~~
19 ~~chapter,~~ of the contributions made by each member as of the date of such
20 distribution.

1 obtain from the company from time to time and upon reasonable demand for
2 any purpose reasonably related to the member's interest as a member of the
3 limited liability company during the period in which he or she was a member:

4 ~~(1) information regarding the status of the business and the financial~~
5 ~~condition of the company;~~

6 ~~(2) promptly after becoming available, a copy of the company's federal,~~
7 ~~state and local income tax returns and financial statements, if any, for the three~~
8 ~~most recent years or, if such returns and statements were not prepared for any~~
9 ~~reason, copies of the information and statements provided to, or which should~~
10 ~~have been provided to, the members or the owners of financial rights to enable~~
11 ~~them to prepare their federal, state and local tax returns for such period;~~

12 ~~(3) a current list of the name and last known business, residence or~~
13 ~~mailing address of each member and manager;~~

14 ~~(4) a copy of the articles of organization and any operating agreement~~
15 ~~and all amendments thereto, together with copies of any written powers of~~
16 ~~attorney pursuant to which the articles of organization, operating agreement~~
17 ~~and all amendments thereto have been executed;~~

18 ~~(5) information regarding the amount of cash and description and~~
19 ~~statement of the agreed value of any other property or services contributed by~~
20 ~~each member and which each member has agreed to contribute in the future,~~
21 ~~and the date on which each member became a member; and~~

1 ~~(6) such other information regarding the affairs of the limited liability~~
2 ~~company that is just and reasonable.~~

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

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

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

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

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

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

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

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

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

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

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

15 ~~(d)~~(e) Any demand under this section shall:

16 (1) be in writing;

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

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

20 ~~(e) A company shall furnish to a member and to the legal representative of~~
21 ~~a deceased member or member under legal disability:~~

1 ~~(1) without demand, information concerning the company's business or~~
2 ~~affairs reasonably required for the proper exercise of the member's rights and~~
3 ~~duties under the operating agreement or this chapter; and~~

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

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

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

13 (g) Subject to section 3075 of this title, the rights under this section do not
14 extend to a person who is a transferee of an interest in a limited liability
15 company, except that a transferee is entitled to an account of the company's
16 transactions only from the date of dissolution.

17 (h)(1) In addition to any restriction or condition stated in this section or the
18 company's operating agreement, a limited liability company may impose
19 reasonable restrictions and conditions on access to and use of information to be
20 furnished under this section, including designating information confidential
21 and imposing nondisclosure and safeguarding obligations on the recipient.

1 (2) to refrain from dealing with the company in the conduct or winding
2 up of the company’s business as or on behalf of a party having an interest
3 adverse to the company; and

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

6 (c) A member’s duty of care to a member-managed limited liability
7 company and its other members in the conduct of and winding up of the
8 ~~company~~ company’s business shall be to act in good faith, with the care an
9 ~~ordinary prudent person in a like position would exercise under similar~~
10 ~~circumstances and in a manner the member reasonably believes to be in the~~
11 ~~best interests of the limited liability company~~ is limited to refrain from
12 engaging in grossly negligent or reckless conduct, or a knowing violation of
13 the law.

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

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

1 ~~(f) A member of a member-managed limited liability company may lend~~
2 ~~money to and transact other business with the company. As to each loan or~~
3 ~~transaction, the rights and obligations of the member are the same as those of a~~
4 ~~person who is not a member, subject to other applicable law.~~

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

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

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

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

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

19 ~~(1) a member who is not also a manager owes no duties to the company~~
20 ~~or to the other members solely by reason of being a member;~~

1 ~~(2) a manager is held to the same standards of conduct prescribed for~~
2 ~~members in subsections (b) through (f) of this section;~~

3 ~~(3) a member who pursuant to the operating agreement exercises some~~
4 ~~or all of the rights of a manager in the management and conduct of the~~
5 ~~company's business is held to the standards of conduct in subsections (b)~~
6 ~~through (f) of this section to the extent that the member exercises the~~
7 ~~managerial authority vested in a manager by this chapter; and~~

8 ~~(4) a manager is relieved of liability imposed by law for violation of the~~
9 ~~standards prescribed by subsections (b) through (f) of this section to the extent~~
10 ~~of the managerial authority delegated to the members by the operating~~
11 ~~agreement.~~

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

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

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

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

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

1 (6) a member who pursuant to the operating agreement exercises some
2 or all of the rights of a manager in the management and conduct of the
3 company's business is held to the standards of conduct in subsections (a), (b),
4 (c), and (g) of this section to the extent that the member exercises the
5 managerial authority vested in a manager by this chapter; and

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

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

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

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

20 (3) A a committee of the ~~member-managers~~ members or managers of
21 which the ~~member-manager~~ member or manager is not a member if the

1 ~~member-manager~~ member or manager reasonably believes the committee
2 merits confidence.

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

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

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

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

16 ~~§ 3060. ACTIONS BY MEMBERS~~

17 ~~(a) A member may maintain an action against a limited liability company~~
18 ~~or another member for legal or equitable relief, with or without an accounting~~
19 ~~as to the company's business, to enforce:~~

20 ~~(1) the member's rights under the operating agreement;~~

21 ~~(2) the member's rights under this chapter; and~~

1 ~~(3) the rights and otherwise protect the interests of the member,~~
2 ~~including rights and interests arising independently of the member's~~
3 ~~relationship to the company.~~

4 ~~(b) The accrual, and any time limited for the assertion, of a right of action~~
5 ~~for a remedy under this section is governed by other law. A right to an~~
6 ~~accounting upon a dissolution and winding up does not revive a claim barred~~
7 ~~by law.~~

8 § 3060. REIMBURSEMENT, INDEMNIFICATION, AND INSURANCE

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

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

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

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

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

9 ~~§ 3061. CONTINUATION OF TERM LIMITED LIABILITY COMPANY~~

10 ~~BEYOND EXPIRATION OF STATED DURATION~~

11 ~~(a) If a term limited liability company is continued after the expiration of~~
12 ~~its term, the rights and duties of the members and managers, if any, remain the~~
13 ~~same as they were at the expiration of the term except to the extent inconsistent~~
14 ~~with rights and duties of members and managers of an at-will limited liability~~
15 ~~company.~~

16 ~~(b) If the members in a member managed limited liability company or the~~
17 ~~managers in a manager managed company continue the business without any~~
18 ~~winding up of the business of the company, it continues as an at-will company.~~

19 [Repealed.]

1 § 3062. ~~AUTHORITY TO INDEMNIFY~~

2 ~~(a) Except as provided in subsection (d) of this section, a limited liability~~
3 ~~company may indemnify a person made a party to a proceeding because the~~
4 ~~person is or was a manager or member against liability incurred in the~~
5 ~~proceeding if:~~

6 ~~(1) the person conducted himself or herself in good faith; and~~

7 ~~(2) the person reasonably believed:~~

8 ~~(A) in the case of conduct in the person's official capacity with the~~
9 ~~limited liability company, that the person's conduct was in the company's best~~
10 ~~interests; and~~

11 ~~(B) in all other cases, that the person's conduct was at least not~~
12 ~~opposed to the company's best interests; and~~

13 ~~(3) in the case of any proceeding brought by a governmental entity, the~~
14 ~~person had no reasonable cause to believe his or her conduct was unlawful, and~~
15 ~~the person is not finally found to have engaged in a reckless or intentional~~
16 ~~unlawful act.~~

17 ~~(b) A person's conduct, with respect to an employee benefit plan for a~~
18 ~~purpose the person reasonably believed to be in the interests of the participants~~
19 ~~in and beneficiaries of the plan, is conduct that satisfies the requirement of~~
20 ~~subdivision (a)(2)(B) of this section.~~

1 ~~(c) The termination of a proceeding by judgment, order, settlement,~~
2 ~~conviction or upon a plea of nolo contendere or its equivalent is not, of itself,~~
3 ~~determinative that the person did not meet the standard of conduct described in~~
4 ~~this section.~~

5 ~~(d) Notwithstanding subsection (c) of this section, a limited liability~~
6 ~~company may not indemnify a person under this section:~~

7 ~~(1) in connection with a proceeding by or in the right of the limited~~
8 ~~liability company in which the person was adjudged liable to the limited~~
9 ~~liability company; or~~

10 ~~(2) in connection with any other proceeding charging improper personal~~
11 ~~benefit to the person, whether or not involving action in the person's official~~
12 ~~capacity, in which the person was adjudged liable on the basis that personal~~
13 ~~benefit was improperly received by the person.~~

14 ~~(e) Indemnification permitted under this section in connection with a~~
15 ~~proceeding by or in the right of the limited liability company is limited to~~
16 ~~reasonable expenses incurred in connection with the proceeding.~~

17 ~~(f) The limited liability company may indemnify an employee or agent of~~
18 ~~the limited liability company who is not a manager or member to the same~~
19 ~~extent that it may indemnify a manager or member. [Repealed.]~~

1 Subchapter 5. Transferees and Creditors of Member

2 § 3071. MEMBER'S DISTRIBUTIONAL INTEREST

3 (a) ~~A member is not a co-owner of, and has no transferable interest in,~~
4 ~~property of a limited liability company.~~

5 (b) A distributional interest in a limited liability company is personal
6 property and, subject to sections 3072 and 3073 of this title, may be transferred
7 in whole or in part.

8 (c) An operating agreement may provide that a distributional interest
9 may be evidenced by a certificate of the interest issued by the limited liability
10 company and, subject to section 3073 of this title, may also provide for the
11 transfer of any interest represented by the certificate by a transfer of the
12 certificate.

13 § 3072. TRANSFER OF DISTRIBUTIONAL INTEREST

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

15 (1) is permissible;

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

18 (3) subject to section 3075 of this title, does not entitle the transferee to:

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

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

1 (C) except as otherwise provided in subsection 3073(d) of this title,
2 have access to records or other information concerning the company's
3 activities.

4 (b) A transfer of a distributional interest entitles the transferee to receive, to
5 the extent transferred in accordance with the transfer, only the distributions to
6 which the transferor would be entitled otherwise be entitled with respect to the
7 interest. A member ceases to be a member upon transfer of all of the
8 member's distributional interest other than a transfer for security purposes or a
9 court order charging the member's distributional interest, which in either case
10 has not been foreclosed.

11 (c) Except as otherwise provided in subdivision 3081(4)(B) of this title, if a
12 member transfers a distributional interest, the transferor retains the rights of a
13 member other than the distributional interest transferred and retains all duties
14 and obligations of a member.

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

18 § 3073. RIGHTS OF TRANSFEREE

19 (a) A transferee of a distributional interest may become a member of a
20 limited liability company if and to the extent that ~~the transferor gives the~~

1 ~~transferee the right in accordance with authority described in the operating~~
2 ~~agreement or~~ all other members consent.

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

7 (2) A transferee who becomes a member also is liable for the transferor
8 member's obligations to make contributions under section ~~3052~~ 3053 of this
9 title and for obligations under section 3057 of this title to return unlawful
10 distributions, but the transferee is not obligated for the transferor member's
11 liabilities unknown to the transferee at the time the transferee becomes a
12 member and which could not be ascertained from the articles of organization
13 or the operating agreement made available to the transferee, and is not
14 personally liable for any obligation of the limited liability company incurred
15 before the transferee's admission as a member.

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

1 (d) A transferee who does not become a member is not entitled to
2 participate in the management or conduct of the limited liability company's
3 business or affairs, require access to information concerning the company's
4 transactions, or inspect or copy any of the company's books and other records,
5 except that in a dissolution and winding up of a limited liability company, a
6 transferee is entitled to an account of the company's transactions only from the
7 date of dissolution.

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

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

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

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

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

17 ~~(3) receive the transferee's distributional interest of a company having a~~
18 ~~specified term purchased as provided under subdivision 3091(a)(2) and section~~
19 ~~3092 of this title; and~~

20 ~~(4) seek a judicial determination that it is equitable to dissolve and wind~~
21 ~~up the company's business for the failure to cause the transferee's~~

1 ~~distributional interest to be purchased under subdivision 3091(a)(2) and section~~
2 ~~3092 of this title.~~

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

6 ~~§ 3074. RIGHTS OF CREDITOR~~

7 ~~(a) On application by a judgment creditor of a member of a limited liability~~
8 ~~company or of a member's transferee, a court having jurisdiction may charge~~
9 ~~the distributional interest of the judgment debtor to satisfy the judgment. The~~
10 ~~court may appoint a receiver of the share of the distributions due or to become~~
11 ~~due to the judgment debtor and make all other orders, directions, accounts and~~
12 ~~inquiries the judgment debtor might have made or which the circumstances~~
13 ~~may require to give effect to the charging order.~~

14 ~~(b) A charging order constitutes a lien on the judgment debtor's~~
15 ~~distributional interest. The court may order a foreclosure of a lien on a~~
16 ~~distributional interest subject to the charging order at any time. A purchaser at~~
17 ~~the foreclosure sale has the rights of a transferee.~~

18 ~~(c) At any time before foreclosure, a distributional interest charged may be~~
19 ~~redeemed:~~

20 ~~(1) by the judgment debtor;~~

1 ~~(2) with property other than the limited liability company's property, by~~
2 ~~one or more of the other members; or~~

3 ~~(3) with the limited liability company's property, but only if permitted~~
4 ~~by the operating agreement or upon the agreement of all members whose~~
5 ~~interests are not so charged.~~

6 ~~(d) This chapter does not affect a member's right under exemption laws~~
7 ~~with respect to the member's distributional interest in a limited liability~~
8 ~~company.~~

9 ~~(e) This section provides the exclusive remedy by which a judgment~~
10 ~~creditor of a member or a transferee may satisfy a judgment out of the~~
11 ~~judgment debtor's distributional interest in a limited liability company.~~

12 § 3074. CHARGING ORDER

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

16 (2) Except as provided in subsection (f) of this section, a charging order
17 constitutes a lien on a judgment debtor's distributional interest and requires the
18 limited liability company to pay over to the person to which the charging order
19 was issued any distribution that would otherwise be paid to the judgment
20 debtor.

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

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

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

8 (c)(1) Upon a showing that distributions under a charging order will not
9 pay the judgment debt within a reasonable time, the court may foreclose the
10 lien and order the sale of the distributional interest.

11 (2) Except as provided in subsection (f) of this section, the purchaser at
12 the foreclosure sale obtains only the distributional interest, does not thereby
13 become a member, and is subject to section 3073 of this title.

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

19 (e) At any time before foreclosure under subsection (c) of this section, a
20 limited liability company or one or more members whose distributional
21 interests are not subject to the charging order may pay to the judgment creditor

1 the full amount due under the judgment and thereby succeed to the rights of the
2 judgment creditor, including the charging order.

3 (f) This section does not deprive any member or transferee of the benefit of
4 any exemption laws applicable to the member's or transferee's distributional
5 interest.

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

8 (1) the court shall confirm the sale;

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

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

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

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

18 § 3075. POWER OF ESTATE OF DECEASED ~~OR~~ MEMBER WHO IS
19 INCOMPETENT

20 If a member who is an individual dies ~~or a court adjudges the member to be~~
21 ~~incompetent to manage the member's person or property,~~ the member's

1 ~~executor, administrator, guardian, conservator or other~~ legal representative
2 may exercise ~~all of the member's rights for the purpose of settling the~~
3 ~~member's estate or administering the member's property.~~ If a member is a
4 ~~corporation, trust, or other entity and is dissolved or terminated, the powers of~~
5 ~~the member may be exercised by its legal representative or successor~~ the rights
6 of a transferee under section 3073 of this title, and, for purposes of settling the
7 estate, the member's legal representative may exercise the rights the deceased
8 member had under section 3058 of this title.

9 Subchapter 6. Member's Dissociation

10 § 3081. EVENTS CAUSING MEMBER'S DISSOCIATION

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

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

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

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

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

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

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

5 (C) a ~~corporate~~ corporation that is a member fails to obtain a
6 revocation of its certificate of dissolution or a reinstatement of its charter or its
7 right to conduct business within 90 days after the company notifies such
8 member that it will be expelled because it has filed a certificate of dissolution
9 or the equivalent, its charter has been revoked, or its right to conduct business
10 has been suspended ~~in this state or~~ by the jurisdiction of its incorporation; or

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

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

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

17 (B) willfully or persistently committed a material breach of the
18 operating agreement or of a duty owed to the company or the other members
19 under section 3059 of this title; or

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

4 (6) ~~the member's~~ in a member-managed limited liability company, the
5 member:

6 (A) ~~becoming~~ becomes a debtor in bankruptcy;

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

8 (C) ~~seeking, consenting to or acquiescing in~~ seeks, consents to, or
9 acquiesces in, the appointment of a trustee, receiver, or liquidator of the
10 member or of all or substantially all of the member's property; or

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

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

17 (A) the member's death; or

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

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

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

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

8 (9) in the case of a member that is an estate or is acting as a member by
9 virtue of being a personal representative of an estate, distribution of the estate's
10 entire ~~rights to receive distributions from~~ distributional interest in the
11 company, but not merely the substitution of a successor personal
12 representative;

13 (10) termination of the existence of a member if the member is not an
14 individual, partnership, limited liability company, corporation, estate, or trust
15 ~~other than a business trust; or~~

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

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

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

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

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

6 ~~(11)~~(14) termination of a member's continued membership in a limited
7 liability company for any other reason.

8 § 3082. MEMBER'S POWER TO DISSOCIATE; WRONGFUL

9 DISSOCIATION

10 (a) A ~~member~~ person has the power to dissociate as a member from a
11 limited liability company at any time, rightfully or wrongfully, by express will
12 pursuant to subdivision (1) of section 3081 of this title; ~~but in the case of an at-~~
13 ~~will limited liability company, upon not less than 90 days' advance written~~
14 ~~notice to the company and other members.~~

15 (b) A member's dissociation from a limited liability company is wrongful
16 only if the dissociation:

17 (1) ~~it~~ is in breach of an express provision of the operating agreement or
18 articles of organization ~~or this chapter, including the failure to provide timely~~
19 ~~written notice of withdrawal from an at will limited liability company under~~
20 ~~subsection (a) of this section; or~~

1 (2) ~~before the expiration of a minimum term set for this purpose in the~~
2 ~~articles of organization or the operating agreement of a term limited liability~~
3 ~~company occurs before the termination of the company and:~~

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

5 (B) the member is expelled as a member by judicial determination
6 under subdivision ~~(5)~~ of section 3081(5) of this title;

7 (C) the member is dissociated under subdivision 3081(6)(A) of this
8 title by becoming a debtor in bankruptcy; or

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

12 (c)(1) ~~A member who~~ person that wrongfully dissociates as a member from
13 a limited liability company is liable to the company and, subject to section
14 3131 of this title, to the other members for damages caused by the dissociation.

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

17 ~~(d) If a limited liability company does not dissolve and wind up its business~~
18 ~~as a result of a member's wrongful dissociation under subsection (b) of this~~
19 ~~section, damages sustained by the company for the wrongful dissociation must~~
20 ~~be offset against distributions otherwise due the dissociated member after the~~
21 ~~dissociation.~~

1 § 3083. EFFECT OF MEMBER'S DISSOCIATION

2 (a) ~~If under section 3101 of this title a member's dissociation from a~~
3 ~~limited liability company results in a dissolution and winding up of the~~
4 ~~company's business, subchapter 8 of this chapter applies. If a member's~~
5 ~~dissociation from a company does not result in a dissolution and winding up of~~
6 ~~the company's business under section 3101 of this title:~~

7 (1) ~~in an at-will company, the company must cause the dissociated~~
8 ~~member's distributional interest to be purchased under subchapter 7 of this~~
9 ~~chapter; and~~

10 (2) ~~in a company having a specified term:~~

11 (A) ~~if the company dissolves and winds up its business on or before~~
12 ~~the expiration of its specified term, subchapter 8 of this chapter applies to~~
13 ~~determine the dissociated member's rights to distributions; and~~

14 (B) ~~if the company does not dissolve and wind up its business on or~~
15 ~~before the expiration of its specified term, the company must cause the~~
16 ~~dissociated member's distributional interest to be purchased under subchapter~~
17 ~~7 of this chapter on the date of the expiration of the term specified at the time~~
18 ~~of the member's dissociation.~~

19 (b) ~~Upon a member's dissociation from~~ When a person is dissociated as a
20 member of a limited liability company:

1 (1) the ~~member's~~ person's right to participate as a member in the
2 management and conduct of the company's business terminates, ~~except as~~
3 ~~otherwise provided in section 3103 of this title, and the member ceases to be a~~
4 ~~member and is treated the same as a transferee of a member under section 3072~~
5 ~~of this title;~~

6 (2) ~~the member's duty of loyalty under subdivision 3059(b)(3) of this~~
7 ~~title terminates~~ if the company is member-managed, the person's fiduciary
8 duties as a member end with regard to matters arising and events occurring
9 after the person's dissociation; and

10 (3) ~~the member's duty of loyalty under subdivisions 3059(b)(1) and (2)~~
11 ~~of this title and duty of care under subsection 3059(c) of this title continue only~~
12 ~~with regard to matters arising and events occurring before the member's~~
13 ~~dissociation, unless the member participates in winding up the company's~~
14 ~~business pursuant to section 3103 of this title, in which case the member's duty~~
15 ~~of loyalty will continue unabated~~ subject to section 3075 of this title and
16 subchapter 10 of this chapter, any distributional interest owned by the person
17 immediately before dissociation in the person's capacity as a member is owned
18 by the person solely as a transferee.

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

1 ~~Subchapter 7: Member's Dissociation When Business Not Wound Up~~

2 §§ 3091-3094. [Repealed.]

3 Subchapter ~~8~~ 7: Winding Up Company Business

4 § 3101. EVENTS CAUSING DISSOLUTION AND WINDING UP OF

5 COMPANY BUSINESS

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

8 (1) an event ~~specified in~~ or circumstance that the operating agreement
9 states causes dissolution;

10 (2) consent of the number or percentage of members specified in the
11 operating agreement, or in the absence of a provision governing approval of a
12 dissolution or winding up of the company contained in an operating agreement,
13 the consent of all the members;

14 ~~(3) dissociation of a member manager or, if none, a member of an at-~~
15 ~~will company for any reason specified in section 3081 of this title, and~~
16 ~~dissociation of a member manager or, if none, a member of a term company~~
17 ~~but only if the dissociation was for a reason provided in subdivisions 3081(6)~~
18 ~~through (10) of this title and occurred before the expiration of the stated~~
19 ~~duration in the articles of organization, but the company is not dissolved and~~
20 ~~required to be wound up by reason of the dissociation:~~

1 ~~(A) if, within 90 days after the dissociation, a majority in interest of~~
2 ~~the remaining members agree to continue the business of the company; or~~

3 ~~(B) the business of the company is continued under a right to~~
4 ~~continue stated in the operating agreement;~~

5 ~~(4) an event that makes it unlawful for all or substantially all of the~~
6 ~~business of the company to be continued, but any cure of illegality within 90~~
7 ~~days after notice to the company of the event is effective retroactively to the~~
8 ~~date of the event for purposes of this section;~~

9 ~~(5) on application by a member, upon entry of a final judicial decree~~
10 ~~that:~~

11 ~~(A) the economic purpose of the company is likely to be~~
12 ~~unreasonably frustrated;~~

13 ~~(B) another member has engaged in conduct relating to the~~
14 ~~company's business that makes it not reasonably practicable to carry on the~~
15 ~~business of the company with that member;~~

16 ~~(C) it is not otherwise reasonably practicable to carry on the~~
17 ~~company's business in conformity with the articles of organization and the~~
18 ~~operating agreement;~~

19 ~~(D) a dissociated member has the right to have the company~~
20 ~~dissolved and its business wound up for failure to cause the member's~~

1 ~~distributional interest to be purchased pursuant to sections 3091 and 3092 of~~
2 ~~this title; or~~

3 ~~(E) the managers or members in control of the company have acted,~~
4 ~~are acting or will act in a manner that is illegal, oppressive, fraudulent or~~
5 ~~unfairly prejudicial to the petitioning member.~~

6 ~~(6) the expiration of a term specified in the company's articles of~~
7 ~~organization.~~

8 (3) the passage of 90 consecutive days during which the company has
9 no members;

10 (4) on application by a member, the entry by the Superior Court of an
11 order dissolving the company on the grounds that:

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

14 (B) it is not reasonably practicable to carry on the company's
15 activities in conformance with the certificate of organization and the operating
16 agreement; or

17 (5) on application by a member, the entry by the Superior Court of an
18 order dissolving the company on the grounds that the managers or those
19 members in control of the company:

20 (A) have acted, are acted, or will act in a manner that is illegal or
21 fraudulent; or

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

3 (b) In an action brought under subdivision (a)(5) of this section, the Court
4 may order a remedy other than dissolution.

5 § 3102. LIMITED LIABILITY COMPANY CONTINUES AFTER
6 DISSOLUTION

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

9 (b) At any time after the dissolution of a limited liability company and
10 before the winding up of its business is completed, all of the members,
11 ~~including a dissociated member whose dissociation caused the dissolution, or,~~
12 if different, the number or percentage of members specified in the operating
13 agreement to dissolve or liquidate the company may unanimously waive the
14 right to have the company's business wound up and the company terminated-
15 ~~In that case, in which case:~~

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

1 (2) the rights of a third party accruing under ~~subsection 3104(a)~~ section
2 3104 of this title or arising out of conduct in reliance on the dissolution before
3 the third party knew or received a notification of the waiver are not adversely
4 affected.

5 § 3103. RIGHT TO WIND UP LIMITED LIABILITY COMPANY'S
6 BUSINESS

7 (a) After dissolution, a member ~~who has not wrongfully dissociated~~ may
8 participate in winding up a limited liability company's business, but on
9 application of any member, member's legal representative, or transferee, the
10 superior court, for good cause shown, may order judicial supervision of the
11 winding up.

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

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

16 (2) may:

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

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

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

3 (D) transfer the company's property;

4 (E) settle disputes by mediation or arbitration; and

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

6 (c) A If a dissolved limited liability company has no members, the legal
7 representative of the last surviving member may wind up a limited liability
8 company's business person to have been a member may wind up the activities
9 of the company. If the person does so, the person has the powers of a sole
10 manager under subsection 3054(c) of this title and is deemed to be a manager
11 for the purposes of subdivision 3042(a)(2) of this title.

12 ~~(e) A person winding up a limited liability company's business may~~
13 ~~preserve the company's business or property as a going concern for a~~
14 ~~reasonable time, prosecute and defend actions and proceedings, whether civil,~~
15 ~~criminal or administrative, settle and close the company's business, dispose of~~
16 ~~and transfer the company's property, discharge the company's liabilities,~~
17 ~~distribute the assets of the company pursuant to section 3106 of this title, settle~~
18 ~~disputes by mediation or arbitration and perform other necessary acts.~~

19 (d)(1) If the legal representative under subsection (c) of this section
20 declines or fails to wind up the company's activities, a person may be
21 appointed to do so by the consent of transferees who own a majority of the

1 rights to receive distributions as transferees at the time the consent is to be
2 effective.

3 (2) A person appointed under this subsection:

4 (A) has the powers of a sole manager under subsection 3054(c) of
5 this title and is deemed to be a manager for purposes of subdivision 3042(a)(2)
6 of this title; and

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

9 (i) state that the company has no members;

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

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

13 (e) The Superior Court may order judicial supervision of the winding up of
14 a dissolved limited liability company, including the appointment of a person to
15 wind up the company's activities:

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

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

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

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

1 (C) within a reasonable time following the dissolution, a person has
2 not been appointed pursuant to subsection (c) of this section; or
3 (3) in connection with a proceeding under subdivision 3101(a)(4) or (5)
4 of this title.

5 § 3104. MEMBER’S OR MANAGER’S POWER AND LIABILITY AS
6 AGENT AFTER DISSOLUTION

7 ~~(a)~~ A limited liability company is bound by a member’s or manager’s act
8 after dissolution that:

- 9 (1) is appropriate for winding up the company’s business; or
10 (2) would have bound the company under section 3041 of this title
11 before dissolution, if the other party to the transaction did not have notice of
12 the dissolution.

13 ~~(b) A member or manager who, with knowledge of the dissolution, subjects~~
14 ~~a limited liability company to liability by an act that is not appropriate for~~
15 ~~winding up the company’s business is liable to the company for any damage~~
16 ~~caused to the company arising from the liability.~~

17 § 3105. ARTICLES OF TERMINATION

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

- 21 (1) the name of the company;

1 (2) the date of the dissolution; and

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

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

7 § 3106. DISTRIBUTION OF ASSETS IN WINDING UP LIMITED

8 LIABILITY COMPANY'S BUSINESS

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

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

18 § 3107. KNOWN CLAIMS AGAINST DISSOLVED LIMITED LIABILITY

19 COMPANY

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

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

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

4 (2) provide a mailing address where the claim is to be sent;

5 (3) state the deadline for receipt of the claim, which may not be less than
6 120 days after the date the written notice is received by the claimant; and

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

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

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

11 (2) in the case of a claim that is timely received but rejected by the
12 ~~dissolved~~ company;

13 (A) the company causes the claimant to receive notice in a record
14 stating that the claim is rejected and will be barred unless the claimant
15 commences an action against the company to enforce the claim within 90 days
16 after the claimant receives the notice; and

17 (B) the claimant does not commence a proceeding to enforce the
18 claim the required action within the 90 days after the receipt of the notice of
19 the rejection.

20 (d) ~~For purposes of this section, “claim” does not include a contingent~~
21 ~~liability or a claim based on an event occurring after the effective date of~~

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

4 § 3108. OTHER CLAIMS AGAINST DISSOLVED LIMITED LIABILITY
5 COMPANY

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

9 (b) The notice ~~must~~ shall:

10 (1) be published at least once in a newspaper of general circulation in
11 the county in which the dissolved limited liability company's principal office is
12 located or, if it has none in this ~~state~~ State, in the county in which its
13 designated office is or was last located, and sent to the ~~office of the attorney~~
14 general Office of the Attorney General;

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

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

20 (c)(1) If the dissolved limited liability company sends notice to the ~~attorney~~
21 general Attorney General and publishes a newspaper notice in accordance with

1 subsection (b) of this section, ~~causes a cause~~ of action against a dissolved
2 limited liability company, whether arising before or after the dissolution of the
3 limited liability company, may be enforced only as follows:

4 (A) against the dissolved limited liability company; and

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

8 (2) ~~All causes~~ A cause of action against a dissolved limited liability
9 company arising under subdivision (1)(A) of this subsection ~~are~~ is
10 extinguished unless the claimant commences a proceeding to enforce the cause
11 of action against the dissolved limited liability company prior to the expiration
12 of the statute of limitations applicable to the cause of action.

13 (3) ~~All causes~~ A cause of action against a dissolved limited liability
14 company arising under subdivision (1)(B) of this subsection ~~are~~ is extinguished
15 unless the claimant commences a proceeding to enforce the cause of action
16 against ~~that~~ a member of a dissolved limited liability company prior to the
17 earlier of the following:

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

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

1 § 3109. ENFORCEMENT OF CLAIMS AGAINST DISSOLVED LIMITED
2 LIABILITY COMPANY

3 A claim not barred under section 3108 of this title may be enforced against
4 the dissolved limited liability company:

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

8 (2) if the assets have been distributed in liquidation, against a member of
9 the dissolved company to the extent of the member's proportionate share of the
10 claim or the company's assets distributed to the member in liquidation,
11 whichever is less, but a member's total liability for all claims under this section
12 may not exceed the total amount of assets distributed to the member.

13 ~~Subchapter 9. Conversions and Mergers [Repealed.]~~

14 Subchapter ~~10~~ 8. Foreign Limited Liability Companies

15 § ~~3134~~ 3111. LAW GOVERNING FOREIGN LIMITED LIABILITY

16 COMPANIES

17 (a) The laws of the state or other jurisdiction under which a foreign limited
18 liability company is organized govern its organization and internal affairs and
19 the liability ~~as among its managers, members and their transferees~~ of a member
20 as a member, and a manager as a manager, for the debts, obligations, or other
21 liabilities of the foreign limited liability company or series thereof.

1 (b) A foreign limited liability company may not be denied a certificate of
2 authority by reason of any difference between the laws of another jurisdiction
3 under which the foreign company is ~~organized~~ formed and the laws of this
4 ~~state~~ State.

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

8 § ~~3132~~ 3112. APPLICATION FOR CERTIFICATE OF AUTHORITY

9 (a) A foreign limited liability company may apply for a certificate of
10 authority to transact business in this ~~state~~ State by delivering an application to
11 the ~~secretary of state~~ Secretary of State for filing. The application ~~must~~ shall
12 set forth:

13 (1) the name of the foreign company ~~or~~ and, if its name is unavailable
14 for use in this ~~state~~ State, a an alternate name that satisfies the requirements of
15 section ~~3136~~ 3116 of this title;

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

17 (3) ~~the street address, and the mailing address if different from the street~~
18 ~~address, of its principal office; [Repealed.]~~

19 (4) the address of its initial designated office ~~in this state~~;

1 (5) the name and street address, and the mailing address if different from
2 the street address, of its ~~initial~~ designated agent for service of process in this
3 ~~state;~~ State

4 ~~(6) whether the company is a term limited liability company and, if so,~~
5 ~~the duration of its term;~~

6 ~~(7) whether the company is manager managed, and, if so, the name and~~
7 ~~address of each initial manager; and~~

8 ~~(8) whether the members of the company are to be liable for its debts~~
9 ~~and obligations under a provision similar to subsection 3043(b) of this title.~~

10 (b) A foreign limited liability company shall deliver with the completed
11 application a certificate of existence or a document of similar import,
12 authenticated by the ~~secretary of state~~ Secretary of State or other official
13 having custody of company records in the state or country under whose law it
14 is organized, dated no earlier than ~~30~~ 90 days prior to filing of the application.

15 § ~~3133~~ 3113. ACTIVITIES NOT CONSTITUTING TRANSACTING

16 BUSINESS

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

1 (b) Except as provided in subsection (c) of this section, “doing business” or
2 “transacting business” shall mean and include each act, power₁ or privilege
3 exercised or enjoyed in this ~~state~~ State by a foreign limited liability company.

4 (c) Among others, the following activities without more do not constitute
5 transacting business for the purpose of determining whether a foreign limited
6 liability company is required to obtain a certificate of authority under
7 subsection (a) of this section:

8 (1) maintaining, defending₁ or settling any proceeding;

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

11 (3) maintaining bank accounts;

12 (4) maintaining offices or agencies for the transfer, exchange₁ and
13 registration of the foreign company’s own securities or maintaining trustees or
14 depositories with respect to those securities;

15 (5) selling through independent contractors;

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

19 (7) creating or acquiring indebtedness, mortgages₁ or security interests
20 in real or personal property;

1 (8) securing or collecting debts or enforcing mortgages or other security
2 interests in property securing the debts, and holding, protecting, and
3 maintaining property so acquired;

4 (9) owning real or personal property;

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

7 (11) transacting business in interstate commerce.

8 § ~~3134~~ 3114. ISSUANCE OF CERTIFICATE OF AUTHORITY

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

14 § ~~3135~~ 3115. AMENDED CERTIFICATE OF AUTHORITY

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

18 (1) changes its name; and

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

20 ~~(3) becomes or ceases to be a term limited liability company;~~

21 ~~(4) becomes or ceases to be manager managed; or~~

1 ~~(5) the members of the company become or ceases to be liable for its~~
2 ~~debts and obligations under a provision similar to subsection 3043(b) of this~~
3 ~~title.~~

4 (b) The requirements of section 3134 of this title for obtaining an original
5 certificate of authority apply to obtaining an amended certificate under this
6 section.

7 § ~~3136~~ 3116. NAME OF FOREIGN LIMITED LIABILITY COMPANY

8 ~~(a) If the name of a foreign limited liability company does not satisfy the~~
9 ~~requirements of section 3005 of this title, the company to obtain or maintain a~~
10 ~~certificate of authority to transact business in this state:~~

11 ~~(1) shall add the words “limited liability company” or “limited~~
12 ~~company”, or the abbreviation “L.L.C.”, “LLC”, “L.C.” or “LC” to its name~~
13 ~~for use in this state; or~~

14 ~~(2) shall use an available trade name to transact business in this state if it~~
15 ~~delivers to the secretary of state for filing a copy of the resolution of its~~
16 ~~managers, in the case of a manager managed company, or of its members, in~~
17 ~~the case of a member managed company, adopting the trade name.~~

18 ~~(b) Except as authorized by subsections (c) and (d) of this section, a foreign~~
19 ~~limited liability company’s name, based upon the records of the secretary of~~
20 ~~state, shall be distinguishable from, and not the same as, deceptively similar to,~~
21 ~~or likely to be confused with or mistaken for any name granted, registered, or~~

1 reserved under this chapter, or the name of any other entity, whether domestic
2 or foreign, that is granted, reserved or registered by or with the secretary of
3 state.

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

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

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

18 (d) ~~A foreign limited liability company may use the name, including the
19 trade name, of another domestic or foreign limited liability company that is
20 used in this state if the other company is organized or authorized to transact
21 business in this state and the proposed user company:~~

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

5 (a)(1) A foreign limited liability company whose name does not comply
6 with section 3005 of this title may not obtain a certificate of authority until it
7 adopts, for the purpose of transacting business in this State, an alternate name
8 that complies with section 3005 of this title.

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

12 (3) After obtaining a certificate of authority with an alternate name, a
13 foreign limited liability company shall transact business in this State under the
14 alternate name unless the company is authorized under chapter 15 of this title
15 to transact business in this State under another name.

16 ~~(e)(b)~~ If a foreign limited liability company authorized to transact business
17 in this ~~state~~ State changes its name to one that does not satisfy the requirements
18 of section 3005 of this title, it may not transact business in this ~~state~~ under the
19 ~~name as changed until it adopts a name satisfying the requirements of section~~
20 ~~3005 of this title~~ State until it complies with subsection (a) of this section and
21 obtains an amended certificate of authority.

1 § ~~3137~~ 3117. REVOCATION OF CERTIFICATE OF AUTHORITY

2 (a) A certificate of authority of a foreign limited liability company to
3 transact business in this ~~state~~ State may be revoked by the ~~secretary of state~~
4 Secretary of State in the manner provided in ~~subsection~~ subsections (b) and (c)
5 of this section if:

6 ~~(1) the company fails to:~~

7 ~~(A) appoint and maintain an agent for service of process as required~~
8 ~~by this chapter; or~~

9 ~~(B) file a statement of a change in the name or business address of~~
10 ~~the agent for service of process as required by this chapter; or~~

11 ~~(2) a misrepresentation has been made of any material matter in any~~
12 ~~application, report, affidavit or other document submitted by the company~~
13 ~~pursuant to this chapter~~

14 (1) the company does not:

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

17 (B) appoint and maintain an agent for service of process as required
18 by section 3008 of this title; or

19 (C) deliver for filing a statement of change under section 3009 of this
20 title within 30 days after a change has occurred in the name or address of the
21 agent; or

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

4 ~~(b)(1) The secretary of state may not~~ To revoke a certificate of authority of
5 a foreign limited liability company ~~unless the secretary of state sends the~~
6 ~~company notice of the revocation, at least 60 days before its effective date, the~~
7 Secretary of State shall file a notice of revocation and send a copy to it's the
8 company's agent for service of process in this state State, or if the company
9 ~~fails to~~ does not appoint and maintain a proper agent in this state, ~~addressed to~~
10 ~~the office required to be maintained by section 3008 of this title State, to the~~
11 company's designated office. The notice must identify the cause for the
12 ~~revocation of the certificate of authority. The authority of the company to~~
13 ~~transact business in this state ceases on the effective date of the revocation~~
14 ~~unless the foreign limited liability company cures the failure before that date.~~

15 (2) A notice of revocation shall state:

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

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

19 (c) The authority of a foreign limited liability company to transact business
20 in this State shall cease on the effective date of the notice of revocation unless,
21 before that date, the company cures each ground for revocation stated in the

1 notice filed under subsection (b) of this section. If the company cures each
2 ground, the Secretary of State shall file a record so stating.

3 § ~~3138~~ 3118. CANCELLATION OF AUTHORITY

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

10 § ~~3139~~ 3119 . EFFECT OF FAILURE TO OBTAIN CERTIFICATE OF
11 AUTHORITY

12 (a) A foreign limited liability company transacting business in this ~~state~~
13 State may not maintain a proceeding or raise a counterclaim, cross-claim, or
14 affirmative defense in any court in this ~~state~~ State until it obtains a certificate
15 of authority to transact business in this ~~state~~ State.

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

20 (c) ~~Limitations on personal liability of managers, members and their~~
21 ~~transferees are not waived solely by transacting business in this state without a~~

1 ~~certificate of authority~~ A member or manager of a foreign limited liability
2 company is not liable for the debts, obligations, or other liabilities of the
3 company solely because the company transacted business in this State without
4 a certificate of authority.

5 (d) If a foreign limited liability company transacts business in this ~~state~~
6 State without a certificate of authority, it appoints the ~~secretary of state~~
7 Secretary of State as its agent for service of process for claims arising out of
8 the transaction of business in this ~~state~~ State.

9 § ~~3140~~ 3120. ACTION BY ATTORNEY GENERAL

10 The ~~attorney general~~ Attorney General may maintain an action to restrain a
11 foreign limited liability company from transacting business in this ~~state~~ State in
12 violation of this chapter.

13 ~~Subchapter 13. Foreign Law Limited Liability Companies~~

14 § ~~3181~~ 3121. ELECTION

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

17 (1) ~~Designating~~ designating itself as ~~such a foreign law limited liability~~
18 company in its articles of organization filed pursuant to section 3023 of this
19 title;

20 (2) ~~Including~~ including in its name either the term “foreign law limited
21 liability company,” the term “Foreign Law Company,” or the abbreviation

1 “F.L.L.L.C.” or “F.L.C.” in lieu of the words or abbreviations required under
2 subsection 3005(a) of this title; and

3 (3) ~~Complying~~ complying with the requirements of this subchapter and
4 paying the filing fees pursuant to section 3013 of this title.

5 § ~~3182~~ 3122. DESIGNATION OF CONTROLLING FOREIGN LAW

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

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

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

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

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

1 (5) ~~A~~ a designation of those classes of individuals or officers within the
2 chosen legal structure who shall have authority to act on behalf of the foreign
3 law limited liability company equivalent to the authority of managers under
4 subsections 3041(b) and (c) of this title, and any limitations on or clarification
5 of that authority.

6 (b) Any bylaws, agreements, or other statements of principles governing
7 the internal governance affairs of the foreign law limited liability company
8 addressed in the applicable foreign law but not required to be in the constituent
9 filing shall be set forth as part of, or in lieu of, the operating agreement
10 required by section 3003 of this title. The prohibitions on a waiver under
11 subsection 3003(b) shall not apply to foreign law limited liability companies.

12 § ~~3183~~ 3123. SCOPE OF DESIGNATED FOREIGN LAW

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

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

20 (2) ~~Will work a~~ cause fraud or manifest injustice under Vermont or
21 United States law;

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

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

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

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

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

18 § ~~3184~~ 3124. JURISDICTION

19 (a) Vermont and other courts designated pursuant to section ~~3182~~ 3122 of
20 this title shall have jurisdiction over all disputes relating to the internal
21 governance affairs of a foreign law limited liability company.

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

6 ~~Subchapter 11. Derivative Actions~~

7 Subchapter 9. Actions by Members

8 § ~~3151~~ 3131. RIGHT OF ACTION

9 ~~A member of a limited liability company may maintain an action in the~~
10 ~~right of the company if the members or managers having authority to do so~~
11 ~~have refused to commence the action or an effort to cause those members or~~
12 ~~managers to commence the action is not likely to succeed.~~

13 (a) Subject to subsection (b) of this section, a member may maintain a
14 direct action against another member, a manager, or the limited liability
15 company to enforce the member's rights and protect the member's interests,
16 including rights and interests under the operating agreement, under this title, or
17 arising independently of the membership relationship.

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

1 § 3132. DERIVATIVE ACTION

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

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

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

10 ~~§ 3152~~ 3133. PROPER PLAINTIFF

11 ~~In a~~ A ~~derivative action for a limited liability company, the plaintiff must be~~
12 under section 3132 of this title may be maintained only by a person that is a
13 member of the company ~~when~~ at the time the action is commenced; and:

14 ~~(1) must have been~~ was a member ~~at the time of the transaction of which~~
15 ~~the plaintiff complains~~ when the conduct giving rise to the action occurred; or

16 ~~(2) the plaintiff's~~ whose status as a member ~~must have devolved upon~~
17 ~~the plaintiff~~ on the person by operation of law or pursuant to the terms of the
18 operating agreement from a person ~~who~~ that was a member at the time of the
19 transaction.

1 § ~~3153~~ 3134. PLEADING

2 In a derivative action ~~for a limited liability company~~, the complaint must set
3 ~~forth~~ state with particularity:

4 (1) ~~the effort of the plaintiff to secure initiation of the action by a~~
5 ~~member or manager or the reasons for not making the effort~~ the date and
6 content of plaintiff's demand and the response to the demand by the other
7 members or the managers; and

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

9 § 3135. SPECIAL LITIGATION COMMITTEE

10 (a)(1) If a limited liability company is named as or made a party in a
11 derivative proceeding, the company may appoint a special litigation committee
12 to investigate the claims asserted in the proceeding and determine whether
13 pursuing the action is in the best interests of the company.

14 (2) If the company appoints a special litigation committee, on motion by
15 the committee made in the name of the company, except for good cause
16 shown, the court shall stay discovery for the time reasonably necessary to
17 permit the committee to make its investigation.

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

19 (A) enforcing a person's right to information under section 3033 of
20 this title; or

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

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

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

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

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

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

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

12 (A) by a majority of the managers not named as parties in the
13 proceeding; or

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

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

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

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

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

1 (4) be dismissed.

2 (e)(1) After making a determination under subsection (d) of this section, a
3 special litigation committee shall file with the court a statement of its
4 determination and its report supporting its determination, and shall serve each
5 party with a copy of the determination and report.

6 (2) The court shall determine whether the members of the committee
7 were disinterested and independent and whether the committee conducted its
8 investigation and made its recommendation in good faith, independently, and
9 with reasonable care, with the committee having the burden of proof.

10 (3) If the court finds that the members of the committee were
11 disinterested and independent and that the committee acted in good faith,
12 independently, and with reasonable care, the court shall enforce the
13 determination of the committee.

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

17 § ~~3154.~~ 3136. PROCEEDS AND EXPENSES

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

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

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

3 (b) If a derivative action for a limited liability company is successful, in
4 whole or in part, or if anything is received by the plaintiff as a result of a
5 judgment, compromise or settlement of an action or claim, the court may
6 award the plaintiff reasonable expenses, including reasonable attorney’s fees
7 and costs, and shall direct the plaintiff to remit to from the recovery of the
8 limited liability company the remainder of the proceeds received.

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

11 Subchapter 10. Conversions, Mergers, and Domestications

12 § 3141. DEFINITIONS

13 In this subchapter:

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

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

18 (3) “Conversion” means a transaction authorized sections by 3142
19 through 3147 of this title.

20 (4) “Converted organization” means the converting organization as it
21 continues in existence after a conversion.

1 (5) “Converting organization” means the domestic organization that
2 approves a plan of conversion pursuant to section 3144 of this title or the
3 foreign organization that approves a conversion pursuant to the law of its
4 jurisdiction of formation.

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

7 (7) “Domesticated company” means the company that exists after a
8 domesticating foreign limited liability company or limited liability company
9 effects a domestication pursuant to sections 3152 through 3155 of this title.

10 (8) “Domesticating company” means the company that effects a
11 domestication pursuant to sections 3152 through 3155 of this title.

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

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

16 (11) “Interest holder” means:

17 (A) a shareholder of a business corporation;

18 (B) a member of a nonprofit corporation;

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

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

21 (E) a limited partner of a limited partnership;

1 (F) a member of a limited liability company;

2 (G) a shareholder of a general cooperative association;

3 (H) a member of a limited cooperative association;

4 (I) a member of an unincorporated nonprofit association;

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

7 (K) any other direct holder of an interest.

8 (12) “Limited partner” means a limited partner in a limited partnership.

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

12 (14) “Organization”:

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

15 (i) a business corporation;

16 (ii) a nonprofit corporation;

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

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

20 (v) a limited liability company;

21 (vi) a general cooperative association;

- 1 (vii) a limited cooperative association;
- 2 (viii) an unincorporated nonprofit association;
- 3 (ix) a statutory trust, business trust, or common-law business
4 trust; or
- 5 (x) any other person that has:
- 6 (I) a legal existence separate from any interest holder of that
7 person; or
- 8 (II) the power to acquire an interest in real property in its own
9 name; and
- 10 (B) does not include:
- 11 (i) an individual;
- 12 (ii) a trust with a predominantly donative purpose or a charitable
13 trust;
- 14 (iii) an association or relationship that is not an organization listed
15 in subdivision (A) of this subdivision (14) and is not a partnership under
16 chapter 22 or 23 of this title, or a similar provision of the law of another
17 jurisdiction;
- 18 (iv) a decedent’s estate; or
- 19 (v) a government or a governmental subdivision, agency, or
20 instrumentality.

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

4 (A) for a domestic or foreign general partnership, its partnership
5 agreement;

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

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

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

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

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

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

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

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

3 (19) “Personal liability” means:

4 (A) any liability for a debt, obligation, or other liability of an
5 organization which is imposed on a person that co-owns, has an interest in, or
6 is a member of the organization:

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

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

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

16 (20) “Private organizational documents” means organizational
17 documents or portions thereof that are not part of the organization’s public
18 record, if any, and includes:

19 (A) the bylaws of a business corporation;

20 (B) the bylaws of a nonprofit corporation;

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

- 1 (D) the partnership agreement of a limited partnership;
2 (E) the operating agreement of a limited liability company;
3 (F) the bylaws of a general cooperative association;
4 (G) the bylaws of a limited cooperative association;
5 (H) the governing principles of an unincorporated nonprofit
6 association; and

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

9 (21) “Protected agreement” means:

10 (A) a record evidencing indebtedness and any related agreement in
11 effect on the effective date set forth in section 3171 of this title;

12 (B) an agreement that is binding on an organization on the effective
13 date set forth in section 3171 of this title;

14 (C) the organizational documents of an organization in effect on the
15 effective date set forth in section 3171 of this title; or

16 (D) an agreement that is binding on any of the governors or interest
17 holders of an organization on the effective date set forth in section 3171 of this
18 title.

19 (22) “Public organizational documents” means the record of
20 organizational documents required to be filed with the Secretary of State to

1 form an organization, and any amendment to or restatement of that record, and

2 includes:

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

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

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

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

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

8 (F) the articles of organization of a limited cooperative

9 association; and

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

11 business trust.

12 (23) “Registered foreign organization” means a foreign organization that

13 is registered to do business in this State pursuant to a record filed by the

14 Secretary of State.

15 (24) “Surviving organization” means an organization into which one or

16 more other organizations are merged whether the organization preexisted the

17 merger or was created by the merger.

18 § 3142. CONVERSION AUTHORIZED

19 (a) By complying with sections 3142 through 3146 of this title, a domestic

20 limited liability company may become a domestic organization that is a

21 different type of organization.

1 (b) By complying with sections 3142 through 3146 of this title, a domestic
2 partnership or limited partnership may become a domestic limited liability
3 company.

4 (c) By complying with sections 3142 through 3146 of this title applicable
5 to foreign organizations, a foreign organization that is not a foreign limited
6 liability company may become a domestic limited liability company if the
7 conversion is authorized by the law of the foreign organization’s jurisdiction of
8 formation.

9 (d) If a protected agreement contains a provision that applies to a merger of
10 a domestic limited liability company but does not refer to a conversion, the
11 provision applies to a conversion of the company as if the conversion were a
12 merger until the provision is amended after the effective date set forth in
13 section 3171 of this title.

14 § 3143. PLAN OF CONVERSION

15 (a) A domestic limited liability company may convert to a different type of
16 organization under section 3142 of this title, by approving a plan of
17 conversion. The plan shall be in a record and contain:

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

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

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

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

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

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

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

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

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

1 § 3144. APPROVAL OF CONVERSION

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

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

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

12 (A) the operating agreement of the company provides in a record for
13 the approval of a conversion or a merger in which some or all of its members
14 become subject to personal liability by the affirmative vote or consent of fewer
15 than all the members; and

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

19 (b) For a conversion of a domestic general partnership or domestic limited
20 partnership into a domestic limited liability company, the plan of conversion

1 shall be approved by all of the partners or by a number or percentage of the
2 partners required for the conversion in the partnership agreement.

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

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

10 § 3145. AMENDMENT OR ABANDONMENT OF PLAN OF

11 CONVERSION

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

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

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

20 (A) the amount or kind of interests, securities, obligations, money,
21 other property, rights to acquire interests or securities, or any combination of

1 the foregoing, to be received by any of the members of the converting
2 company under the plan;

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

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

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

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

14 (2) by its general partner or general partners in the manner provided in
15 the plan, but a partner that was entitled to vote on or consent to approval of the
16 conversion is entitled to vote on or consent to any amendment of the plan that
17 will change:

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

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

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

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

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

13 (d)(1) If a plan of conversion is abandoned after a statement of conversion
14 has been delivered to the Secretary of State for filing and before the statement
15 becomes effective, a statement of abandonment, signed by the converting
16 organization, shall be delivered to the Secretary of State for filing before the
17 statement of conversion becomes effective.

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

20 (3) The statement of abandonment must contain:

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

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

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

5 § 3146. STATEMENT OF CONVERSION; EFFECTIVE DATE OF
6 CONVERSION

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

9 (b) A statement of conversion must contain:

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

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

14 (3) if the converting organization is a domestic limited liability
15 company, a statement that the plan of conversion was approved in accordance
16 with this subchapter, or, if the converting organization is a foreign
17 organization, a statement that the conversion was approved by the foreign
18 organization in accordance with the law of its jurisdiction of formation;

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

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

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

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

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

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

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

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

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

3 (B) when the statement is effective.

4 § 3147. EFFECT OF CONVERSION

5 (a) When a conversion becomes effective:

6 (1) the converted organization is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (e) When a conversion becomes effective, a foreign organization that is the
18 converted organization may be served with process in this State for the
19 collection and enforcement of any of its debts, obligations, and other liabilities
20 as provided in section 3010 of this title.

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

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

6 § 3148. MERGER OF ENTITIES

7 (a) A limited liability company may merge with one or more other
8 constituent organizations pursuant to this section, sections 3149 through 3151
9 of this title, and a plan of merger, if:

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

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

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

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

17 (1) the name and form of each constituent organization;

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

20 (3) the terms and conditions of the merger, including the manner and
21 basis for converting the interests in each constituent organization into any

1 combination of money, interests in the surviving organization, and other
2 consideration;

3 (4) if the surviving organization is to be created by the merger, the
4 surviving organization's organizational documents that are proposed to be in a
5 record; and

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

9 § 3149. ACTION ON PLAN OF MERGER BY CONSTITUENT LIMITED

10 LIABILITY COMPANY

11 (a) Subject to section 3156 of this title, a plan of merger shall be approved
12 in accordance with the organizational documents of the constituent limited
13 liability company, or, in the absence of a provision governing approval of
14 conversions, by all the members of the limited liability company entitled to
15 vote on or consent to any matter.

16 (b) Subject to section 3156 of this title and any contractual rights, after a
17 merger is approved, and at any time before the articles of merger are delivered
18 to the Secretary of State for filing under section 3146 of this title, a constituent
19 limited liability company may amend the plan or abandon the merger:

20 (1) as provided in the plan; or

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

3 § 3150. FILINGS REQUIRED FOR MERGER; EFFECTIVE DATE.

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

6 (1) each constituent limited liability company, as provided in subsection
7 3205(a) of this title; and

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

10 (b) Articles of merger under this section shall include:

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

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

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

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

19 (A) if it will be a limited liability company, the company's certificate
20 of organization; or

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

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

7 (6) a statement as to each constituent organization that the merger was
8 approved as required by the organization’s governing statute;

9 (7) if the surviving organization is a foreign organization not authorized
10 to transact business in this State, the street and mailing addresses of an office
11 that the Secretary of State may use for the purposes of subsection 3145(b) of
12 this title; and

13 (8) any additional information required by the governing statute of any
14 constituent organization.

15 (c) Each constituent limited liability company shall deliver the articles of
16 merger for filing in the Office of the Secretary of State.

17 (d) A merger becomes effective under this subchapter:

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

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

1 (B) subject to section 3026 of this title, as specified in the articles of
2 merger; or

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

5 § 3151. EFFECT OF MERGER

6 (a) When a merger becomes effective:

7 (1) the surviving organization continues or comes into existence;

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

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

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

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

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

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

3 (8) except as otherwise agreed, if a constituent limited liability company
4 ceases to exist, the merger does not dissolve the limited liability company for
5 the purposes of subchapter 7 of this chapter;

6 (9) if the surviving organization is created by the merger:

7 (A) if it is a limited liability company, the certificate of organization
8 becomes effective; or

9 (B) if it is an organization other than a limited liability company, the
10 organizational document that creates the organization becomes effective; and

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

14 (b)(1) A surviving organization that is a foreign organization consents to
15 the jurisdiction of the courts of this State to enforce any debt, obligation, or
16 other liability owed by a constituent organization, if before the merger the
17 constituent organization was subject to suit in this State on the debt, obligation,
18 or other liability.

19 (2) A surviving organization that is a foreign organization and not
20 authorized to transact business in this State appoints the Secretary of State as

1 its agent for service of process for the purposes of enforcing a debt, obligation,
2 or other liability under this subsection.

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

6 § 3152. DOMESTICATION

7 (a) A foreign limited liability company may become a limited liability
8 company pursuant to this section, sections 3153 through 3155 of this title, and
9 a plan of domestication, if:

10 (1) the foreign limited liability company's governing statute authorizes
11 the domestication;

12 (2) the domestication is not prohibited by the law of the jurisdiction that
13 enacted the governing statute; and

14 (3) the foreign limited liability company complies with its governing
15 statute in effecting the domestication.

16 (b) A limited liability company may become a foreign limited liability
17 company pursuant to this section, sections 3153 through 3155 of this title, and
18 a plan of domestication, if:

19 (1) the foreign limited liability company's governing statute authorizes
20 the domestication;

1 (2) the domestication is not prohibited by the law of the jurisdiction that
2 enacted the governing statute; and

3 (3) the foreign limited liability company complies with its governing
4 statute in effecting the domestication.

5 (c) A plan of domestication must be in a record and must include:

6 (1) the name of the domesticating company before domestication and
7 the jurisdiction of its governing statute;

8 (2) the name of the domesticated company after domestication and the
9 jurisdiction of its governing statute;

10 (3) the terms and conditions of the domestication, including the manner
11 and basis for converting interests in the domesticating company into any
12 combination of money, interests in the domesticated company, and other
13 consideration; and

14 (4) the organizational documents of the domesticated company that are,
15 or are proposed to be, in a record.

16 § 3153. ACTION ON PLAN OF DOMESTICATION BY

17 DOMESTICATING LIMITED LIABILITY COMPANY

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

19 (1) by all the members, subject to section 3156 of this title, if the
20 domesticating company is a limited liability company; and

1 (2) as provided in the domesticating company’s governing statute, if the
2 company is a foreign limited liability company.

3 (b) Subject to any contractual rights, after a domestication is approved, and
4 at any time before articles of domestication are delivered to the Secretary of
5 State for filing under section 3154 of this title, a domesticating limited liability
6 company may amend the plan or abandon the domestication:

7 (1) as provided in the plan; or

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

10 § 3154. FILINGS REQUIRED FOR DOMESTICATION; EFFECTIVE

11 DATE

12 (a) After a plan of domestication is approved, a domesticating company
13 shall deliver to the Secretary of State for filing articles of domestication, which
14 shall include:

15 (1) a statement, as the case may be, that the company has been
16 domesticated from or into another jurisdiction;

17 (2) the name of the domesticating company and the jurisdiction of its
18 governing statute;

19 (3) the name of the domesticated company and the jurisdiction of its
20 governing statute;

1 (4) the date the domestication is effective under the governing statute of
2 the domesticated company;

3 (5) if the domesticating company was a limited liability company, a
4 statement that the domestication was approved as required by this title;

5 (6) if the domesticating company was a foreign limited liability
6 company, a statement that the domestication was approved as required by the
7 governing statute of the other jurisdiction; and

8 (7) if the domesticated company was a foreign limited liability company
9 not authorized to transact business in this State, the street and mailing
10 addresses of an office that the Secretary of State may use for the purposes of
11 subsection 3155(b) of this title.

12 (b) A domestication becomes effective:

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

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

17 § 3155. EFFECT OF DOMESTICATION

18 (a) When a domestication takes effect:

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

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

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

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

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

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

13 (7) except as otherwise agreed, the domestication does not dissolve a
14 domesticating limited liability company for the purposes of subchapter 7 of
15 this chapter.

16 (b)(1) A domesticated company that is a foreign limited liability company
17 consents to the jurisdiction of the courts of this State to enforce any debt,
18 obligation, or other liability owed by the domesticating company, if, before the
19 domestication, the domesticating company was subject to suit in this State on
20 the debt, obligation, or other liability.

1 (2) A domesticated company that is a foreign limited liability company
2 and not authorized to transact business in this State appoints the Secretary of
3 State as its agent for service of process for purposes of enforcing a debt,
4 obligation, or other liability under this subsection.

5 (3) Service on the Secretary of State under this subsection must be made
6 in the same manner and has the same consequences as in section 3010 of this
7 title.

8 (c) If a limited liability company has adopted and approved a plan of
9 domestication under section 3152 of this title providing for the company to be
10 domesticated in a foreign jurisdiction, a statement surrendering the company's
11 certificate of organization must be delivered to the Secretary of State for filing,
12 setting forth:

13 (1) the name of the company;

14 (2) a statement that the certificate of organization is being surrendered in
15 connection with the domestication of the company in a foreign jurisdiction;

16 (3) a statement the domestication was approved as required by this
17 title; and

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

1 § 3156. RESTRICTIONS ON APPROVAL OF MERGERS,

2 CONVERSIONS, AND DOMESTICATIONS

3 (a) If a member of a constituent, converting, or domesticating limited
4 liability company will have personal liability with respect to a surviving,
5 converted, or domesticated organization, approval or amendment of a plan of
6 merger, conversion, or domestication are ineffective without the consent of the
7 member, unless:

8 (1) the company's operating agreement provides for approval of a
9 merger, conversion, or domestication with the consent of fewer than all the
10 members; and

11 (2) the member has consented to the provision of the operating
12 agreement.

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

17 § 3157. SUBCHAPTER NOT EXCLUSIVE

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

1 Subchapter 11. Low-Profit Limited Liability Companies

2 § 3161. ELECTION

3 A limited liability company organized pursuant to this title may elect to be a
4 low-profit limited liability company if and for so long at it satisfies the
5 requirements of section 3162 of this title.

6 § 3162. REQUIREMENTS

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

10 (1) The company:

11 (A) significantly furthers the accomplishment of one or more
12 charitable or educational purposes within the meaning of 26 U.S.C.
13 § 170(c)(2)(B); and

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

16 (2) No significant purpose of the company is the production of income
17 or the appreciation of property; provided, however, that the fact that a person
18 produces significant income or capital appreciation shall not, in the absence of
19 other factors, be conclusive evidence of a significant purpose involving the
20 production of income or the appreciation of property.

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

3 § 3163. FAILURE TO MEET REQUIREMENTS

4 (a) A limited liability company that elects to be an L3C and subsequently
5 fails to satisfy any one of the requirements set forth in section 3162 of this title
6 shall immediately cease to be a low-profit limited liability company, but by
7 continuing to meet all the other requirements of this chapter, continues to exist
8 as a limited liability company.

9 (b) In the event an L3C fails to satisfy the requirements of section 3162 of
10 this title, the company shall change its name to conform with subsection
11 3005(a) of this title.

12 Sec. 2. EFFECTIVE DATE; APPLICATION

13 (a) This section shall take effect on July 1, 2015.

14 (b) Sec. 1 shall take effect on July 1, 2015, and applies only to:

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

16 (2) except as otherwise provided in subsection (e) of this section, a
17 limited liability company formed before July 1, 2015, that elects, in the manner
18 provided in its operating agreement or by law for amending the operating
19 agreement, to be subject to this act.

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

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

3 (e) For the purposes of applying Sec. 1 to a limited liability company
4 formed before July 1, 2015, for the purposes of applying 11 V.S.A. § 3023 and
5 subject to 11 V.S.A. § 3003, language in the company's articles of
6 organization designating the company's management structure operates as if
7 that language were in the operating agreement.