

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: S4/21/21

A Bill

SENATE BILL 601

5 By: Senator J. Dismang
6

For An Act To Be Entitled

8 AN ACT TO REPEAL THE SMALL BUSINESS ENTITY TAX PASS
9 THROUGH ACT; TO ESTABLISH THE UNIFORM LIMITED
10 LIABILITY COMPANY ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12
13
14 TO REPEAL THE SMALL BUSINESS ENTITY
15 TAX PASS THROUGH ACT; AND TO ESTABLISH
16 THE UNIFORM LIMITED LIABILITY COMPANY
17 ACT.
18

19
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code Title 4, Chapter 32, is repealed.
23

~~CHAPTER 32~~

~~SMALL BUSINESS ENTITY TAX PASS THROUGH ACT~~

~~Subchapter 1 — General Provisions~~

~~4-32-101. Title.~~

28
29
30 ~~This chapter shall be known and may be cited as the “Small Business~~
31 ~~Entity Tax Pass Through Act”.~~
32

~~4-32-102. Definitions.~~

33
34 ~~As used in this chapter, unless the context otherwise requires:~~

35 ~~(1) “Articles of organization” means articles filed under § 4-~~
36 ~~32-201, and those articles as amended and restated;~~



1 ~~(2) “Corporation” means a corporation formed under the laws of~~
2 ~~any state or foreign country, including professional corporations or~~
3 ~~associations;~~

4 ~~(3) “Court” includes every court having jurisdiction in the~~
5 ~~case;~~

6 ~~(4) “Event of dissociation” means an event that causes a person~~
7 ~~to cease to be a member as provided in § 4-32-802;~~

8 ~~(5) “Foreign limited liability company” means an organization~~
9 ~~that is:~~

10 ~~(A) An unincorporated association;~~

11 ~~(B) Organized under laws of a state other than the laws of~~
12 ~~this state, or under the laws of any foreign country;~~

13 ~~(C) Organized under a statute pursuant to which an~~
14 ~~association may be formed that affords to each of its members limited~~
15 ~~liability with respect to the liabilities of the entity; and~~

16 ~~(D) Not required to be registered or organized under any~~
17 ~~statute of this state other than this chapter;~~

18 ~~(6) “Limited liability company” or “domestic limited liability~~
19 ~~company” means an organization formed under this chapter;~~

20 ~~(7) “Limited liability company interest” or “interest in the~~
21 ~~limited liability company” means the interest that can be assigned under § 4-~~
22 ~~32-704 and charged under § 4-32-705;~~

23 ~~(8) “Limited partnership” means a limited partnership formed~~
24 ~~under the laws of any state or foreign country;~~

25 ~~(9) “Manager” or “managers” means, with respect to a limited~~
26 ~~liability company that has set forth in its articles of organization that it~~
27 ~~is to be managed by managers, the person or persons designated in accordance~~
28 ~~with § 4-32-401;~~

29 ~~(10) “Member” or “members” means a person or persons who have~~
30 ~~been admitted to membership in a limited liability company as provided in §~~
31 ~~4-32-801 and who have not ceased to be members as provided in § 4-32-802;~~

32 ~~(11) “Operating agreement” means the written agreement which~~
33 ~~shall be entered into among all of the members as to the conduct of the~~
34 ~~business and affairs of a limited liability company;~~

35 ~~(12)(A) “Person” means an individual, a general partnership, a~~
36 ~~limited partnership, a domestic or foreign limited liability company, a~~

1 ~~trust, an estate, an association, a corporation, a custodian, a nominee and~~
2 ~~other individual entity in its own or representative capacity, or any other~~
3 ~~legal entity.~~

4 ~~(B) "Person" includes a protected series;~~

5 ~~(13) "Professional service" means any type of professional~~
6 ~~service which may be legally performed only pursuant to a license or other~~
7 ~~legally mandated personal authorization. For example: the personal service~~
8 ~~rendered by certified public accountants, architects, engineers, dentists,~~
9 ~~doctors, and attorneys at law; and~~

10 ~~(14) "State" means a state, territory, or possession of the~~
11 ~~United States, the District of Columbia, or the Commonwealth of Puerto Rico.~~

12
13 ~~4-32-103. Name.~~

14 ~~(a) The name of each limited liability company as set forth in its~~
15 ~~articles of organization must contain the words "Limited Liability Company"~~
16 ~~or "Limited Company" or the abbreviations "L.L.C.", "L.C.", "LLC", or "LC".~~
17 ~~The word "Limited" may be abbreviated as "Ltd." and the word "Company" may be~~
18 ~~abbreviated as "Co.".~~

19 ~~(b) A limited liability company name must be distinguishable upon the~~
20 ~~records of the Secretary of State from:~~

21 ~~(1) The name of any limited liability company, limited~~
22 ~~partnership, or corporation existing under the laws of this state or~~
23 ~~authorized to transact business in this state; or~~

24 ~~(2) Any name reserved under § 4-32-104.~~

25 ~~(c) The provisions of subsection (b) of this section shall not apply~~
26 ~~if the applicant files with the Secretary of State a certified copy of a~~
27 ~~final decree of a court of competent jurisdiction establishing the prior~~
28 ~~right of the applicant to the use of the name in this state.~~

29 ~~(d) The name of a limited liability company which performs~~
30 ~~professional service shall in addition contain the words "Professional~~
31 ~~Limited Liability Company" or "Professional Limited Company" or the~~
32 ~~abbreviations "P.L.L.C.", "P.L.C.", "PLLC", "PLC", and the words "Limited"~~
33 ~~and "Company" may be abbreviated as "Ltd." or "Co." and may not contain the~~
34 ~~name of any person who is not a member, except that the name of a former~~
35 ~~member or member of a predecessor organization may continue to be included in~~
36 ~~the name.~~

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~~4-32-104. Reservation of name.~~

~~(a) The exclusive right to use a name may be reserved by:~~

~~(1) Any person intending to organize a limited liability company and to adopt that name;~~

~~(2) Any limited liability company or any foreign limited liability company registered in this state that intends to adopt that name;~~

~~(3) Any foreign limited liability company intending to register in this state and to adopt that name; or~~

~~(4) Any person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.~~

~~(b) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic or foreign limited liability company, the Secretary of State shall reserve the name of the exclusive use of the applicant for a period of one hundred twenty (120) days from and after the date the application is filed with the Secretary of State.~~

~~(c) The holder of a reserved limited liability company name may renew the reservation for two (2) successive periods of one hundred twenty (120) days each from the date of the first renewal.~~

~~(d) The right to the exclusive use of a reserved name may be transferred to another person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name to be transferred and the name and address of the transferee. The transfer shall not extend the term during which the name is reserved.~~

~~4-32-105. [Repealed.]~~

~~4-32-106. Nature of business — Powers.~~

~~(a) A limited liability company may be organized under this chapter for any lawful purpose, including the performance of professional services and related activities. If the purpose for which a limited liability company is organized or its activities make it subject to a special provision of law, the limited liability company shall also comply with that provision.~~

1 ~~(b) A limited liability company shall possess and may exercise all~~
2 ~~powers and privileges granted by this chapter or by any other law or by its~~
3 ~~operating agreement, together with any powers incidental thereto, so far as~~
4 ~~such powers and privileges are necessary or convenient to the conduct,~~
5 ~~promotion, or attainment of the business, purposes, or activities of the~~
6 ~~limited liability company.~~

7
8 ~~4-32-107. [Repealed.]~~

9
10 ~~4-32-108. Use of fictitious names.~~

11 ~~(a) No limited liability company, domestic or foreign, shall conduct~~
12 ~~any business in this state under a fictitious name unless it first files with~~
13 ~~the Secretary of State a form supplied or approved by the Secretary of State~~
14 ~~giving the following information:~~

15 ~~(1) The fictitious name under which business is being or will be~~
16 ~~conducted by the applicant limited liability company;~~

17 ~~(2) A brief statement of the character of business to be~~
18 ~~conducted under the fictitious name; and~~

19 ~~(3) The name of the limited liability company, the state of~~
20 ~~organization, and location, giving the city and street address, of the~~
21 ~~registered office in the state of the applicant limited liability company.~~

22 ~~(b) Each such form shall be executed, without verification, in~~
23 ~~duplicate and filed with the Secretary of State. The Secretary of State shall~~
24 ~~retain one (1) counterpart; and the other counterpart, bearing the file marks~~
25 ~~of the Secretary of State, shall be returned to the limited liability~~
26 ~~company. However, the Secretary of State shall not accept such filing if the~~
27 ~~proposed fictitious name is the same as, or confusingly similar to, the name~~
28 ~~of any domestic corporation, limited liability company, limited partnership,~~
29 ~~limited liability partnership or any other entity registered with the~~
30 ~~Secretary of State, or any foreign entity authorized to do business in the~~
31 ~~state or any name reserved or registered under §§ 4-27-402, 4-27-403, 4-32-~~
32 ~~104, or 4-47-109.~~

33 ~~(c) Copies of such filed forms, certified by the respective filing~~
34 ~~officers, shall be admitted in evidence where the question of filing may be~~
35 ~~material.~~

36 ~~(d) If, after a filing under this section, the applicant limited~~

1 ~~liability company is dissolved, or, being a foreign limited liability~~
2 ~~company, surrenders or forfeits its rights to do business in Arkansas or,~~
3 ~~whether a domestic or foreign limited liability company, ceases to do~~
4 ~~business in Arkansas under the specified fictitious name, such limited~~
5 ~~liability company shall be obligated to file with the Secretary of State a~~
6 ~~cancellation of its privilege hereunder. If such cancellation is not filed,~~
7 ~~the Secretary of State, upon satisfactory evidence, may cancel such~~
8 ~~privilege.~~

9 ~~(e) If a limited liability company which has not filed under this~~
10 ~~section has heretofore or shall hereafter become a party to any contract,~~
11 ~~deed, conveyance, assignment, or instrument of encumbrance in which such~~
12 ~~limited liability company is referred to exclusively by a fictitious name,~~
13 ~~the obligations imposed upon the limited liability company under said~~
14 ~~instrument and the right sought to be conferred upon third parties thereunder~~
15 ~~may be enforced against it, but the rights accruing to the limited liability~~
16 ~~company under said instrument may not be enforced by the limited liability~~
17 ~~company in the courts of this state until it complies with this section and~~
18 ~~pays to the Treasurer of State a civil penalty of three hundred dollars~~
19 ~~(\$300), and in any suit by a limited liability company upon an instrument~~
20 ~~which identified it exclusively by a fictitious name, the limited liability~~
21 ~~company shall be required to allege compliance with this section.~~

22 ~~(f) Compliance with this section does not give a limited liability~~
23 ~~company an exclusive right to the use of the fictitious name, and the~~
24 ~~registration of a fictitious name under this section will not bar the use of~~
25 ~~the same name as the name of any domestic entity or any foreign entity~~
26 ~~authorized to do business in this state, but this chapter is not intended to~~
27 ~~bar any aggrieved party in such a situation from applying for equitable~~
28 ~~relief under principles of fair trade law.~~

29
30 ~~4-32-109. Registered name.~~

31 ~~(a) A foreign limited liability company may register its name, if the~~
32 ~~name is distinguishable upon the records of the Secretary of State from the~~
33 ~~names of any limited liability company, limited partnership, partnership, or~~
34 ~~corporation existing under the laws of this state or authorized to transact~~
35 ~~business in this state.~~

36 ~~(b) A foreign limited liability company registers its name by~~

1 ~~delivering it to the Secretary of State for filing an application;~~

2 ~~(1) Setting forth its name, or its name with any addition~~
3 ~~required by § 4-32-103, the state or country and date of its formation, and a~~
4 ~~brief description of the nature of the business in which it is engaged; and~~

5 ~~(2) Accompanied by a certificate of existence or a document of~~
6 ~~similar import from the state or country in which it was formed.~~

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

9 ~~(d)(1) A foreign limited liability company whose registration is~~
10 ~~effective may renew the registration for successive years by delivering to~~
11 ~~the Secretary of State for filing a renewal application, which complies with~~
12 ~~the requirements of subsection (b) of this section, between October 1 and~~
13 ~~December 31 of the preceding year.~~

14 ~~(2) The renewal application when filed renews the registration~~
15 ~~for the following calendar year.~~

16 ~~(e)(1) A foreign limited liability company whose registration is~~
17 ~~effective may thereafter qualify as a foreign limited liability company under~~
18 ~~the registered name or consent in writing to the use of that name by a~~
19 ~~limited liability company thereafter incorporated under this chapter, or by~~
20 ~~another foreign limited liability company thereafter authorized to transact~~
21 ~~business in this state.~~

22 ~~(2) The registration terminates when the domestic limited liability~~
23 ~~company is incorporated or the foreign limited liability company qualifies or~~
24 ~~consents to the qualification of another foreign limited liability company~~
25 ~~under the registered name.~~

26 ~~Subchapter 2 — Formation~~

27 ~~4-32-201. Formation.~~

28
29 ~~One (1) or more persons may form a limited liability company by signing~~
30 ~~or causing to be signed articles of organization and delivering the signed~~
31 ~~articles to the Secretary of State for filing. The person or persons who sign~~
32 ~~the articles of organization causing the formation of a limited liability~~
33 ~~company need not be members of the limited liability company at the time of~~
34 ~~formation or after formation has occurred.~~

35
36

1 ~~4-32-202. Articles of organization.~~

2 ~~The articles of organization shall set forth:~~

3 ~~(1) A name for the limited liability company that satisfies the~~
4 ~~requirements of § 4-32-103;~~

5 ~~(2) The information required by § 4-20-105(a); and~~

6 ~~(3) If management of the limited liability company is vested in~~
7 ~~a manager or managers, a statement to that effect.~~

8
9 ~~4-32-203. Amendment of articles of organization—Restatement.~~

10 ~~(a) The articles of organization of a limited liability company may be~~
11 ~~amended by filing articles of amendment with the Secretary of State. The~~
12 ~~articles of amendment shall set forth:~~

13 ~~(1) The name of the limited liability company;~~

14 ~~(2) The date the articles of organization were filed; and~~

15 ~~(3) The amendment to the articles of organization.~~

16 ~~(b) The articles of organization may be amended in any respects as may~~
17 ~~be desired, so long as the articles of organization as amended contain only~~
18 ~~provisions that may be lawfully contained in articles of organization at the~~
19 ~~time of making the amendment.~~

20 ~~(c) Articles of organization may be restated at any time. Restated~~
21 ~~articles of organization shall be filed with the Secretary of State and shall~~
22 ~~be specifically designated as such in the heading and shall state either in~~
23 ~~the heading or in an introductory paragraph the limited liability company's~~
24 ~~present name and, if it has been changed, all of its former names and the~~
25 ~~date of the filing of its articles of organization.~~

26
27 ~~4-32-204. Execution of documents.~~

28 ~~(a) Unless otherwise provided in any other section of this chapter,~~
29 ~~any document required by this chapter to be filed with the Secretary of State~~
30 ~~shall be executed:~~

31 ~~(1) By any manager if management of the limited liability~~
32 ~~company is vested in one (1) or more managers;~~

33 ~~(2) By any member if management of the limited liability company~~
34 ~~is reserved to the members;~~

35 ~~(3) If the limited liability company has not been formed, by the~~
36 ~~person or persons forming the limited liability company; or~~

1 ~~(4) If the limited liability company is in the hands of a~~
2 ~~receiver, trustee, or other court-appointed fiduciary, by that fiduciary.~~

3 ~~(b) The person executing the document shall sign it and state beneath~~
4 ~~or opposite his or her signature the person's name and the capacity in which~~
5 ~~he or she signs.~~

6 ~~(c) The person executing the document may do so as an attorney in-~~
7 ~~fact. Powers of attorney relating to the execution of the document need not~~
8 ~~be provided to or filed with the Secretary of State.~~

9
10 ~~4-32-205. Filing with Secretary of State.~~

11 ~~(a) The original signed copy, together with a duplicate copy that may~~
12 ~~be either a signed, photocopied, or conformed copy of the articles of~~
13 ~~organization or any other document required to be filed pursuant to this~~
14 ~~chapter, shall be delivered to the Secretary of State. If the Secretary of~~
15 ~~State determines that the documents conform to the filing provisions of this~~
16 ~~chapter, the Secretary of State shall, when all required filing fees have~~
17 ~~been paid:~~

18 ~~(1) Endorse on each signed original and duplicate copy the word~~
19 ~~"filed" and the date and time of the document's acceptance for filing;~~

20 ~~(2) Retain the signed original in the Secretary of State's~~
21 ~~files; and~~

22 ~~(3) Return the duplicate copy to the person who filed it or the~~
23 ~~person's representative.~~

24 ~~(b) If at the time any documents are delivered for filing, the~~
25 ~~Secretary of State is unable to make the determination required for filing by~~
26 ~~subsection (a) of this section, the documents are deemed to have been filed~~
27 ~~at the time of delivery if the Secretary of State subsequently determines~~
28 ~~that:~~

29 ~~(1) The documents as delivered conform to the filing provisions~~
30 ~~of this chapter; or~~

31 ~~(2) The documents have been brought into conformance within~~
32 ~~twenty (20) days after notification of nonconformance is given by the~~
33 ~~Secretary of State to the person who delivered the documents for filing or~~
34 ~~the person's representative.~~

35 ~~(c) If the filing and determination requirements of this chapter are~~
36 ~~not satisfied within the time prescribed in subdivision (b)(2) of this~~

1 ~~section, the documents shall not be filed.~~

2
3 ~~4-32-206. Effect of delivery or filing of articles of organization.~~

4 ~~(a) Unless a delayed effective date is recited in the articles of~~
5 ~~organization, a limited liability company is formed when the articles of~~
6 ~~organization are delivered to the Secretary of State for filing, even if the~~
7 ~~Secretary of State is unable at the time of delivery to make the~~
8 ~~determination required for filing by § 4-32-1308. If the articles of~~
9 ~~organization, as delivered to the Secretary of State, do not conform to the~~
10 ~~filing provisions of this chapter and are not brought into conformance within~~
11 ~~the time period prescribed by § 4-32-1308, the existence of the limited~~
12 ~~liability company terminates at the end of such time period.~~

13 ~~(b) Each copy of the articles of organization stamped "filed" and~~
14 ~~marked with the filing date is conclusive evidence that all conditions~~
15 ~~precedent required to be performed by the organizers have been complied with~~
16 ~~and that the limited liability company has been legally organized and formed~~
17 ~~under this chapter.~~

18
19 ~~Subchapter 3—Relations of Members and Managers to Persons Dealing with the~~
20 ~~Limited Liability Company~~

21
22 ~~4-32-301. Agency power of members and managers.~~

23 ~~(a) Except as provided in subsection (b) of this section, every member~~
24 ~~is an agent of the limited liability company for the purpose of its business~~
25 ~~or affairs, and the act of any member, including, but not limited to, the~~
26 ~~execution in the name of the limited liability company of any instrument, for~~
27 ~~apparently carrying on in the usual way the business or affairs of the~~
28 ~~limited liability company of which he or she is a member, binds the limited~~
29 ~~liability company, unless the member so acting has, in fact, no authority to~~
30 ~~act for the limited liability company in the particular matter, and the~~
31 ~~person with whom the member is dealing has knowledge of the fact that the~~
32 ~~member has no such authority.~~

33 ~~(b) If the articles of organization provide that management of the~~
34 ~~limited liability company is vested in a manager or managers:~~

35 ~~(1) No member solely by reason of being a member is an agent of~~
36 ~~the limited liability company; and~~

1 ~~(2) Every manager is an agent of the limited liability company~~
2 ~~for the purpose of its business or affairs, and the act of any manager,~~
3 ~~including, but not limited to, the execution in the name of the limited~~
4 ~~liability company of any instrument, for apparently carrying on in the usual~~
5 ~~way the business or affairs of the limited liability company of which he or~~
6 ~~she is a manager binds the limited liability company, unless the manager so~~
7 ~~acting has, in fact, no authority to act for the limited liability company in~~
8 ~~the particular matter, and the person with whom the manager is dealing has~~
9 ~~knowledge of the fact that the manager has no such authority.~~

10 ~~(c) An act of a manager or a member which is not apparently for the~~
11 ~~carrying on in the usual way the business or affairs of the limited liability~~
12 ~~company does not bind the limited liability company unless authorized in~~
13 ~~accordance with an operating agreement, at the time of the transaction or at~~
14 ~~any other time.~~

15 ~~(d) No act of a manager or member in contravention of a restriction on~~
16 ~~authority shall bind the limited liability company to persons having~~
17 ~~knowledge of the restriction.~~

18
19 ~~4-32-302. Admissions by members and managers.~~

20 ~~(a) Except as provided in subsection (b) of this section, an admission~~
21 ~~or representation made by any member concerning the business or affairs of a~~
22 ~~limited liability company within the scope of his or her authority as~~
23 ~~provided for by this chapter is evidence against the limited liability~~
24 ~~company.~~

25 ~~(b) If the articles of organization provide that management of the~~
26 ~~limited liability company is vested in a manager or managers:~~

27 ~~(1) An admission or representation made by a manager concerning~~
28 ~~the business or affairs of a limited liability company within the scope of~~
29 ~~the manager's authority as provided for by this chapter is evidence against~~
30 ~~the limited liability company; and~~

31 ~~(2) The admission or representation of any member, acting solely~~
32 ~~in the capacity of a member, shall not constitute evidence against the~~
33 ~~limited liability company.~~

34
35 ~~4-32-303. Limited liability company charged with knowledge of or~~
36 ~~notice to member or manager.~~

1 ~~(a) Except as provided in subsection (b) of this section, notice to~~
2 ~~any member of any matter relating to the business or affairs of the limited~~
3 ~~liability company, and the knowledge of the member acting in the particular~~
4 ~~matter, acquired while a member or known at the time of becoming a member,~~
5 ~~and the knowledge of any other member who reasonably could and should have~~
6 ~~communicated the knowledge to the acting member, operate as notice to or~~
7 ~~knowledge of the limited liability company, except in the case of a fraud on~~
8 ~~the limited liability company committed by or with the consent of that~~
9 ~~member.~~

10 ~~(b) If the articles of organization provide that management of the~~
11 ~~limited liability company is vested in a manager or managers:~~

12 ~~(1) Notice to any manager of any matter relating to the business~~
13 ~~or affairs of the limited liability company, and the knowledge of the manager~~
14 ~~acting in the particular matter, acquired while a manager or known at the~~
15 ~~time of becoming a manager, and the knowledge of any other manager who~~
16 ~~reasonably could and should have communicated the knowledge to the acting~~
17 ~~manager, operate as notice to or knowledge of the limited liability company,~~
18 ~~except in the case of a fraud on the limited liability company committed by~~
19 ~~or with the consent of that manager; and~~

20 ~~(2) Notice to or knowledge of any member of a limited liability~~
21 ~~company while the member is acting solely in the capacity of a member is not~~
22 ~~notice to or knowledge of the limited liability company.~~

23
24 ~~4-32-304. Liability of members to third parties.~~

25 ~~Except for the personal liability for acts or omissions of those~~
26 ~~providing professional service as set forth in § 4-32-308, a person who is a~~
27 ~~member, manager, agent, or employee of a limited liability company is not~~
28 ~~liable for a debt, obligation, or liability of the limited liability company,~~
29 ~~whether arising in contract, tort, or otherwise or for the acts or omissions~~
30 ~~of any other member, manager, agent, or employee of the limited liability~~
31 ~~company.~~

32
33 ~~4-32-305. Parties to actions.~~

34 ~~A member of a limited liability company is not a proper party to a~~
35 ~~proceeding by or against a limited liability company, by reason of being a~~
36 ~~member of the limited liability company, except where the object of the~~

1 ~~proceeding is to enforce a member's right against or liability to the limited~~
2 ~~liability company or as otherwise provided in an operating agreement.~~

3
4 ~~4-32-306. Limited liability company may render professional service—~~
5 ~~Nonprofessional employees and agents—Members and managers need not be~~
6 ~~employees, etc.~~

7 ~~No limited liability company organized under this chapter may render~~
8 ~~professional service within this state except through its members, employees~~
9 ~~of its members, managers, employees, and agents who are duly licensed or~~
10 ~~otherwise legally authorized to render those professional services. However,~~
11 ~~this provision shall not be interpreted to preclude clerks, secretaries,~~
12 ~~bookkeepers, technicians, and other assistants who are not usually and~~
13 ~~ordinarily considered by custom and practice to be rendering professional~~
14 ~~service to the public for which a license or other legal authorization is~~
15 ~~required from acting as employees, managers, or agents of a professional~~
16 ~~limited liability company.~~

17
18 ~~4-32-307. Limited liability company may qualify as executor or~~
19 ~~administrator, or in other fiduciary capacity.~~

20 ~~A limited liability company engaged in the practice of law, as a part~~
21 ~~of the practice of law, may act as an executor, trustee, or administrator of~~
22 ~~an estate, guardian for an infant, or in any other fiduciary capacity. Any~~
23 ~~member, employee of a member, manager, employee, or agent of a limited~~
24 ~~liability company engaged in the practice of law who is duly licensed as an~~
25 ~~attorney in this state may perform necessary fiduciary responsibilities on~~
26 ~~behalf of the limited liability company.~~

27
28 ~~4-32-308. Professional relationship—Personal liability.~~

29 ~~All individuals rendering professional service may be personally liable~~
30 ~~for any results of that individual's acts or omissions. No member, employee~~
31 ~~of a member, manager, or employee of a limited liability company shall be~~
32 ~~personally liable for the acts or omission of any other member, employee of a~~
33 ~~member, manager, or employee of the limited liability company.~~

34
35 ~~4-32-309. Liability of limited liability company to third parties.~~
36 ~~Notwithstanding the limitations on liability contained in this~~

1 ~~subchapter for members and managers, a limited liability company shall be~~
2 ~~liable to third parties for its valid obligations.~~

3
4 ~~Subchapter 4 — Rights and Duties of Members and Managers~~

5
6 ~~4-32-401. Management.~~

7 ~~(a) With respect to persons other than members, management of the~~
8 ~~affairs of the limited liability company shall be governed by § 4-32-301.~~

9 ~~(b) Unless otherwise provided in an operating agreement, with respect~~
10 ~~to members, management of the affairs of the limited liability company shall~~
11 ~~be governed by § 4-32-301.~~

12 ~~(c) Unless otherwise provided in an operating agreement, managers:~~

13 ~~(1) Shall be designated, appointed, elected, removed, or~~
14 ~~replaced by a vote, approval, or consent of more than one-half ($\frac{1}{2}$) by number~~
15 ~~of the members;~~

16 ~~(2) Need not be members of the limited liability company or~~
17 ~~natural persons; and~~

18 ~~(3) Unless they are sooner removed or sooner resign, shall hold~~
19 ~~office until their successors shall have been elected and qualified.~~

20
21 ~~4-32-402. Duties of managers and members.~~

22 ~~Unless otherwise provided in an operating agreement:~~

23 ~~(1) A member or manager shall not be liable, responsible, or~~
24 ~~accountable in damages or otherwise to the limited liability company or to~~
25 ~~the members of the limited liability company for any action taken or failure~~
26 ~~to act on behalf of the limited liability company unless the act or omission~~
27 ~~constitutes gross negligence or willful misconduct;~~

28 ~~(2) Every member and manager must account to the limited~~
29 ~~liability company and hold as trustee for it any profit or benefit derived by~~
30 ~~that person without the consent of more than one-half ($\frac{1}{2}$) by number of the~~
31 ~~disinterested managers or members, or other persons participating in the~~
32 ~~management of the business or affairs of the limited liability company, from~~
33 ~~any transaction connected with the conduct or winding up of the limited~~
34 ~~liability company or any use by the member or manager of its property,~~
35 ~~including, but not limited to, confidential or proprietary information of the~~
36 ~~limited liability company or other matters entrusted to the person as a~~

1 ~~result of his or her status as manager or member; and~~

2 ~~(3) One who is a member of a limited liability company in which~~
3 ~~management is vested in managers under § 4-32-401 and who is not a manager~~
4 ~~shall have no duties to the limited liability company or to the other members~~
5 ~~solely by reason of acting in the capacity of a member.~~

6
7 ~~4-32-403. Voting.~~

8 ~~(a) Unless otherwise provided in an operating agreement or this~~
9 ~~chapter, and subject to subsection (b) of this section, the affirmative vote,~~
10 ~~approval or consent of more than one-half ($\frac{1}{2}$) by number of the members, if~~
11 ~~management of the limited liability company is vested in the members, or of~~
12 ~~the managers if the management of the limited liability company is vested in~~
13 ~~managers, shall be required to decide any matter connected with the business~~
14 ~~of the limited liability company.~~

15 ~~(b) Unless otherwise provided in writing in an operating agreement,~~
16 ~~the affirmative vote, approval, or consent of all members shall be required~~
17 ~~to:~~

18 ~~(1) Amend a written operating agreement; or~~

19 ~~(2) Authorize a manager or member to do any act on behalf of the~~
20 ~~limited liability company that contravenes a written operating agreement,~~
21 ~~including any written provision thereof which expressly limits the purpose,~~
22 ~~business, or affairs of the limited liability company or the conduct thereof.~~

23
24 ~~4-32-404. Limitation of liability and indemnification of members and~~
25 ~~managers.~~

26 ~~An operating agreement which is in writing may:~~

27 ~~(1) Eliminate or limit the personal liability of a member or~~
28 ~~manager for monetary damages for breach of any duty provided for in § 4-32-~~
29 ~~402; and~~

30 ~~(2) Provide for indemnification of a member or manager for~~
31 ~~judgments, settlements, penalties, fines, or expenses incurred in a~~
32 ~~proceeding to which a person is a party because the person is or was a member~~
33 ~~or manager.~~

34
35 ~~4-32-405. Records and information.~~

36 ~~(a) Unless otherwise provided in writing in an operating agreement, a~~

1 ~~limited liability company shall keep at its principal place of business the~~
2 ~~following:~~

3 ~~(1) A current and a past list, setting forth the full name and~~
4 ~~last known mailing address of each member and manager, if any, set forth in~~
5 ~~alphabetical order;~~

6 ~~(2) A copy of the articles of organization and all amendments~~
7 ~~thereto, together with executed copies of any powers of attorney pursuant to~~
8 ~~which the articles of amendment have been executed;~~

9 ~~(3) Copies of the limited liability company's federal, state,~~
10 ~~and local income tax returns and financial statements, if any, for the three~~
11 ~~(3) most recent years or, if those returns and statements were not prepared~~
12 ~~for any reason, copies of the information and statements provided to, or~~
13 ~~which should have been provided to, the members to enable them to prepare~~
14 ~~their federal, state, and local tax returns for the period;~~

15 ~~(4) Copies of any effective written operating agreements, and~~
16 ~~all amendments thereto, and copies of any written operating agreements no~~
17 ~~longer in effect; and~~

18 ~~(5) Unless contained in writing in an operating agreement:~~

19 ~~(A) A writing, if any, setting forth the amount of cash~~
20 ~~and a statement of the agreed value of other property or services contributed~~
21 ~~by each member and the times at which or events upon the happening of which~~
22 ~~any additional contributions are to be made by each member;~~

23 ~~(B) A writing, if any, stating events upon the happening~~
24 ~~of which the limited liability company is to be dissolved and its affairs~~
25 ~~wound up; and~~

26 ~~(C) Other writings, if any, prepared pursuant to a~~
27 ~~requirement in an operating agreement.~~

28 ~~(b) Upon reasonable request, a member may, at the member's own~~
29 ~~expense, inspect and copy during ordinary business hours any limited~~
30 ~~liability company record, wherever the record is located.~~

31 ~~(c) Members, if the management of the limited liability company is~~
32 ~~vested in the members, or managers, if management of the limited liability~~
33 ~~company is vested in managers, shall render, to the extent the circumstances~~
34 ~~render it just and reasonable, true and full information of all things~~
35 ~~affecting the members to any member and to the legal representative of any~~
36 ~~deceased member or of any member under legal disability.~~

1 ~~(d) Failure of the limited liability company to keep or maintain any~~
2 ~~of the records or information required pursuant to this section shall not be~~
3 ~~grounds for imposing liability on any member or manager for the debts and~~
4 ~~obligations of the limited liability company.~~

5
6 Subchapter 5—Finance

7
8 4-32-501.—Contributions to capital.

9 A limited liability company interest may be issued in exchange for
10 property, services rendered, or a promissory note or other obligation to
11 contribute cash or property or to perform services.

12
13 4-32-502.—Liability for contributions.

14 (a) A promise by a member to contribute to the limited liability
15 company is not enforceable unless set forth in a writing signed by the
16 member.

17 (b) Unless otherwise provided in an operating agreement, a member is
18 obligated to the limited liability company to perform any enforceable promise
19 to contribute cash or property or to perform services, even if the member is
20 unable to perform because of death, disability, or other reason.

21 (c) If a member does not make the required contribution of property or
22 services, the member is obligated, at the option of the limited liability
23 company, to contribute cash equal to that portion of value of the stated
24 contribution that has not been made.

25 (d) Unless otherwise provided in an operating agreement, the
26 obligation of a member to make a contribution may be compromised only with
27 the unanimous consent of the members.

28 (e) Only a creditor of a limited liability company who extends credit
29 in reliance on an obligation to contribute or otherwise acts in reliance on
30 that obligation to contribute after the member signs a writing which reflects
31 the obligation to contribute pursuant to subsection (d) of this section may
32 enforce any obligation to contribute.

33
34 4-32-503.—Sharing of profits.

35 Unless otherwise provided in writing in an operating agreement, each
36 member shall be repaid that member's contributions to capital and share

1 ~~equally in the profits and assets remaining after all liabilities, including~~
2 ~~those to members, are satisfied.~~

3
4 ~~Subchapter 6—Distributions and Withdrawal~~

5
6 ~~4-32-601.—Sharing of interim distributions.~~

7 ~~Except as otherwise provided in §§ 4-32-602 and 4-32-905, distributions~~
8 ~~of cash or other assets of a limited liability company shall be shared among~~
9 ~~the members and among classes of members in the manner provided in writing in~~
10 ~~an operating agreement. If an operating agreement does not so provide in~~
11 ~~writing, each member shall share equally in any distribution. A member is~~
12 ~~entitled to receive distributions described in this section from a limited~~
13 ~~liability company to the extent and at the times or upon the happening of the~~
14 ~~events specified in an operating agreement or at the times determined by the~~
15 ~~members or managers pursuant to § 4-32-403.~~

16
17 ~~4-32-602.—Distributions on an event of dissociation.~~

18 ~~Upon the occurrence of an event of dissociation under § 4-32-802 which~~
19 ~~does not cause dissolution, other than an event of dissociation described in~~
20 ~~§ 4-32-802(a)(3)(B), a dissociating member is entitled to receive any~~
21 ~~distribution which the member was entitled to receive prior to the event of~~
22 ~~dissociation. If an operating agreement does not provide the amount of or a~~
23 ~~method for determining the distribution to a dissociating member, the member~~
24 ~~shall receive within a reasonable time after dissociation the fair value of~~
25 ~~the member's interest in the limited liability company as of the date of~~
26 ~~dissociation based upon the member's right to share in distributions from the~~
27 ~~limited liability company.~~

28
29 ~~4-32-603.—Distribution in kind.~~

30 ~~Unless otherwise provided in an operating agreement:~~

31 ~~(1) A member, regardless of the nature of the member's~~
32 ~~contribution, has no right to demand and receive any distribution from the~~
33 ~~limited liability company in any form other than cash; and~~

34 ~~(2) A member may not be compelled to accept from the limited~~
35 ~~liability company a distribution of any asset in kind to the extent that the~~
36 ~~percentage of the asset distributed to the member exceeds the percentage that~~

1 ~~the member would have shared in a cash distribution equal to the value of the~~
2 ~~property at the time of distribution.~~

3
4 ~~4-32-604. Right to distribution.~~

5 ~~At the time a member becomes entitled to receive a distribution, the~~
6 ~~member has the status of and is entitled to all remedies available to a~~
7 ~~creditor of the limited liability company with respect to that distribution.~~

8
9 ~~Subchapter 7 — Ownership and Transfer of Property~~

10
11 ~~4-32-701. Ownership of limited liability company property.~~

12 ~~(a) Property transferred to or otherwise acquired by a limited~~
13 ~~liability company is property of the limited liability company and not of the~~
14 ~~members individually.~~

15 ~~(b) Property may be acquired, held, and conveyed in the name of the~~
16 ~~limited liability company. Any interest in real property may be acquired in~~
17 ~~the name of the limited liability company, and title to any interest so~~
18 ~~acquired shall vest in the limited liability company rather than in the~~
19 ~~members individually.~~

20
21 ~~4-32-702. Transfer of real property.~~

22 ~~(a) If the articles of organization do not provide that management is~~
23 ~~vested in a manager or managers, then property of the limited liability~~
24 ~~company held in the name of the limited liability company may be transferred~~
25 ~~by an instrument of transfer executed by any member in the name of the~~
26 ~~limited liability company.~~

27 ~~(b) Property of the limited liability company that is held in the name~~
28 ~~of one (1) or more members or managers with an indication in the instrument~~
29 ~~transferring the property to them of their capacity as members or managers of~~
30 ~~a limited liability company or of the existence of a limited liability~~
31 ~~company, if the name of the limited liability company is not indicated, may~~
32 ~~be transferred by an instrument of transfer executed by the persons in whose~~
33 ~~name title is held.~~

34 ~~(c) Property transferred under subsections (a) and (b) of this section~~
35 ~~may be recovered by the limited liability company only if it proves that the~~
36 ~~person executing the instrument had no authority to do so, and the initial~~

1 ~~transferee had knowledge of the lack of authority unless the property has~~
2 ~~been transferred by the initial transferee or a person claiming through the~~
3 ~~initial transferee to a subsequent transferee who gives value without having~~
4 ~~notice that the person who executed the instrument of initial transfer lacked~~
5 ~~authority to bind the limited liability company.~~

6 ~~(d) Property of the limited liability company held in the name of one~~
7 ~~(1) or more persons other than the limited liability company without an~~
8 ~~indication in the instrument transferring title to the property to them of~~
9 ~~their capacity as members or managers of a limited liability company or of~~
10 ~~the existence of a limited liability company may be transferred free of any~~
11 ~~claims of the limited liability company or the members by the persons in~~
12 ~~whose name title is held to a transferee who gives value without having~~
13 ~~notice that it is property of the limited liability company.~~

14 ~~(e) If the articles of organization provide that management of the~~
15 ~~limited liability company is vested in a manager or managers:~~

16 ~~(1) Title to property of the limited liability company that is~~
17 ~~held in the name of the limited liability company may be transferred by an~~
18 ~~instrument of transfer executed by any manager in the name of the limited~~
19 ~~liability company; and~~

20 ~~(2) A member, solely by reason of being a member, shall not have~~
21 ~~authority to transfer property of the limited liability company.~~

22
23 ~~4-32-703. Nature of limited liability company interest.~~

24 ~~A limited liability company interest is personal property.~~

25
26 ~~4-32-704. Assignment of interest.~~

27 ~~(a) Unless otherwise provided in writing in an operating agreement:~~

28 ~~(1) A limited liability company interest is assignable in whole~~
29 ~~or in part;~~

30 ~~(2) An assignment entitles the assignee to receive, to the~~
31 ~~extent assigned, only the distributions to which the assignor would be~~
32 ~~entitled;~~

33 ~~(3) An assignment of a limited liability company interest does~~
34 ~~not dissolve the limited liability company or entitle the assignee to~~
35 ~~participate in the management and affairs of the limited liability company or~~
36 ~~to become or exercise any rights of a member;~~

1 ~~(4) Until the assignee of a limited liability company interest~~
2 ~~becomes a member, the assignor continues to be a member and to have the power~~
3 ~~to exercise any rights of a member, subject to the member's right to remove~~
4 ~~the assignor pursuant to § 4-32-802(a)(3)(B);~~

5 ~~(5) Until an assignee of a limited liability company interest~~
6 ~~becomes a member, the assignee has no liability, if any, as a member solely~~
7 ~~as a result of the assignment; and~~

8 ~~(6) The assignor of a limited liability company interest is not~~
9 ~~released from his or her liability as a member solely as a result of the~~
10 ~~assignment.~~

11 ~~(b) An operating agreement may provide that a member's limited~~
12 ~~liability company interest may be evidenced by a certificate of limited~~
13 ~~liability company interest issued by the limited liability company and may~~
14 ~~also provide for the assignment or transfer of any interest represented by~~
15 ~~the certificate.~~

16
17 ~~4-32-705. Rights of judgment creditor.~~

18 ~~(a)(1) On application to a court of competent jurisdiction by any~~
19 ~~judgment creditor of a member, the court may charge the member's limited~~
20 ~~liability company interest with payment of the unsatisfied amount of judgment~~
21 ~~with interest.~~

22 ~~(2) To the extent so charged, the judgment creditor has only the~~
23 ~~rights of an assignee of the member's limited liability company interest.~~

24 ~~(3) This chapter does not deprive any member of the benefit of~~
25 ~~any exemption laws applicable to his or her limited liability company~~
26 ~~interest.~~

27 ~~(b) Upon the filing of a charging application by a judgment creditor~~
28 ~~of a member under subdivision (a)(1) of this section and the recording of the~~
29 ~~charging application in the register of the Secretary of State as required~~
30 ~~under subsection (c) of this section, a temporary lien is created in favor of~~
31 ~~the judgment creditor against the member's membership interest in the limited~~
32 ~~liability company interest until a ruling by the court is entered on the~~
33 ~~record or the application is dismissed.~~

34 ~~(c) The Secretary of State shall:~~

35 ~~(1) Create a register within the Uniform Commercial Code lien~~
36 ~~filings for charging applications received under subsection (b) of this~~

1 ~~section; and~~

2 ~~(2) Maintain the register so that the register can be searched~~
3 ~~in the same manner as the lien filings of the Uniform Commercial Code, § 4-1-~~
4 ~~101 et seq.~~

5
6 ~~4-32-706. Right of assignee to become member.~~

7 ~~(a) Unless otherwise provided in writing in an operating agreement, an~~
8 ~~assignee of a limited liability company interest may become a member only if~~
9 ~~the other members unanimously consent. The consent of a member may be~~
10 ~~evidenced in any manner specified in writing in an operating agreement, but~~
11 ~~in the absence of specification, consent shall be evidenced by a written~~
12 ~~instrument dated and signed by the member.~~

13 ~~(b) An assignee who becomes a member has to the extent assigned the~~
14 ~~rights and powers and is subject to the restrictions and liabilities of a~~
15 ~~member under the articles of organization, any operating agreement, and this~~
16 ~~chapter. An assignee who becomes a member also is liable for any obligations~~
17 ~~of the assignor to make contributions under § 4-32-502. However, the assignee~~
18 ~~is not obligated for liabilities of which the assignee had no knowledge at~~
19 ~~the time he or she became a member and which could not be ascertained from~~
20 ~~the written records of the limited liability company kept pursuant to § 4-32-~~
21 ~~405.~~

22 ~~(c) Whether or not an assignee of a limited liability company interest~~
23 ~~becomes a member, the assignor is not released from his or her liability, if~~
24 ~~any, to the limited liability company under § 4-32-502.~~

25 ~~(d) Unless otherwise provided in writing in an operating agreement, a~~
26 ~~member who assigns his or her entire limited liability company interest~~
27 ~~ceases to be a member or to have the power to exercise any rights of a member~~
28 ~~when the assignee becomes a member with respect to the entire assigned~~
29 ~~interest.~~

30
31 ~~4-32-707. Powers of estate of deceased or incompetent member.~~

32 ~~If a member who is an individual dies or a court of competent~~
33 ~~jurisdiction adjudges the member to be incompetent to manage his or her~~
34 ~~person or property, the member's executor, administrator, guardian,~~
35 ~~conservator, or other legal representative shall have all of the rights of an~~
36 ~~assignee of the member's interest.~~

1
2 ~~Subchapter 8—Admission and Withdrawal of Members~~

3
4 ~~4-32-801.—Admission of members.~~

5 ~~(a)—Subject to subsection (b) of this section, a person may become a~~
6 ~~member in a limited liability company.~~

7 ~~(1)—In the case of a person acquiring a limited liability~~
8 ~~company interest directly from the limited liability company, upon compliance~~
9 ~~with an operating agreement or, if an operating agreement does not so provide~~
10 ~~in writing, upon the written consent of all members; and~~

11 ~~(2)—In the case of an assignee of a limited liability company~~
12 ~~interest, as provided in § 4-32-706.~~

13 ~~(b)—The effective time of admission of a member to a limited liability~~
14 ~~company shall be the later of:~~

15 ~~(1)—The date the limited liability company is formed; or~~

16 ~~(2)—The time provided in an operating agreement or, if no such~~
17 ~~time is provided therein, then when the person's admission is reflected in~~
18 ~~the records of the limited liability company.~~

19
20 ~~4-32-802.—Events of dissociation.~~

21 ~~(a)—A person ceases to be a member of a limited liability company upon~~
22 ~~the occurrence of one (1) or more of the following events:~~

23 ~~(1)—The member withdraws by voluntary act from the limited~~
24 ~~liability company as provided in subsection (c) of this section;~~

25 ~~(2)—The member ceases to be a member of the limited liability~~
26 ~~company as provided in § 4-32-706;~~

27 ~~(3)—The member is removed as a member:~~

28 ~~(A)—In accordance with an operating agreement; or~~

29 ~~(B)—Unless otherwise provided in writing in an operating~~
30 ~~agreement, when the member assigns all of his or her interest in the limited~~
31 ~~liability company, by an affirmative vote of a majority of the members who~~
32 ~~have not assigned their interests;~~

33 ~~(4)—Unless otherwise provided in writing in an operating~~
34 ~~agreement or by the written consent of all members at the time, the member:~~

35 ~~(A)—Makes an assignment for the benefit of creditors;~~

36 ~~(B)—Files a voluntary petition in bankruptcy;~~

1 ~~(C) Is adjudicated a bankrupt or insolvent;~~
2 ~~(D) Files a petition or answer seeking for the member any~~
3 ~~reorganization, arrangement, composition, readjustment, liquidation,~~
4 ~~dissolution, or similar relief under any statute, law, or rule;~~
5 ~~(E) Files an answer or other pleading admitting or failing~~
6 ~~to contest the material allegations of a petition filed against the member in~~
7 ~~any proceeding of the nature described in subdivision (a)(4)(D) of this~~
8 ~~section; or~~
9 ~~(F) Seeks, consents to, or acquiesces in the appointment~~
10 ~~of a trustee, receiver, or liquidator of the member or of all or any~~
11 ~~substantial part of the member's properties;~~
12 ~~(5) Unless otherwise provided in writing in an operating~~
13 ~~agreement or by the written consent of all members at the time, if:~~
14 ~~(A) Within one hundred twenty (120) days after the~~
15 ~~commencement of any proceeding against the member seeking reorganization,~~
16 ~~arrangement, composition, readjustment, liquidation, dissolution, or similar~~
17 ~~relief under any statute, law, or rule, the proceeding has not been~~
18 ~~dismissed; or~~
19 ~~(B)(i) Within one hundred twenty (120) days after the~~
20 ~~appointment without his or her consent or acquiescence of a trustee,~~
21 ~~receiver, or liquidator of the member or of all or any substantial part of~~
22 ~~his or her properties, the appointment is not vacated or stayed; or~~
23 ~~(ii) Within one hundred twenty (120) days after the~~
24 ~~expiration of any stay, the appointment is not vacated;~~
25 ~~(6) Unless otherwise provided in writing in an operating~~
26 ~~agreement or by the written consent of all members at the time, in the case~~
27 ~~of a member who is an individual:~~
28 ~~(i) The member's death; or~~
29 ~~(ii) The entry of an order by a court of competent~~
30 ~~jurisdiction adjudicating the member incompetent to manage his or her person~~
31 ~~or estate;~~
32 ~~(7) Unless otherwise provided in writing in an operating~~
33 ~~agreement or by the written consent of all members at the time, in the case~~
34 ~~of a member who is a trust or is acting as a member by virtue of being a~~
35 ~~trustee of a trust, the termination of the trust, but not merely the~~
36 ~~substitution of a new trustee;~~

1 ~~(8) Unless otherwise provided in writing in an operating~~
2 ~~agreement or by the written consent of all members at the time, in the case~~
3 ~~of a member that is a separate limited liability company, the dissolution and~~
4 ~~commencement of winding up of the separate limited liability company;~~

5 ~~(9) Unless otherwise provided in writing in an operating~~
6 ~~agreement or by the written consent of all members at the time, in the case~~
7 ~~of a member that is a corporation, the filing of a certificate of its~~
8 ~~dissolution or the equivalent for the corporation or the revocation of its~~
9 ~~charter and the lapse of ninety (90) days after notice to the corporation of~~
10 ~~revocation without reinstatement of its charter; or~~

11 ~~(10) Unless otherwise provided in writing in an operating~~
12 ~~agreement or by the written consent of all members at the time, in the case~~
13 ~~of an estate, the distribution by the fiduciary of the estate's entire~~
14 ~~interest in the limited liability company.~~

15 ~~(b) The members may provide in writing in an operating agreement for~~
16 ~~other events, the occurrence of which shall result in a person's ceasing to~~
17 ~~be a member of the limited liability company.~~

18 ~~(c) A member may withdraw from a limited liability company only at the~~
19 ~~time or upon the happening of an event specified in the articles of~~
20 ~~organization or an operating agreement. Unless the articles of organization~~
21 ~~or an operating agreement provides otherwise, a member may not withdraw from~~
22 ~~a limited liability company prior to the dissolution and winding up of the~~
23 ~~limited liability company.~~

24

25 Subchapter 9—Dissolution

26

27 4-32-901. Dissolution.

28 ~~A limited liability company is dissolved and its affairs shall be wound~~
29 ~~up upon the happening of the first to occur of the following:~~

30 ~~(1) At the time or upon the occurrence of events specified in~~
31 ~~writing in the articles of organization or an operating agreement, but if no~~
32 ~~such time is set forth in either of the foregoing, then the limited liability~~
33 ~~company shall have a perpetual existence;~~

34 ~~(2) The written consent of all members;~~

35 ~~(3) At any time there are no members, provided that, unless~~
36 ~~otherwise provided in the articles of organization or an operating agreement,~~

1 the limited liability company is not dissolved and is not required to be
2 wound up if within ninety (90) days or such other period as is provided for
3 in the articles of organization or an operating agreement after the
4 occurrence of the event that terminated the continued membership of the last
5 remaining member, the personal representative of the last remaining member
6 agrees in writing to continue the limited liability company and to the
7 admission of the personal representative of the member or its nominee or
8 designee to the limited liability company as a member, effective as of the
9 occurrence of the event that terminated the continued membership of the last
10 remaining member; and

11 ~~(4) The entry of a decree of judicial dissolution under § 4-32-~~
12 ~~902.~~

13
14 ~~4-32-902. Judicial dissolution.~~

15 ~~On application by or for a member, a circuit court may decree~~
16 ~~dissolution of a limited liability company whenever it is not reasonably~~
17 ~~practicable to carry on the business of the limited liability company in~~
18 ~~conformity with the operating agreement.~~

19
20 ~~4-32-903. Winding up.~~

21 ~~Unless otherwise provided in writing in an operating agreement:~~

22 ~~(1) The business or affairs of the limited liability company may~~
23 ~~be wound up:~~

24 ~~(A) By the members or managers who have authority to~~
25 ~~manage the limited liability company prior to dissolution pursuant to § 4-32-~~
26 ~~401; or~~

27 ~~(B) If one (1) or more of such members or managers have~~
28 ~~engaged in wrongful conduct, or upon other cause shown, by a circuit court on~~
29 ~~application of any member or any member's legal representative or assignee.~~

30 ~~(2) The persons winding up the business or affairs of the~~
31 ~~limited liability company may, in the name of, and for and on behalf of, the~~
32 ~~limited liability company:~~

33 ~~(A) Prosecute and defend suits;~~

34 ~~(B) Settle and close the business of the limited liability~~
35 ~~company;~~

36 ~~(C) Dispose of and transfer the property of the limited~~

1 ~~liability company;~~

2 ~~(D) Discharge the liabilities of the limited liability~~
3 ~~company; and~~

4 ~~(E) Distribute to the members any remaining assets of the~~
5 ~~limited liability company.~~

6
7 ~~4-32-904. Agency power of managers or members after dissolution.~~

8 ~~(a) Except as provided in subsections (c)–(e) of this section, after~~
9 ~~dissolution of the limited liability company, each of the members having~~
10 ~~authority to wind up the limited liability company's business and affairs can~~
11 ~~bind the limited liability company.~~

12 ~~(1) By any act appropriate for winding up the limited liability~~
13 ~~company's affairs or completing transactions unfinished at dissolution; and~~

14 ~~(2) By any transaction that would have bound the limited~~
15 ~~liability company if it had not been dissolved, if the other party to the~~
16 ~~transaction does not have notice of the dissolution.~~

17 ~~(b) The filing of the articles of dissolution shall be presumed to~~
18 ~~constitute notice of dissolution for purposes of subdivision (a)(2) of this~~
19 ~~section.~~

20 ~~(c) An act of a member which is not binding on the limited liability~~
21 ~~company pursuant to subsection (a) of this section is binding if it is~~
22 ~~otherwise authorized by the limited liability company.~~

23 ~~(d) An act of a member which would be binding under subsection (a) of~~
24 ~~this section or would be otherwise authorized but which is in contravention~~
25 ~~of a restriction on authority shall not bind the limited liability company to~~
26 ~~persons having knowledge of the restriction.~~

27 ~~(e) If the articles of organization vest management of the limited~~
28 ~~liability company in managers, a manager shall have the authority of a member~~
29 ~~provided for in subsection (a) of this section, and no member shall have such~~
30 ~~authority if the member is acting solely in the capacity of a member.~~

31
32 ~~4-32-905. Distribution of assets.~~

33 ~~Upon the winding up of a limited liability company, the assets shall be~~
34 ~~distributed as follows:~~

35 ~~(1) Payment, or adequate provision for payment, shall be made to~~
36 ~~creditors, including, to the extent permitted by law, members who are~~

1 ~~creditors in satisfaction of liabilities of the limited liability company;~~
2 ~~(2) Unless otherwise provided in writing in an operating~~
3 ~~agreement, to members or former members in satisfaction of liabilities for~~
4 ~~distributions under §§ 4-32-601 and 4-32-602; and~~

5 ~~(3) Unless otherwise provided in writing in an operating~~
6 ~~agreement, to members and former members first for the return of their~~
7 ~~contribution and second in proportion to the members' respective rights to~~
8 ~~share in distributions from the limited liability company prior to~~
9 ~~dissolution.~~

10
11 ~~4-32-906. Articles of dissolution.~~

12 ~~After the dissolution of the limited liability company pursuant to § 4-~~
13 ~~32-901, the limited liability company may file articles of dissolution with~~
14 ~~the Secretary of State which set forth:~~

15 ~~(1) The name of the limited liability company;~~

16 ~~(2) The date of filing of its articles of organization and all~~
17 ~~amendments thereto;~~

18 ~~(3) The reason for filing the articles of dissolution;~~

19 ~~(4) The effective date, which shall be a date certain, of the~~
20 ~~articles of dissolution if they are not to be effective upon the filing; and~~

21 ~~(5) Any other information the members or managers filing the~~
22 ~~certificate shall deem proper.~~

23
24 ~~4-32-907. Known claims against dissolved limited liability company.~~

25 ~~(a) Upon dissolution, a limited liability company may dispose of the~~
26 ~~known claims against it by filing articles of dissolution pursuant to § 4-32-~~
27 ~~906 and following the procedures described in this section.~~

28 ~~(b) The limited liability company shall notify its known claimants in~~
29 ~~writing of the dissolution at any time after the effective date of~~
30 ~~dissolution. The written notice must:~~

31 ~~(1) Describe information that must be included in a claim;~~

32 ~~(2) Provide a mailing address where a claim may be sent;~~

33 ~~(3) State the deadline, which may not be less than one hundred~~
34 ~~twenty (120) days after the later of the date of the written notice or the~~
35 ~~filing of articles of dissolution pursuant to § 4-32-906, by which the~~
36 ~~limited liability company must receive the claim; and~~

1 ~~(4) State that the claim will be barred if not received by the~~
2 ~~deadline.~~

3 ~~(c) A claim against the limited liability company is barred:~~

4 ~~(1) If a claimant who was given written notice under subsection~~
5 ~~(b) of this section does not deliver the claim to the limited liability~~
6 ~~company by the deadline; or~~

7 ~~(2) If a claimant whose claim was rejected by the limited~~
8 ~~liability company does not commence a proceeding to enforce the claim within~~
9 ~~ninety (90) days after the date of the rejection notice or deemed rejection.~~

10 ~~(d) For purposes of this section, "claim" does not include a~~
11 ~~contingent liability or a claim based on an event occurring after the~~
12 ~~effective date of dissolution.~~

13 ~~(e) Provided, that any claim not responded to by the limited liability~~
14 ~~company within thirty (30) days after receipt shall be deemed to have been~~
15 ~~rejected.~~

16
17 ~~4-32-908. Unknown claims against dissolved limited liability company.~~

18 ~~(a) A limited liability company may publish notice of its dissolution~~
19 ~~pursuant to this section which requests that persons with claims against the~~
20 ~~limited liability company present them in accordance with the notice.~~

21 ~~(b) The notice must:~~

22 ~~(1) Be published one (1) time in a newspaper of general~~
23 ~~circulation in the county where the limited liability company's principal~~
24 ~~office is located or in a newspaper of general circulation in Pulaski County~~
25 ~~if the company does not have a principal office in this state;~~

26 ~~(2) Describe the information that must be included in a claim~~
27 ~~and provide a mailing address where the claim may be sent; and~~

28 ~~(3) State that a claim against the limited liability company~~
29 ~~will be barred unless a proceeding to enforce the claim is commenced within~~
30 ~~the earlier of five (5) years after the publication of the notice or the~~
31 ~~expiration of the applicable period of limitations otherwise provided under~~
32 ~~law.~~

33 ~~(c) If the limited liability company publishes a newspaper notice in~~
34 ~~accordance with subsection (b) of this section and files articles of~~
35 ~~dissolution pursuant to § 4-32-906, the claim of each of the following~~
36 ~~claimants is barred unless the claimant commences a proceeding to enforce the~~

1 ~~claim against the limited liability company within the earlier of the~~
2 ~~applicable period of limitations otherwise provided under law or five (5)~~
3 ~~years after the later of the publication date of the newspaper notice or the~~
4 ~~filing of the articles of dissolution.~~

5 ~~(1) A claimant who did not receive written notice under § 4-32-~~
6 ~~907; or~~

7 ~~(2) A claimant whose claim is contingent or based on an event~~
8 ~~occurring after the effective date of dissolution.~~

9 ~~(d) A claim may be enforced under this section.~~

10 ~~(1) Against the limited liability company, to the extent of its~~
11 ~~undistributed assets; or~~

12 ~~(2) If the assets have been distributed in liquidation, against~~
13 ~~a member of the limited liability company to the extent of his or her pro~~
14 ~~rata share of the claim or the assets of the limited liability company~~
15 ~~distributed to him or her in liquidation, whichever is less, but a member's~~
16 ~~total liability for all claims under this section may not exceed the total~~
17 ~~amount of assets distributed to him or her in liquidation.~~

18
19 ~~Subchapter 10 — Foreign Limited Liability Companies~~

20
21 ~~4-32-1001. — Law governing.~~

22 ~~Subject to the Arkansas Constitution, the laws of the state or other~~
23 ~~jurisdiction under which a foreign limited liability company is organized~~
24 ~~shall govern its organization and internal affairs and the liability and~~
25 ~~authority of its managers and members. A foreign limited liability company~~
26 ~~may not be denied registration by reason of any difference between those laws~~
27 ~~and the laws of this state.~~

28
29 ~~4-32-1002. — Registration.~~

30 ~~Before transacting business in this state, a foreign limited liability~~
31 ~~company shall register with the Secretary of State by submitting to the~~
32 ~~Secretary of State an original signed copy of an application for registration~~
33 ~~as a foreign limited liability company executed by a person with authority to~~
34 ~~do so under the laws of the state or other jurisdiction of its formation. The~~
35 ~~application shall set forth:~~

36 ~~(1) The name of the foreign limited liability company and if the~~

1 ~~company's name is unavailable for use in this state, the name under which it~~
2 ~~proposes to transact business in this state;~~

3 ~~(2) The state or other jurisdiction where formed and the date of~~
4 ~~its formation;~~

5 ~~(3) The information required by § 4-20-105(a);~~

6 ~~(4) A statement confirming that the foreign limited liability~~
7 ~~company has filed a statement appointing an agent for service of process~~
8 ~~under § 4-20-112 and may be served with process under § 4-20-113 if the~~
9 ~~foreign limited liability company fails to appoint or maintain a registered~~
10 ~~agent for service of process;~~

11 ~~(5) The address of the office required to be maintained in the~~
12 ~~state or other jurisdiction of its formation by the laws of that state or~~
13 ~~jurisdiction or, if not so required, of the principal office of the foreign~~
14 ~~limited liability company; and~~

15 ~~(6) A statement evidencing that the foreign limited liability~~
16 ~~company is a "foreign limited liability company" as defined in § 4-32-102(5).~~

17
18 ~~4-32-1003. Issuance of registration.~~

19 ~~(a) If the Secretary of State finds that an application for~~
20 ~~registration conforms to the provisions of this chapter and all requisite~~
21 ~~fees have been paid, the Secretary of State shall:~~

22 ~~(1) Endorse on each signed original and duplicate copy the word~~
23 ~~"filed" and the date and time of its acceptance for filing;~~

24 ~~(2) Retain the signed original in the Secretary of State's~~
25 ~~files; and~~

26 ~~(3) Return the duplicate copy to the person who filed it or the~~
27 ~~person's representative.~~

28 ~~(b) If the Secretary of State is unable to make the determination~~
29 ~~required for filing by subsection (a) of this section at the time any~~
30 ~~documents are delivered for filing, the documents are deemed to have been~~
31 ~~filed at the time of delivery if the Secretary of State subsequently~~
32 ~~determines that:~~

33 ~~(1) The documents as delivered conform to the filing provisions~~
34 ~~of this chapter; or~~

35 ~~(2) Within twenty (20) days after notification of nonconformance~~
36 ~~is given by the Secretary of State to the person who delivered the documents~~

1 ~~for filing or the person's representative, the documents are brought into~~
2 ~~conformance.~~

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

6
7 ~~4-32-1004.—Name.~~

8 ~~No certificate of registration shall be issued to a foreign limited~~
9 ~~liability company unless the name of the company satisfies the requirements~~
10 ~~of § 4-32-103. If the name under which a foreign limited liability company is~~
11 ~~registered in the jurisdiction of its formation does not satisfy the~~
12 ~~requirements of § 4-32-103, to obtain or maintain a certificate of~~
13 ~~registration the foreign limited liability company may use a designated name~~
14 ~~that is available and which satisfies the requirements of § 4-32-103.~~

15
16 ~~4-32-1005.—Amendments.~~

17 ~~(a) The application for registration of a foreign limited liability~~
18 ~~company is amended by filing articles of amendment with the Secretary of~~
19 ~~State signed by a person with authority to do so under the laws of the state~~
20 ~~or other jurisdiction of its formation. The articles of amendment shall set~~
21 ~~forth:~~

22 ~~(1) The name of the foreign limited liability company;~~

23 ~~(2) The date the original application for registration was~~
24 ~~filed; and~~

25 ~~(3) The amendment to the application for registration.~~

26 ~~(b) The application for registration may be amended in any way,~~
27 ~~provided that the application for registration as amended contains only~~
28 ~~provisions that may be lawfully contained in an application for registration~~
29 ~~at the time of the amendment.~~

30
31 ~~4-32-1006.—Cancellation of registration.~~

32 ~~(a) A foreign limited liability company authorized to transact~~
33 ~~business in this state may cancel its registration upon procuring from the~~
34 ~~Secretary of State a certificate of cancellation. In order to procure a~~
35 ~~certificate, the foreign limited liability company shall deliver to the~~
36 ~~Secretary of State an application for cancellation, which shall set forth:~~

1 ~~(1) The name of the foreign limited liability company and the~~
2 ~~state or other jurisdiction under the laws of which it is formed;~~

3 ~~(2) That the foreign limited liability company is not~~
4 ~~transacting business in this state;~~

5 ~~(3) That the foreign limited liability company surrenders its~~
6 ~~certificate of registration to transact business in this state;~~

7 ~~(4) That the foreign limited liability company revokes the~~
8 ~~authority of its registered agent for service of process in this state and~~
9 ~~consents that service of process in any action, suit, or proceeding based~~
10 ~~upon any cause of action arising in this state during the time the foreign~~
11 ~~limited liability company was authorized to transact business in this state~~
12 ~~may thereafter be made on the foreign limited liability company by service~~
13 ~~thereof upon the Secretary of State; and~~

14 ~~(5) An address to which a person may mail a copy of any process~~
15 ~~against the foreign limited liability company.~~

16 ~~(b) The application for cancellation shall be in the form and manner~~
17 ~~designated by the Secretary of State and shall be executed on behalf of the~~
18 ~~foreign limited liability company by a person with authority to do so under~~
19 ~~the laws of the state or other jurisdiction of its formation, or, if the~~
20 ~~foreign limited liability company is in the hands of a receiver, trustee, or~~
21 ~~other court-appointed fiduciary, by that fiduciary.~~

22 ~~(c) A cancellation does not terminate the authority of the Secretary~~
23 ~~of State to accept service of process on the foreign limited liability~~
24 ~~company with respect to causes of action arising out of the doing of business~~
25 ~~in this state.~~

26
27 ~~4-32-1007. Transaction of business without registration.~~

28 ~~(a) A foreign limited liability company transacting business in this~~
29 ~~state may not maintain an action, suit, or proceeding in a court of this~~
30 ~~state until it has registered in this state.~~

31 ~~(b) The failure of a foreign limited liability company to register in~~
32 ~~this state does not:~~

33 ~~(1) Impair the validity of any contract or act of the foreign~~
34 ~~limited liability company;~~

35 ~~(2) Affect the right of any other party to the contract to~~
36 ~~maintain any action, suit, or proceeding on the contract; or~~

1 ~~(3) Prevent the foreign limited liability company from defending~~
2 ~~any action, suit, or proceeding in any court of this state.~~

3 ~~(c) A foreign limited liability company transacting business in this~~
4 ~~state without registration may be served with process under § 4-20-113 if the~~
5 ~~foreign limited liability company:~~

6 ~~(1) Fails to appoint an agent for service of process under § 4-~~
7 ~~20-112;~~

8 ~~(2) No longer has an agent for service of process; or~~

9 ~~(3) Has an agent for service of process that cannot with~~
10 ~~reasonable diligence be served.~~

11 ~~(d) A foreign limited liability company which transacts business in~~
12 ~~this state without registration shall be liable to the state for the years or~~
13 ~~parts thereof during which it transacted business in this state without~~
14 ~~registration in an amount equal to all fees which would have been imposed by~~
15 ~~this chapter upon that foreign limited liability company had it duly~~
16 ~~registered and all penalties imposed by this chapter. The Attorney General~~
17 ~~may bring proceedings to recover all amounts due this state under the~~
18 ~~provisions of this section.~~

19 ~~(e) A foreign limited liability company which transacts business in~~
20 ~~this state without registration shall be subject to a civil penalty, payable~~
21 ~~to the state, not to exceed five thousand dollars (\$5,000) for each twelve-~~
22 ~~month period or part thereof, beginning with the date it began transacting~~
23 ~~business in this state and ending on the date it becomes registered.~~

24 ~~(f) The civil penalty set forth in subsection (e) of this section may~~
25 ~~be recovered in an action brought within a court by the Attorney General.~~
26 ~~Upon a finding by the court that a foreign limited liability company has~~
27 ~~transacted business in this state in violation of this chapter, the court~~
28 ~~shall issue, in addition to the imposition of a civil penalty, an injunction~~
29 ~~restraining further transactions of the business of the foreign limited~~
30 ~~liability company and the further exercise of any limited liability company's~~
31 ~~rights and privileges in this state. The foreign limited liability company~~
32 ~~shall be enjoined from transacting business in this state until all civil~~
33 ~~penalties plus any interest and court costs which the court may assess have~~
34 ~~been paid and until the foreign limited liability company has otherwise~~
35 ~~complied with the provisions of this subchapter.~~

36 ~~(g) A member or manager of a foreign limited liability company is not~~

1 ~~liable for the debts and obligations of the limited liability company solely~~
2 ~~because the limited liability company transacted business in this state~~
3 ~~without registration.~~

4
5 ~~4-32-1008. Transactions not constituting transacting business.~~

6 ~~(a) The following activities of a foreign limited liability company,~~
7 ~~among others, do not constitute transacting business within the meaning of~~
8 ~~this subchapter:~~

9 ~~(1) Maintaining, defending, or settling any proceeding;~~

10 ~~(2) Holding meetings of its members or managers or carrying on~~
11 ~~any other activities concerning its internal affairs;~~

12 ~~(3) Maintaining bank accounts;~~

13 ~~(4) Maintaining offices or agencies for the transfer, exchange,~~
14 ~~and registration of the foreign limited liability company's own securities or~~
15 ~~interests or maintaining trustees or depositories with respect to those~~
16 ~~securities or interests;~~

17 ~~(5) Selling through independent contractors;~~

18 ~~(6) Soliciting or obtaining orders, whether by mail or through~~
19 ~~employees or agents or otherwise, if the orders require acceptance outside~~
20 ~~this state before they become contracts;~~

21 ~~(7) Creating or acquiring indebtedness, mortgages, and security~~
22 ~~interests in real or personal property;~~

23 ~~(8) Securing or collecting debts or enforcing mortgages and~~
24 ~~security interests in property securing debts;~~

25 ~~(9) Owning, without more, real or personal property;~~

26 ~~(10) Conducting an isolated transaction that is completed within~~
27 ~~thirty (30) days and that is not one in the course of repeated transactions~~
28 ~~of a like nature; or~~

29 ~~(11) Transacting business in interstate commerce.~~

30 ~~(b) The foreign limited liability company shall not be considered to~~
31 ~~be transacting business solely because it:~~

32 ~~(1) Owns a controlling interest in a corporation that is~~
33 ~~transacting business;~~

34 ~~(2) Is a limited partner of a limited partnership that is~~
35 ~~transacting business; or~~

36 ~~(3) Is a member or manager of a limited liability company or~~

1 ~~foreign limited liability company that is transacting business.~~

2 ~~(c) This section does not apply in determining the contacts or~~
3 ~~activities that may subject a foreign limited liability company to service of~~
4 ~~process or taxation in this state or to other law or to regulation under any~~
5 ~~other law of this state.~~

6
7 ~~Subchapter 11 — Suits by and Against the Limited Liability Company~~

8
9 ~~4-32-1101. Suits by and against the limited liability company.~~

10 ~~Suit may be brought by or against a limited liability company in its~~
11 ~~own name.~~

12
13 ~~4-32-1102. Authority to sue on behalf of limited liability company.~~

14 ~~Unless otherwise provided in an operating agreement, a suit on behalf~~
15 ~~of the limited liability company may be brought only in the name of the~~
16 ~~limited liability company by:~~

17 ~~(1) One (1) or more members of a limited liability company,~~
18 ~~whether or not an operating agreement vests management of the limited~~
19 ~~liability company in one (1) or more managers, who are authorized to sue by~~
20 ~~the vote of more than one half ($\frac{1}{2}$) by number of the members eligible to vote~~
21 ~~thereon, unless the vote of all members shall be required pursuant to § 4-32-~~
22 ~~403(b), provided that in determining the vote required under § 4-32-403, the~~
23 ~~vote of any member who has an interest in the outcome of the suit that is~~
24 ~~adverse to the interest of the limited liability company shall be excluded;~~
25 ~~or~~

26 ~~(2) One (1) or more managers of a limited liability company, if~~
27 ~~an operating agreement vests management of the limited liability company in~~
28 ~~one (1) or more managers, who are authorized to do so by the vote required~~
29 ~~pursuant to § 4-32-403 of the members eligible to vote thereon, provided that~~
30 ~~in determining the required vote, the vote of any manager who has an interest~~
31 ~~in the outcome of the suit that is adverse to the interest of the limited~~
32 ~~liability company shall be excluded.~~

33
34 ~~4-32-1103. Effect of lack of authority to sue.~~

35 ~~The lack of authority of a member or manager to sue on behalf of the~~
36 ~~limited liability company may not be asserted as a defense to an action by~~

1 ~~the limited liability company or by the limited liability company as a basis~~
2 ~~for bringing a subsequent suit on the same cause of action.~~

3
4 ~~Subchapter 12—Conversion and Merger~~

5
6 ~~4-32-1201. Definitions.~~

7 ~~In this subchapter:~~

8 ~~(1) “Constituent limited liability company” means a constituent~~
9 ~~organization that is a limited liability company;~~

10 ~~(2) “Constituent organization” means an organization that is~~
11 ~~party to a merger;~~

12 ~~(3) “Converted organization” means the organization into which a~~
13 ~~converting organization converts under §§ 4-32-1202—4-32-1205;~~

14 ~~(4) “Converting limited liability company” means a converting~~
15 ~~organization that is a limited liability company;~~

16 ~~(5) “Converting organization” means an organization that~~
17 ~~converts into another organization under § 4-32-1202;~~

18 ~~(6) “Governing statute” of an organization means the statute~~
19 ~~that governs the organization’s internal affairs;~~

20 ~~(7) “In a record” means maintained or kept on file by the~~
21 ~~organization at an office of the organization or with the Secretary of State;~~

22 ~~(8)(A) “Organization” means:~~

23 ~~(i) A partnership, including a limited liability~~
24 ~~partnership;~~

25 ~~(ii) A limited partnership, including a limited~~
26 ~~liability limited partnership;~~

27 ~~(iii) A limited liability company;~~

28 ~~(iv) A business trust;~~

29 ~~(v) A corporation; or~~

30 ~~(vi) Any other entity that has a governing statute.~~

31 ~~(B) “Organization” includes a domestic or foreign~~
32 ~~organization whether or not the organization is organized for profit;~~

33 ~~(9) “Organizational documents” means:~~

34 ~~(A) For a domestic or foreign general partnership, its~~
35 ~~partnership agreement and if applicable statement of qualification;~~

36 ~~(B) For a domestic or foreign limited partnership, its~~

1 ~~certificate of limited partnership and partnership agreement;~~

2 ~~(C) For a domestic or foreign limited liability company,~~
3 ~~its articles of organization and operating agreement or the comparable~~
4 ~~records provided for in its governing statute;~~

5 ~~(D) For a business trust, its agreement of trust and~~
6 ~~declaration of trust;~~

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

11 ~~(F) For any other organization, the records that:~~

12 ~~(i) Create the organization;~~

13 ~~(ii) Determine the internal governance of the~~
14 ~~organization; and~~

15 ~~(iii) Determine the relations among the~~
16 ~~organization's owners, members, and interested parties; and~~

17 ~~(10) "Surviving organization" means an organization into which~~
18 ~~one or more other organizations are merged.~~

19
20 ~~4-32-1202. Conversion.~~

21 ~~(a) An organization other than a limited liability company may convert~~
22 ~~to a limited liability company, and a limited liability company may convert~~
23 ~~to another organization under this section and §§ 4-32-1203—4-32-1205 and a~~
24 ~~plan of conversion, if the:~~

25 ~~(1) Other organization's governing statute authorizes the~~
26 ~~conversion and is complied with; and~~

27 ~~(2) Conversion is not prohibited by the law of the jurisdiction~~
28 ~~that enacted the governing statute.~~

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

30 ~~(1) Name and form of the organization before conversion;~~

31 ~~(2) Name and form of the organization after conversion;~~

32 ~~(3) Terms and conditions of the conversion, including the manner~~
33 ~~and basis for converting interests in the converting organization into any~~
34 ~~combination of money, interests in the converted organization, and other~~
35 ~~consideration; and~~

36 ~~(4) Organizational documents of the converted organization.~~

1
2 ~~4-32-1203. Action on plan of conversion by converting limited~~
3 ~~liability company.~~

4 ~~(a) Unless otherwise provided in writing in an operating agreement, a~~
5 ~~plan of conversion must be consented to by more than one half ($\frac{1}{2}$) by number~~
6 ~~of the members of a converting limited liability company.~~

7 ~~(b) Subject to any contractual rights, until a conversion is filed~~
8 ~~under § 4-32-1204, a converting limited liability company may amend the plan~~
9 ~~or abandon the planned conversion.~~

10 ~~(1) As provided in the plan; and~~

11 ~~(2) Except as prohibited by the plan, by the same consent~~
12 ~~required to approve the plan.~~

13
14 ~~4-32-1204. Filings required for conversion — Effective date.~~

15 ~~(a)(1) After a plan of conversion is approved, a converting limited~~
16 ~~liability company shall file articles of conversion with the Secretary of~~
17 ~~State.~~

18 ~~(2) The articles of conversion shall include:~~

19 ~~(A) A statement that the limited liability company has~~
20 ~~been converted into another organization;~~

21 ~~(B) The name and form of the converted organization and~~
22 ~~the jurisdiction of its governing statute;~~

23 ~~(C) The date the conversion is effective under the~~
24 ~~governing statute of the converted organization;~~

25 ~~(D) A statement that the conversion was approved as~~
26 ~~required by this chapter;~~

27 ~~(E) A statement that the conversion was approved as~~
28 ~~required by the governing statute of the converted organization;~~

29 ~~(F) A statement confirming that the converted organization~~
30 ~~has filed a statement appointing an agent for service of process under § 4-~~
31 ~~20-112 if the converted organization is a foreign organization not authorized~~
32 ~~to transact business in this state; and~~

33 ~~(G)(i) A copy of the plan of conversion; or~~

34 ~~(ii) A statement that:~~

35 ~~(a) Contains the address of an office of the~~
36 ~~organization where the plan of conversion is on file; and~~

1 ~~(b) A copy of the plan of conversion will be~~
2 ~~furnished by the converting organization on request and without cost to any~~
3 ~~shareholder of the converting organization.~~

4 ~~(b)(1) If the converting organization is not a converting limited~~
5 ~~liability company, the converting organization shall file articles of~~
6 ~~organization with the Secretary of State.~~

7 ~~(2) The articles of organization shall include, in addition to~~
8 ~~the information required by § 4-32-202:~~

9 ~~(A) A statement that the limited liability company was~~
10 ~~converted from another organization;~~

11 ~~(B) The name and form of the converting organization and~~
12 ~~the jurisdiction of its governing statute; and~~

13 ~~(C) A statement that the conversion was approved in a~~
14 ~~manner that complied with the converting organization's governing statute.~~

15 ~~(c) A conversion becomes effective:~~

16 ~~(1) If the converted organization is a limited liability~~
17 ~~company, when the articles of organization take effect; and~~

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

20
21 ~~4-32-1205. Effect of conversion.~~

22 ~~(a) An organization that has been converted under this subchapter is~~
23 ~~for all purposes the same entity that existed before the conversion.~~

24 ~~(b) When a conversion takes effect:~~

25 ~~(1) All property owned by the converting organization remains~~
26 ~~vested in the converted organization;~~

27 ~~(2) All debts, liabilities, and other obligations of the~~
28 ~~converting organization continue as obligations of the converted~~
29 ~~organization;~~

30 ~~(3) An action or proceeding pending by or against the converting~~
31 ~~organization may be continued as if the conversion had not occurred;~~

32 ~~(4) Except as prohibited by other law, all of the rights,~~
33 ~~privileges, immunities, powers, and purposes of the converting organization~~
34 ~~remain vested in the converted organization;~~

35 ~~(5) Except as otherwise provided in the plan of conversion, the~~
36 ~~terms and conditions of the plan of conversion take effect; and~~

1 ~~(6) Except as otherwise agreed, the conversion does not dissolve~~
2 ~~a converting limited liability company under § 4-32-901 et seq.~~

3 ~~(c)(1) A converted organization that is a foreign organization~~
4 ~~consents to the jurisdiction of the courts of this state to enforce any~~
5 ~~obligation owed by the converting limited liability company, if before the~~
6 ~~conversion the converting limited liability company was subject to suit in~~
7 ~~this state on the obligation.~~

8 ~~(2) A converted organization that is a foreign organization and~~
9 ~~not authorized to transact business in this state may be served with process~~
10 ~~under § 4-20-113 if the converted organization:~~

11 ~~(A) Fails to appoint an agent for service of process under~~
12 ~~§ 4-20-112;~~

13 ~~(B) No longer has an agent for service of process; or~~

14 ~~(C) Has an agent for service of process that cannot with~~
15 ~~reasonable diligence be served.~~

16
17 ~~4-32-1206. Merger.~~

18 ~~(a) A limited liability company may merge with one (1) or more other~~
19 ~~constituent organizations under this section and §§ 4-32-1207—4-32-1209 and~~
20 ~~a plan of merger, if:~~

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

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

25 ~~(3) Each of the other organizations complies with its governing~~
26 ~~statute in effecting the merger.~~

27 ~~(b) A plan of merger shall be in a record and shall include:~~

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

29 ~~(2) The name and form of the surviving organization;~~

30 ~~(3) The terms and conditions of the merger, including the manner~~
31 ~~and basis for converting the interests in each constituent organization into~~
32 ~~any combination of money, interests in the surviving organization, and other~~
33 ~~consideration; and~~

34 ~~(4) Any amendments to be made by the merger to the surviving~~
35 ~~organization's organizational documents.~~

36

1 ~~4-32-1207. Action on plan of merger by constituent limited liability~~
2 ~~company.~~

3 ~~(a) Unless otherwise provided in writing in an operating agreement, a~~
4 ~~plan of merger must be consented to by more than one half (1/2) by number of~~
5 ~~the members of a constituent limited liability company.~~

6 ~~(b) Subject to any contractual rights, until articles of merger are~~
7 ~~filed under § 4-32-1208 a constituent limited liability company may amend the~~
8 ~~plan or abandon the planned merger:~~

9 ~~(1) As provided in the plan; and~~

10 ~~(2) Except as prohibited by the plan, with the same consent~~
11 ~~required to approve the plan.~~

12
13 ~~4-32-1208. Filings required for merger — Effective date.~~

14 ~~(a) After each constituent organization has approved a merger,~~
15 ~~articles of merger must be signed by an authorized representative of each~~
16 ~~constituent organization and filed with the Secretary of State.~~

17 ~~(b) The articles of merger shall include:~~

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

20 ~~(2) The name and form of the surviving organization and the~~
21 ~~jurisdiction of its governing statute;~~

22 ~~(3) The date the merger is effective under the governing statute~~
23 ~~of the surviving organization;~~

24 ~~(4) Any amendments provided for in the plan of merger for the~~
25 ~~organizational document of the surviving organization;~~

26 ~~(5) A statement as to each constituent organization that the~~
27 ~~merger was approved as required by the organization's governing statute;~~

28 ~~(6) A statement confirming that the surviving organization has~~
29 ~~filed a statement appointing an agent for service of process under § 4-20-112~~
30 ~~if the surviving organization is a foreign organization not authorized to~~
31 ~~transact business in this state;~~

32 ~~(7) Either:~~

33 ~~(A) A copy of the plan of merger; or~~

34 ~~(B) A statement that:~~

35 ~~(i) Contains the address of an office of the~~
36 ~~surviving organization where the plan of merger is on file; and~~

1 (ii) ~~A copy of the plan of merger will be furnished~~
2 ~~by the surviving organization on request and without cost to any shareholder,~~
3 ~~member, partner, or other owner of any constituent organization; and~~

4 (8) ~~Any additional information required by the governing statute~~
5 ~~of any constituent organization.~~

6 (c) ~~A merger becomes effective under this subchapter:~~

7 (1) ~~If the surviving organization is a limited liability~~
8 ~~company, upon the later of:~~

9 (A) ~~Compliance with subsection (a) of this section; or~~

10 (B) ~~The date specified in the articles of merger; or~~

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

13
14 4-32-1209. ~~Effect of merger.~~

15 (a) ~~When a merger becomes effective:~~

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

18 (2) ~~Each constituent organization that merges into the surviving~~
19 ~~organization ceases to exist as a separate entity;~~

20 (3) ~~All property owned by each constituent organization that~~
21 ~~ceases to exist vests in the surviving organization;~~

22 (4) ~~All debts, liabilities, and other obligations of each~~
23 ~~constituent organization that ceases to exist continue as obligations of the~~
24 ~~surviving organization;~~

25 (5) ~~An action or proceeding pending by or against a constituent~~
26 ~~organization that ceases to exist may continue as if the merger had not~~
27 ~~occurred;~~

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

31 (7) ~~Except as otherwise provided in the plan of merger, the~~
32 ~~terms and conditions of the plan of merger take effect;~~

33 (8) ~~Except as otherwise agreed, if a constituent limited~~
34 ~~liability company ceases to exist, the merger does not dissolve the limited~~
35 ~~liability company under § 4-32-901 et seq.; and~~

36 (9) ~~Any amendments provided for in the articles of merger for~~

~~the organizational documents of the surviving organization become effective.~~

~~(b)(1) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the obligation.~~

~~(2) A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process under § 4-20-113 if the surviving organization:~~

~~(A) Fails to appoint an agent for service of process under § 4-20-112;~~

~~(B) No longer has an agent for service of process; or~~

~~(C) Has an agent for service of process that cannot with reasonable diligence be served.~~

~~4-32-1210. Chapter not exclusive.~~

~~This chapter does not preclude an entity from being converted or merged under other law.~~

~~Subchapter 13 — Miscellaneous~~

~~4-32-1301. Filing, service, and copying fees.~~

~~(a) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him or her for filing:~~

DOCUMENT	FEE
(1) Articles of organization	\$50.00
(2) Application for use of indistinguishable name	25.00
(3) Application for reserved name	25.00
(4) Notice of transfer of reserved name	25.00
(5) Amendment of articles of organization	25.00
(6) Restatement of articles of organization with amendment of articles of organization	25.00
(7) Articles of merger or share exchange	50.00
(8) Articles of dissolution	50.00
(9) Certificate of judicial dissolution	No fee

1	(10) Application for certificate of authority by	
2	foreign limited liability company	300.00
3	(11) Application for amended certificate of authority	
4	by foreign limited liability company	300.00
5	(12) Application for certificate of withdrawal by	
6	foreign limited liability company	No fee
7	(13) Certificate of revocation of authority to	
8	transact business	No fee
9	(14) Articles of correction	30.00
10	(15) Application for certificate of existence or	
11	authorization by domestic limited liability	
12	company	15.00
13	(16) Any other document required or permitted to	
14	be filed by this chapter	25.00

15 ~~(b)(1) The Secretary of State shall collect a fee of twenty-five~~
 16 ~~dollars (\$25.00) each time process is served on him or her under this~~
 17 ~~chapter.~~

18 ~~(2) The party to a proceeding causing service of process is~~
 19 ~~entitled to recover the process fee as costs if the party prevails in the~~
 20 ~~proceeding.~~

21 ~~(c) The Secretary of State shall collect the following fees for~~
 22 ~~copying and certifying the copy of any filed document relating to a domestic~~
 23 ~~or foreign limited liability company:~~

24 ~~(1) Fifty cents (50¢) a page for copying; and~~

25 ~~(2) Five dollars (\$5.00) for the certificate.~~

26 ~~(d) The Secretary of State shall collect the following fees when the~~
 27 ~~documents described in this subsection are delivered to him or her by~~
 28 ~~electronic means:~~

30	DOCUMENT	FEE	PROCESSING
31			FEE
32	(1) Articles of organization for domestic		
33	limited liability company	\$40.00	\$5.00
34	(2) Certificate of amendment to articles		
35	of organization for a domestic		
36	limited liability company	\$18.50	\$4.00

1	(3) Application for reservation of		
2	limited liability company name	No Fee	No Fee
3	(4) Notice of transfer of reserved name	\$18.50	\$4.00
4	(5) Application for certificate of		
5	registration of foreign limited		
6	liability company	\$258.00	\$12.00
7	(6) Application for amended certificate		
8	of authority by foreign limited		
9	liability company	\$258.00	\$12.00
10	(7) Application for fictitious name for		
11	foreign limited liability company	\$18.50	\$4.00

12 ~~(8) For any other document not listed above, the cost for electronic~~
13 ~~filing is:~~

14 ~~(A) Four dollars (\$4.00) for the processing fee when the filing fee is~~
15 ~~zero dollars (\$0.00) to fifty dollars~~
16 ~~(\$50.00);~~

17 ~~(B) Five dollars (\$5.00) for the processing fee when the filing fee is~~
18 ~~fifty-one dollars (\$51.00) to ninety-~~
19 ~~nine dollars (\$99.00);~~

20 ~~(C) Ten dollars (\$10.00) for the processing fee when the filing fee is~~
21 ~~one hundred dollars (\$100) to two~~
22 ~~hundred ninety-nine dollars (\$299); and~~

23 ~~(D) Twelve dollars (\$12.00) for the processing fee when the filing fee~~
24 ~~is three hundred dollars (\$300) or~~
25 ~~more.~~

26
27 ~~4-32-1302. Appeal from Secretary of State's refusal to file document.~~

28 ~~(a) If the Secretary of State refused to file a document delivered to~~
29 ~~his or her office for filing, the domestic or foreign limited liability~~
30 ~~company may appeal the refusal within thirty (30) days after the return of~~
31 ~~the document to the Pulaski County Circuit Court. The appeal is commenced by~~
32 ~~petitioning the court to compel filing the document and by attaching to the~~
33 ~~petition the document and the Secretary of State's explanation of his or her~~
34 ~~refusal to file.~~

35 ~~(b) The court may summarily order the Secretary of State to file the~~
36 ~~document or take other action the court considers appropriate.~~

1 ~~(c) The court's final decision may be appealed as in other civil~~
2 ~~proceedings.~~

3
4 ~~4-32-1303. Definition of knowledge.~~

5 ~~A person has "knowledge" of a fact within the meaning of this chapter~~
6 ~~not only when he or she has actual knowledge thereof, but also when he or she~~
7 ~~has knowledge of such other facts as in the circumstances shows bad faith.~~

8
9 ~~4-32-1304. Rules of construction.~~

10 ~~(a) It is the policy of this chapter to give maximum effect to the~~
11 ~~principle of freedom of contract and to the enforceability of operating~~
12 ~~agreements.~~

13 ~~(b) Unless displaced by particular provisions of this chapter, the~~
14 ~~principles of law and equity supplement this chapter.~~

15 ~~(c) Rules that statutes in derogation of the common law are to be~~
16 ~~strictly construed shall have no application to this chapter.~~

17 ~~(d) Neither this chapter nor any amendment of this chapter shall be~~
18 ~~construed so as to impair the obligations of any contract existing when the~~
19 ~~chapter or amendment goes into effect, nor to affect any action or~~
20 ~~proceedings begun or right accrued before the chapter or amendment takes~~
21 ~~effect.~~

22
23 ~~4-32-1305. Powers of Secretary of State.~~

24 ~~The Secretary of State has the power reasonably necessary to perform~~
25 ~~the duties required of him or her by this chapter.~~

26
27 ~~4-32-1306. Severability.~~

28 ~~If any provision of this chapter or its application to any person or~~
29 ~~circumstance is held invalid, the invalidity does not affect other provisions~~
30 ~~or applications of this chapter which can be given effect without the invalid~~
31 ~~provision or application. To this end, the provisions of this chapter are~~
32 ~~severable.~~

33
34 ~~4-32-1307. Interstate application.~~

35 ~~A limited liability company organized and existing under this chapter~~
36 ~~may conduct its business, carry on its operations, and have and exercise the~~

1 ~~powers granted by this chapter in any state or foreign country.~~

2
3 ~~4-32-1308. Filing requirements.~~

4 ~~(a) A document must satisfy the requirements of this section, and of~~
5 ~~any other section that adds to or varies from these requirements, to be~~
6 ~~entitled to filing by the Secretary of State.~~

7 ~~(b) This chapter must require or permit filing the document in the~~
8 ~~office of the Secretary of State.~~

9 ~~(c) The document must contain the information required by this~~
10 ~~chapter. It may contain other information as well.~~

11 ~~(d) The document must be typewritten or printed.~~

12 ~~(e) The document must be in the English language. A limited liability~~
13 ~~company or foreign limited liability company name need not be in English if~~
14 ~~written in English letters or Arabic or Roman numerals, and the certificate~~
15 ~~of existence required of foreign limited liability companies need not be in~~
16 ~~English if accompanied by a reasonably authenticated English translation.~~

17 ~~(f) The document must be executed:~~

18 ~~(1) The original signed copy, together with a duplicate copy~~
19 ~~that may either be a signed, photocopied, or conformed copy, of any document~~
20 ~~required to be filed pursuant to this chapter, shall be delivered to the~~
21 ~~Secretary of State. When the Secretary of State determines that the documents~~
22 ~~conform to the filing provisions of this chapter and when all required filing~~
23 ~~fees, taxes, license fees, or penalties required by this chapter or other law~~
24 ~~have been paid, the Secretary of State shall:~~

25 ~~(A) Have endorsed on each signed original and duplicate~~
26 ~~copy the word "filed" and the date and time of the documents' acceptance for~~
27 ~~filing;~~

28 ~~(B) Retain the signed original in the Secretary of State's~~
29 ~~file; and~~

30 ~~(C) Return the duplicate copy to the person who filed it~~
31 ~~or the person's representative.~~

32 ~~(2) If at the time any documents are delivered for filing, the~~
33 ~~Secretary of State is unable to make the determination required for filing,~~
34 ~~the documents are deemed to have been filed at the time of delivery if the~~
35 ~~Secretary of State subsequently determines that:~~

36 ~~(A) The documents as delivered conform to the filing~~

1 ~~provisions of this chapter; and~~

2 ~~(B) The documents have been brought into conformance~~
3 ~~within twenty (20) days after notification of nonperformance is given by the~~
4 ~~Secretary of State to the person who delivered the documents for filing or~~
5 ~~that person's representative.~~

6 ~~(3) If the filing and determination requirements of this chapter~~
7 ~~are not satisfied within the time prescribed in subdivision (f)(2)(B) of this~~
8 ~~section, the documents shall not be filed.~~

9 ~~(4) A document may specify a delayed effective time and date,~~
10 ~~and if it does so the document becomes effective at the time and date~~
11 ~~specified. If a delayed effective date but no time is specified, the document~~
12 ~~is effective at the close of business on that date. A delayed effective date~~
13 ~~for a document may not be later than the ninetieth day after the date it is~~
14 ~~filed.~~

15
16 ~~4-32-1309. Correcting filed document.~~

17 ~~(a) A domestic or foreign limited liability company may correct a~~
18 ~~document filed by the Secretary of State if the document:~~

19 ~~(1) Contains an incorrect statement; or~~

20 ~~(2) Was defectively executed, attested, sealed, verified, or~~
21 ~~acknowledged.~~

22 ~~(b) A document is corrected:~~

23 ~~(1) By preparing articles of correction that:~~

24 ~~(A) Describe the document, including its filing date, or~~
25 ~~attach a copy of it to the articles;~~

26 ~~(B) Specify the incorrect statement and the reason it is~~
27 ~~incorrect or the manner in which the execution was defective; and~~

28 ~~(C) Correct the incorrect statement or defective~~
29 ~~execution; and~~

30 ~~(2) By delivering the articles to the Secretary of State for~~
31 ~~filing.~~

32 ~~(c) Articles of correction are effective on the effective date of the~~
33 ~~document they correct except as to persons relying on the uncorrected~~
34 ~~document and adversely affected by the correction. As to those persons,~~
35 ~~articles of correction are effective when filed.~~

36

1 ~~4-32-1310. Evidentiary effect of copy of filed document.~~

2 ~~A certificate attached to a copy of a document filed by the Secretary~~
3 ~~of State, bearing his or her signature, which may be in facsimile, and the~~
4 ~~seal of this state, is conclusive evidence that the original document is on~~
5 ~~file with the Secretary of State.~~

6
7 ~~4-32-1311. Certificate of existence.~~

8 ~~(a) Anyone may apply to the Secretary of State to furnish a~~
9 ~~certificate of existence for a domestic limited liability company or a~~
10 ~~certificate of authorization for a foreign limited liability company.~~

11 ~~(b) A certificate of existence or authorization sets forth:~~

12 ~~(1) The domestic limited liability company name or the foreign~~
13 ~~limited liability company's corporate name used in this state;~~

14 ~~(2) Either:~~

15 ~~(A) That the domestic limited liability company is duly~~
16 ~~formed under the laws of this state, the date of its formation, and the~~
17 ~~period of its duration; or~~

18 ~~(B) That the foreign limited liability company is~~
19 ~~authorized to transact business in this state;~~

20 ~~(3) That all fees, taxes, and penalties owed to this state have~~
21 ~~been paid if:~~

22 ~~(A) Payment is reflected in the records of the Secretary~~
23 ~~of State; and~~

24 ~~(B) Nonpayment affects the existence or authorization of~~
25 ~~the domestic or foreign limited liability company.~~

26 ~~(4) That articles of dissolution have not been filed; and~~

27 ~~(5) Other facts of record in the office of the Secretary of~~
28 ~~State that may be requested by the applicant.~~

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

34
35 ~~4-32-1312. Penalty for signing false documents.~~

36 ~~(a) A person commits an offense if he or she signs a document he or~~

1 ~~she knows is false in any material respect with intent that the document be~~
2 ~~delivered to the Secretary of State for filing.~~

3 ~~(b) An offense under this section is a Class C misdemeanor.~~

4
5 ~~4-32-1313. Tax status.~~

6 ~~A limited liability company and its member or members shall be~~
7 ~~classified and taxed for Arkansas income tax purposes in the same manner as~~
8 ~~the limited liability company and its member or members are classified and~~
9 ~~taxed for federal income tax purposes.~~

10
11 ~~4-32-1314. Governing law.~~

12 ~~(a) The liability of members, managers, employees, and agents of a~~
13 ~~limited liability company organized and existing under this chapter shall at~~
14 ~~all times be determined solely and exclusively by this chapter and the laws~~
15 ~~of this state.~~

16 ~~(b) If a conflict arises between the law of this state and the laws of~~
17 ~~any other jurisdiction with regard to the liability of a member, manager,~~
18 ~~employee, or agent of a limited liability company organized and existing~~
19 ~~under this chapter for the debts, obligations, and liabilities of the limited~~
20 ~~liability company, or for the acts or omissions of another member, manager,~~
21 ~~employee, or agent of the limited liability company, this chapter and the~~
22 ~~laws of this state shall govern in determining such liability.~~

23
24 ~~4-32-1315. Full faith and credit.~~

25 ~~It is the intent of the legislature that the legal existence of limited~~
26 ~~liability companies organized under this chapter be recognized outside the~~
27 ~~boundaries of this state and that, subject to any reasonable requirement of~~
28 ~~registration, a domestic limited liability company transacting business~~
29 ~~outside this state be granted full faith and credit under the United States~~
30 ~~Constitution, Article IV, § 1.~~

31
32 ~~4-32-1316. Repealer.~~

33 ~~All laws and parts of laws in conflict with the provisions of this~~
34 ~~chapter are hereby repealed. Furthermore, the laws of this state relating to~~
35 ~~the establishment and regulation of professional service are hereby amended~~
36 ~~and superseded to the extent such laws are inconsistent as to form of~~

1 ~~organization with the provisions of this chapter, and are deemed amended to~~
2 ~~permit the provisions of professional service within this state by limited~~
3 ~~liability companies. By way of example and not by way of limitation of the~~
4 ~~foregoing, §§ 17-12-702 and 16-114-302 presently apply to persons,~~
5 ~~partnerships, and corporations and shall hereafter be deemed to apply to~~
6 ~~persons, partnerships, corporations, and limited liability companies.~~

7
8 ~~Subchapter 14 — Medical or Dental Limited Liability Company~~

9
10 ~~4-32-1401. — Certification of registration.~~

11 ~~(a) — A limited liability company formed under this chapter and that~~
12 ~~will engage in the practice of medicine must obtain a certificate of~~
13 ~~registration from the Arkansas State Medical Board and must comply with the~~
14 ~~statutes of the Medical Corporation Act, § 4-29-301 et seq.~~

15 ~~(b) — A limited liability company formed under this chapter and that~~
16 ~~will engage in the practice of dentistry must obtain a certificate of~~
17 ~~registration and comply with the statutes in the Dental Corporation Act, § 4-~~
18 ~~29-401 et seq.~~

19
20 SECTION 2. Arkansas Code § 4-37-102(8), concerning the definition of
21 "foreign limited liability company" under the Uniform Protected Series Act,
22 is amended to read as follows:

23 (8) "Foreign limited liability company" means an organization
24 that is:

25 (A) an unincorporated association;

26 (B) organized under laws of a state other than the laws of
27 this state, or under the laws of any foreign country;

28 (C) organized under a statute pursuant to which an
29 association may be formed that affords to each of its members limited
30 liability with respect to the liabilities of the entity; and

31 (D) not required to be registered or organized under any
32 statute of this state other than the ~~Small Business Entity Tax Pass Through~~
33 ~~Act, § 4-32-101 et seq~~ Uniform Limited Liability Company Act, § 4-38-101 et
34 seq.

35
36 SECTION 3. Arkansas Code § 4-37-102(12), concerning the definition of

1 "limited liability company" under the Uniform Protected Series Act, is
2 amended to read as follows:

3 (12) "Limited liability company" means an organization formed
4 under the ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et seq~~
5 Uniform Limited Liability Company Act, § 4-38-101 et seq.
6

7 SECTION 4. Arkansas Code § 4-37-102(13), concerning the definition of
8 "manager" or "manages" under the Uniform Protected Series Act, is amended to
9 read as follows:

10 (13) "Manager" or "managers" means, with respect to a limited
11 liability company that has set forth in its articles of organization that it
12 is to be managed by managers, the person or persons designated in accordance
13 with ~~§ 4-32-401~~ § 4-38-407.
14

15 SECTION 5. Arkansas Code § 4-37-102(14), concerning the definition of
16 "member" or "members" under the Uniform Protected Series Act, is amended to
17 read as follows:

18 (14) "Member" or "members" means a person or persons who have
19 been admitted to membership in a limited liability company as provided in §
20 ~~4-32-801~~ § 4-38-401 and who have not ceased to be members as provided in ~~§ 4-~~
21 ~~32-802~~ § 4-38-602.
22

23 SECTION 6. Arkansas Code § 4-37-102(20), concerning the definition of
24 "protected-series manager" under the Uniform Protected Series Act, is amended
25 to read as follows:

26 (20) "Protected-series manager" means a person under whose
27 authority the powers of a protected series are exercised and under whose
28 direction the activities and affairs of the protected series are managed
29 under the operating agreement, this chapter, and the ~~Small Business Entity~~
30 ~~Tax Pass Through Act, § 4-32-101 et seq~~ Uniform Limited Liability Company
31 Act, § 4-38-101 et seq.
32

33 SECTION 7. Arkansas Code § 4-37-106 is amended to read as follows:

34 4-37-106. Relation of operating agreement, this chapter, and the ~~Small~~
35 ~~Business Entity Tax Pass Through Act~~ Uniform Limited Liability Company Act.

36 (a) Except as otherwise provided in this section and subject to § 4-

1 37-107 and § 4-37-108, the operating agreement of a series limited liability
2 company governs:

3 (1) the internal affairs of a protected series, including:

4 (A) relations among any associated members of the
5 protected series;

6 (B) relations among the protected series and:

7 (i) any associated member;

8 (ii) the protected-series manager; or

9 (iii) any protected-series transferee;

10 (C) relations between any associated member and:

11 (i) the protected-series manager; or

12 (ii) any protected-series transferee;

13 (D) the rights and duties of a protected-series manager;

14 (E) governance decisions affecting the activities and
15 affairs of the protected series and the conduct of those activities and
16 affairs; and

17 (F) procedures and conditions for becoming an associated
18 member or protected-series transferee;

19 (2) relations among the protected series, the company, and any
20 other protected series of the company;

21 (3) relations between:

22 (A) the protected series, its protected-series manager,
23 any associated member of the protected series, or any protected-series
24 transferee of the protected series; and

25 (B) a person in the person's capacity as:

26 (i) a member of the company which is not an
27 associated member of the protected series;

28 (ii) a protected-series transferee or protected-
29 series manager of another protected series; or

30 (iii) a transferee of the company.

31 (b) If the ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et~~
32 ~~seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq., restricts the
33 power of an operating agreement to affect a matter, the restriction applies
34 to a matter under this chapter in accordance with § 4-37-108.

35 (c) If law of this state other than this chapter imposes a
36 prohibition, limitation, requirement, condition, obligation, liability, or

1 other restriction on a limited liability company, a member, manager, or other
2 agent of the company, or a transferee of the company, except as otherwise
3 provided in law of this state other than this chapter, the restriction
4 applies in accordance with § 4-37-108.

5 (d) Except as otherwise provided in § 4-37-107, if the operating
6 agreement of a series limited liability company does not provide for a matter
7 described in subsection (a) in a manner permitted by this chapter, the matter
8 is determined in accordance with the following rules:

9 (1) To the extent this chapter addresses the matter, this
10 chapter governs.

11 (2) To the extent this chapter does not address the matter, the
12 ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.~~ Uniform
13 Limited Liability Company Act, § 4-38-101 et seq., governs the matter in
14 accordance with § 4-37-108.

15

16 SECTION 8. Arkansas Code § 4-37-107(a)(4), concerning limitations on
17 an operating agreement under the Uniform Protected Series Act, is amended to
18 read as follows:

19 (4) section 4-37-104(b) to provide a protected series a power
20 beyond the powers the ~~Small Business Entity Tax Pass Through Act, § 4-32-101~~
21 ~~et seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq., provides a
22 limited liability company;

23

24 SECTION 9. Arkansas Code § 4-37-108 is amended to read as follows:

25 4-37-108. Rules for applying ~~Small Business Entity Tax Pass Through~~
26 ~~Act~~ Uniform Limited Liability Company Act to specified provisions of chapter.

27 (a) Except as otherwise provided in subsection (b) and § 4-37-107, the
28 following rules apply in applying § 4-37-106, § 4-37-304(c) and § 4-37-
29 304(f), § 4-37-501(4)(A), § 4-37-502(a), and § 4-37-503(2):

30 (1) a protected series of a series limited liability company is
31 deemed to be a limited liability company that is formed separately from the
32 series limited liability company and is distinct from the series limited
33 liability company and any other protected series of the series limited
34 liability company.

35 (2) an associated member of the protected series is deemed to be
36 a member of the company deemed to exist under subdivision (a)(1).

1 (3) a protected-series transferee of the protected series is
2 deemed to be a transferee of the company deemed to exist under subdivision
3 (a)(1).

4 (4) a protected-series transferable interest of the protected
5 series is deemed to be a transferable interest of the company deemed to exist
6 under subdivision (a)(1).

7 (5) a protected-series manager is deemed to be a manager of the
8 company deemed to exist under subdivision (a)(1).

9 (6) an asset of the protected series is deemed to be an asset of
10 the company deemed to exist under subdivision (a)(1), whether or not the
11 asset is an associated asset of the protected series.

12 (7) any creditor or other obligee of the protected series is
13 deemed to be a creditor or obligee of the company deemed to exist under
14 subdivision (a)(1).

15 (b) Subsection (a) does not apply if its application would:

16 (1) contravene ~~§ 4-32-404~~ § 4-38-408; or

17 (2) authorize or require the Secretary of State to:

18 (A) accept for filing a type of record that neither this
19 chapter nor the ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et~~
20 ~~seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq., authorizes or
21 requires a person to deliver to the Secretary of State for filing; or

22 (B) make or deliver a record that neither this chapter nor
23 the ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.~~ Uniform
24 Limited Liability Company Act, § 4-38-101 et seq., authorizes or requires the
25 Secretary of State to make or deliver.

26
27 SECTION 10. Arkansas Code § 4-37-201(c), concerning the effectiveness
28 of a protected series designation amendment under the Uniform Protected
29 Series Act, is amended to read as follows:

30 (c) A protected series is established when the protected series
31 designation takes effect under ~~§ 4-32-206~~ § 4-38-207.

32
33 SECTION 11. Arkansas Code § 4-37-201(d), concerning an amendment to a
34 protected series designation under the Uniform Protected Series Act, is
35 amended to read as follows:

36 (d) To amend a protected series designation, a series limited

1 liability company shall deliver to the Secretary of State for filing a
2 statement of designation change, signed by the company, that changes the name
3 of the company, the name of the protected series to which the designation
4 applies, or both. The change takes effect when the statement of designation
5 change takes effect under ~~§ 4-32-206~~ § 4-38-207.

6
7 SECTION 12. Arkansas Code § 4-37-202 is amended to read as follows:
8 4-37-202. Name.

9 (a) Except as otherwise provided in subsection (b), the name of a
10 protected series must comply with ~~§ 4-32-103~~ § 4-38-112.

11 (b) The name of a protected series of a series limited liability
12 company must:

13 (1) begin with the name of the company, including any word or
14 abbreviation required by ~~§ 4-32-103~~ § 4-38-112; and

15 (2) contain the phrase "Protected Series" or "protected series"
16 or the abbreviation "P.S." or "PS".

17 (c) If a series limited liability company changes its name, the
18 company shall deliver to the Secretary of State for filing a statement of
19 designation change for each of the company's protected series, changing the
20 name of each protected series to comply with this section.

21 (d) If a limited liability company is dissolved, administratively or
22 otherwise, the name is available for use by another formed limited liability
23 company, and the dissolved company would be required, upon reinstatement, to
24 use a new name if the prior name was taken.

25
26 SECTION 13. Arkansas Code § 4-37-204(a)(3), concerning service of
27 process under the Uniform Protected Series Act, is amended to read as
28 follows:

29 (3) other means authorized by law of this state other than the
30 ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.~~ Uniform
31 Limited Liability Company Act, § 4-38-101 et seq.

32
33 SECTION 14. Arkansas Code § 4-37-304(f), concerning the management of
34 a protected series under the Uniform Protected Series Act, is amended to read
35 as follows:

36 (f) Section ~~4-32-1102~~ 4-38-302 applies to a protected series in

1 accordance with § 4-37-108.

2

3 SECTION 15. Arkansas Code § 4-37-304(g), concerning the management of
4 a protected series under the Uniform Protected Series Act, is amended to read
5 as follows:

6 (g) An associated member of a protected series is an agent for the
7 protected series with power to bind the protected series to the same extent
8 that a member of a limited liability company is an agent for the company with
9 power to bind the company under ~~§ 4-32-301~~ § 4-38-301.

10

11 SECTION 16. Arkansas Code § 4-37-305 is amended to read as follows:

12 4-37-305. Right of person not associated member of protected series to
13 information concerning protected series.

14 (a) A member of a series limited liability company which is not an
15 associated member of a protected series of the company has a right to
16 information concerning the protected series to the same extent, in the same
17 manner, and under the same conditions that a member that is not a manager of
18 a manager-managed limited liability company has a right to information
19 concerning the company under ~~§ 4-32-405(b)~~ § 4-38-405.

20 (b) A person formerly an associated member of a protected series has a
21 right to information concerning the protected series to the same extent, in
22 the same manner, and under the same conditions that a person dissociated as a
23 member of a manager-managed limited liability company has a right to
24 information concerning the company under ~~§ 4-32-405(b)~~ § 4-38-405.

25 (c) If an associated member of a protected series dies, the legal
26 representative of the deceased associated member has a right to information
27 concerning the protected series to the same extent, in the same manner, and
28 under the same conditions that the legal representative of a deceased member
29 of a limited liability company has a right to information concerning the
30 company under ~~§ 4-32-405(e)~~ § 4-38-405.

31 (d) A protected-series manager of a protected series has a right to
32 information concerning the protected series to the same extent, in the same
33 manner, and under the same conditions that a manager of a manager-managed
34 limited liability company has a right to information concerning the company
35 under ~~§ 4-32-405(b)~~ § 4-38-405.

36

1 SECTION 17. Arkansas Code § 4-37-403 is amended to read as follows:
2 4-37-403. Remedies of judgment creditor of associated member of
3 protected-series transferee.

4 Section ~~4-32-705~~ 4-38-503 applies to a judgment creditor of:

5 (1) an associated member or protected-series transferee of a
6 protected series; or

7 (2) a series limited liability company, to the extent the
8 company owns a protected-series transferable interest of a protected series.
9

10 SECTION 18. Arkansas Code § 4-37-502 is amended to read as follows:
11 4-37-502. Winding up dissolved protected series.

12 (a) Subject to subsections (b) and (c) and in accordance with § 4-37-
13 108:

14 (1) a dissolved protected series shall wind up its activities
15 and affairs in the same manner that a limited liability company winds up its
16 activities and affairs under ~~§ 4-32-903~~ § 4-38-908, subject to the same
17 requirements and conditions and with the same effects; and

18 (2) judicial supervision or another judicial remedy is available
19 in the winding up of the protected series to the same extent, in the same
20 manner, under the same conditions, and with the same effects that apply under
21 ~~§ 4-32-902~~ § 4-38-908.

22 (b) When a protected series of a series limited liability company
23 dissolves, the company may deliver to the Secretary of State for filing a
24 statement of protected series dissolution stating the name of the company and
25 the protected series and that the protected series is dissolved. The filing
26 of the statement by the Secretary of State has the same effect as the filing
27 by the Secretary of State of a statement of dissolution under ~~§ 4-32-906~~ § 4-
28 38-701.

29 (c) When a protected series of a series limited liability company has
30 completed winding up, the company may deliver to the Secretary of State for
31 filing a statement of designation cancellation stating the name of the
32 company and the protected series and that the protected series is terminated.
33 The filing of the statement by the Secretary of State has the same effect as
34 the filing by the Secretary of State of a statement of termination under ~~§ 4-~~
35 ~~32-906~~ § 4-38-701.

36 (d) A series limited liability company has not completed its winding

1 up until each of the protected series of the company has completed its
2 winding up.

3

4 SECTION 19. Arkansas Code § 4-37-503 is amended to read as follows:

5 4-37-503. Effect of reinstatement of series limited liability company
6 or revocation of voluntary dissolution.

7 If a series limited liability company that has been administratively
8 dissolved is reinstated, or a series limited liability company that
9 voluntarily dissolved rescinds its dissolution:

10 (1) each protected series of the company ceases winding up; and

11 (2) section ~~4-32-203~~ 4-38-202 applies to each protected series
12 of the company in accordance with § 4-37-108.

13

14 SECTION 20. Arkansas Code § 4-37-604 is amended to read as follows:

15 4-37-604. Merger authorized – Parties restricted.

16 A series limited liability company may be party to a merger in
17 accordance with ~~§ 4-32-1206~~ § 4-38-1021, this section, and § 4-37-605 through
18 4-37-608 only if:

19 (1) each other party to the merger is a domestic limited
20 liability company; and

21 (2) the surviving company is not created in the merger.

22

23 SECTION 21. Arkansas Code § 4-37-605(1), concerning a merger under the
24 Uniform Protected Series Act, is amended to read as follows:

25 (1) comply with ~~§ 4-32-1206~~ § 4-38-1021; and

26

27 SECTION 22. Arkansas Code § 4-37-606(1), concerning a statement of
28 merger under the Uniform Protected Series Act, is amended to read as follows:

29 (1) comply with ~~§ 4-32-1208~~ § 4-38-1021; and

30

31 SECTION 23. Arkansas Code § 4-37-607 is amended to read as follows:

32 4-37-607. Effect of merger.

33 When a merger under § 4-37-604 becomes effective, in addition to the
34 effects stated in ~~§ 4-32-1209~~ § 4-38-1021:

35 (1) as provided in the plan of merger, each protected series of
36 each merging company which was established before the merger:

1 (A) is a relocated protected series or continuing
2 protected series; or

3 (B) is dissolved, wound up, and terminated;

4 (2) any protected series to be established as a result of the
5 merger is established;

6 (3) any relocated protected series or continuing protected
7 series is the same person without interruption as it was before the merger;

8 (4) all property of a relocated protected series or continuing
9 protected series continues to be vested in the protected series without
10 transfer, reversion, or impairment;

11 (5) all debts, obligations, and other liabilities of a relocated
12 protected series or continuing protected series continue as debts,
13 obligations, and other liabilities of the protected series;

14 (6) except as otherwise provided by law or the plan of merger,
15 all the rights, privileges, immunities, powers, and purposes of a relocated
16 protected series or continuing protected series remain in the protected
17 series;

18 (7) the new name of a relocated protected series may be
19 substituted for the former name of the protected series in any pending action
20 or proceeding;

21 (8) if provided in the plan of merger:

22 (A) a person becomes an associated member or protected-
23 series transferee of a relocated protected series or continuing protected
24 series;

25 (B) a person becomes an associated member of a protected
26 series established by the surviving company as a result of the merger;

27 (C) any change in the rights or obligations of a person in
28 the person's capacity as an associated member or protected-series transferee
29 of a relocated protected series or continuing protected series take effect;
30 and

31 (D) any consideration to be paid to a person that before
32 the merger was an associated member or protected-series transferee of a
33 relocated protected series or continuing protected series is due; and

34 (9) any person that is a member of a relocated protected series
35 becomes a member of the surviving company, if not already a member.

36

1 SECTION 24. Arkansas Code § 4-37-703(c), concerning the registration
2 of foreign protected series under the Uniform Protected Series Act, is
3 amended to read as follows:

4 (c) The name of a foreign protected series applying for registration
5 or registered to do business in this state must comply with § 4-37-202, § 4-
6 38-902, and § 4-38-903 and may do so using ~~§ 4-32-108~~ § 4-38-112, if the
7 fictitious name complies with § 4-37-202.

8
9 SECTION 25. Arkansas Code § 4-37-703(d), concerning the registration
10 of foreign protected series under the Uniform Protected Series Act, is
11 amended to read as follows:

12 (d) The requirement in ~~§ 4-32-1309~~ § 4-38-209 to amend a statement of
13 registration to update information applies to the information required by
14 subsection (b).

15
16 SECTION 26. Arkansas Code Title 4, is amended to add an additional
17 chapter to read as follows:

18 CHAPTER 38

19 UNIFORM LIMITED LIABILITY COMPANY ACT

20
21 Subchapter 1 – General Provisions

22
23 4-38-101. Short title.

24 This chapter may be cited as the Uniform Limited Liability Company Act.

25
26 4-38-102. Definitions.

27 In this chapter:

28 (1) "Certificate of organization" means the certificate required
29 by § 4-38-201. The term includes the certificate as amended or restated.

30 (2) "Contribution", except in the phrase "right of
31 contribution", means property or a benefit described in § 4-38-402 which is
32 provided by a person to a limited liability company to become a member or in
33 the person's capacity as a member.

34 (3) "Debtor in bankruptcy" means a person that is the subject
35 of:

36 (A) an order for relief under Title 11 of the United

1 States Code or a comparable order under a successor statute of general
2 application; or

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

5 (4) "Distribution" means a transfer of money or other property
6 from a limited liability company to a person on account of a transferable
7 interest or in the person's capacity as a member. The term:

8 (A) includes:

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

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

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

20 (5) "Foreign limited liability company" means an unincorporated
21 entity formed under the law of a jurisdiction other than this state which
22 would be a limited liability company if formed under the law of this state.

23 (6) "Jurisdiction", used to refer to a political entity, means
24 the United States, a state, a foreign county, or a political subdivision of a
25 foreign country.

26 (7) "Jurisdiction of formation" means the jurisdiction whose law
27 governs the internal affairs of an entity.

28 (8) "Limited liability company", except in the phrase "foreign
29 limited liability company" and in § 4-38-1001 et seq., means an entity formed
30 under this chapter or which becomes subject to this chapter under § 4-38-1001
31 et seq. or § 4-38-110;

32 (9) "Manager" means a person that under the operating agreement
33 of a manager-managed limited liability company is responsible, alone or in
34 concert with others, for performing the management functions stated in § 4-
35 38-407(c).

36 (10) "Manager-managed limited liability company" means a limited

1 liability company that qualifies under § 4-38-407(a).

2 (11) "Member" means a person that:

3 (A) has become a member of a limited liability company
4 under § 4-38-401 or was a member in a company when the company became subject
5 to this chapter under § 4-38-110; and

6 (B) has not dissociated under § 4-38-602.

7 (12) "Member-managed limited liability company" means a limited
8 liability company that is not a manager-managed limited liability company.

9 (13) "Operating agreement" means the agreement, whether or not
10 referred to as an operating agreement and whether oral, implied, in a record,
11 or in any combination thereof, of all the members of a limited liability
12 company, including a sole member, concerning the matters described in § 4-38-
13 105(a). The term includes the agreement as amended or restated.

14 (14) "Organizer" means a person that acts under § 4-38-201 to
15 form a limited liability company.

16 (15) "Person" means an individual, business corporation,
17 nonprofit corporation, partnership, limited partnership, limited liability
18 company, general cooperative association, limited cooperative association,
19 unincorporated nonprofit association, statutory trust, business trust,
20 common-law business trust, estate, trust, association, joint venture, public
21 corporation, government or governmental subdivision, agency, or
22 instrumentality, or any other legal or commercial entity.

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

26 (17) "Property" means all property, whether real, personal, or
27 mixed or tangible or intangible, or any right or interest therein.

28 (18) "Record", used as a noun, means information that is
29 inscribed on a tangible medium or that is stored in an electronic or other
30 medium and is retrievable in perceivable form.

31 (19)(A) "Registered agent" means an agent of a limited liability
32 company or foreign limited liability company which is authorized to receive
33 service of any process, notice, or demand required or permitted by law to be
34 served on the company.

35 (B) "Registered agent" means a commercial registered agent
36 or a noncommercial registered agent under the Model Registered Agents Act, §

1 4-20-101 et seq.

2 (20) "Registered foreign limited liability company" means a
3 foreign limited liability company that is registered to do business in this
4 state pursuant to a statement of registration filed by the Secretary of
5 State.

6 (21) "Sign" means, with present intent to authenticate or adopt
7 a record:

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

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

11 (22) "State" means a state of the United States, the District of
12 Columbia, Puerto Rico, the United States Virgin Islands, or any territory or
13 insular possession subject to the jurisdiction of the United States.

14 (23) "Transfer" includes:

15 (A) an assignment;

16 (B) a conveyance;

17 (C) a sale;

18 (D) a lease;

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

21 (F) a gift; and

22 (G) a transfer by operation of law.

23 (24) "Transferable interest" means the right, as initially owned
24 by a person in the person's capacity as a member, to receive distributions
25 from a limited liability company, whether or not the person remains a member
26 or continues to own any part of the right. The term applies to any fraction
27 of the interest, by whomever owned.

28 (25) "Transferee" means a person to which all or part of a
29 transferable interest has been transferred, whether or not the transferor is
30 a member. The term includes a person that owns a transferable interest under
31 § 4-38-603(a)(3).

32

33 4-38-103. Knowledge – Notice.

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

35 (1) has actual knowledge of it; or

36 (2) is deemed to know it under subsection (d)(1) or law other

1 than this chapter.

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

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

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

7 (c) Subject to § 4-38-210(f), a person notifies another person of a
8 fact by taking steps reasonably required to inform the other person in
9 ordinary course, whether or not those steps cause the other person to know
10 the fact.

11 (d) A person not a member is deemed:

12 (1) to know of a limitation on authority to transfer real
13 property as provided in § 4-38-302(g); and

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

15 (A) dissolution 90 days after a statement of dissolution
16 under § 4-38-702(b)(2)(A) becomes effective;

17 (B) termination 90 days after a statement of termination
18 under § 4-38-702(b)(2)(F) becomes effective; and

19 (C) participation in a merger, interest exchange,
20 conversion, or domestication, 90 days after articles of merger, interest
21 exchange, conversion, or domestication under § 4-38-1001 et seq. become
22 effective.

23
24 4-38-104. Governing law.

25 The law of this state governs:

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

27 (2) the liability of a member as member and a manager as manager
28 for a debt, obligation, or other liability of a limited liability company.

29
30 4-38-105. Operating agreement – Scope, function, and limitations.

31 (a) Except as otherwise provided in subsections (e) and (f), the
32 operating agreement governs the following:

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

35 (2) relations between the members and any manager or managers,
36 and the rights and duties under this chapter of a person in the capacity of

1 manager;

2 (3) the activities and affairs of the limited liability company
3 and the conduct of such activities and affairs, including without limitation
4 the requisite votes or consents from members and any managers required under
5 this chapter; and

6 (4) the means and conditions for amending the operating
7 agreement, including without limitation the votes or consents required from
8 members and any managers with respect to any matters under this chapter.

9 (b) Except as provided in subsections (e) and (f), the operating
10 agreement may vary the terms and provisions of this chapter.

11 (c) For purposes of this chapter, activities include without
12 limitation all business and financial matters.

13 (d) To the extent the operating agreement does not provide for a
14 matter described in subsection (a), this chapter governs the matter.

15 (e) An operating agreement may not:

16 (1) vary the law applicable under § 4-38-104;

17 (2) vary a limited liability company's capacity under § 4-38-109
18 to sue and be sued in its own name;

19 (3) vary any requirement, procedure, or other provision of this
20 chapter pertaining to:

21 (A) registered agents under the Model Registered Agents
22 Act, § 4-20-101 et seq.; or

23 (B) the Secretary of State, including provisions
24 pertaining to records authorized or required to be delivered to the Secretary
25 of State for filing under this chapter;

26 (4) vary the provisions of § 4-38-204;

27 (5) alter or eliminate the duty of loyalty or the duty of care,
28 except as otherwise provided in subsection (f);

29 (6) eliminate the contractual obligation of good faith and fair
30 dealing under § 4-38-409(d), but the operating agreement may prescribe the
31 standards, if not manifestly unreasonable, by which the performance of the
32 obligation is to be measured;

33 (7) relieve or exonerate a person from liability for conduct
34 involving bad faith, willful or intentional misconduct, or knowing violation
35 of law;

36 (8) unreasonably restrict the duties and rights under § 4-38-

1 410, but the operating agreement may impose reasonable restrictions on the
2 availability and use of information obtained under that section and may
3 define appropriate remedies, including liquidated damages, for a breach of
4 any reasonable restriction on use;

5 (9) vary the causes of dissolution specified in § 4-38-
6 701(a)(4);

7 (10) vary the requirement to wind up the company's activities
8 and affairs as specified in § 4-38-702(a), (b)(1), and (e);

9 (11) unreasonably restrict the right of a member to maintain an
10 action under § 4-38-801 et seq.;

11 (12) vary the provisions of § 4-38-805, but the operating
12 agreement may provide that the company may not have a special litigation
13 committee;

14 (13) vary the right of a member to approve a merger, interest
15 exchange, conversion, or domestication under § 4-38-1023(a)(2), § 4-38-
16 1033(a)(2), § 4-38-1043(a)(2), or § 4-38-1053(a)(2);

17 (14) vary the required contents of a plan of merger under § 4-
18 38-1022(a), plan of interest exchange under § 4-38-1032(a), plan of
19 conversion under § 4-38-1042(a), or plan of domestication under § 4-38-
20 1052(a); or

21 (15) except as otherwise provided in § 4-38-106 and § 4-38-
22 107(b), restrict the rights under this chapter of a person other than a
23 member or manager.

24 (f) Subject to subsection (e)(7), without limiting other terms that
25 may be included in an operating agreement, the following rules apply:

26 (1) The operating agreement may:

27 (A) specify the method by which a specific act or
28 transaction that would otherwise violate the duty of loyalty may be
29 authorized or ratified by one or more disinterested and independent persons
30 after full disclosure of all material facts; and

31 (B) alter the prohibition in § 4-38-405(a)(2) so that the
32 prohibition requires only that the company's total assets not be less than
33 the sum of its total liabilities.

34 (2) To the extent the operating agreement of a member-managed
35 limited liability company expressly relieves a member of a responsibility
36 that the member otherwise would have under this chapter and imposes the

1 responsibility on one or more other members, the agreement also may eliminate
2 or limit any fiduciary duty of the member relieved of the responsibility
3 which would have pertained to the responsibility.

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

5 (A) alter or eliminate the aspects of the duty of loyalty
6 stated in § 4-38-409(b) and (i);

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

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

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

13 (g) The court shall decide as a matter of law whether a term of an
14 operating agreement is manifestly unreasonable under subsection (e)(6) or
15 (f)(3). The court:

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

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

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

23 (B) the term is an unreasonable means to achieve the
24 term's objective.

25
26 4-38-106. Operating agreement – Effect on limited liability company
27 and person becoming member – Preformation agreements.

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

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

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

1 company may assent to terms providing that upon the formation of the company
2 the terms will become the operating agreement.

3
4 4-38-107. Operating agreement – Effect on third parties and
5 relationship to records effective on behalf of limited liability company.

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

10 (b) The obligations of a limited liability company and its members to
11 a person in the person's capacity as a transferee or a person dissociated as
12 a member are governed by the operating agreement. Subject only to a court
13 order issued under § 4-38-503(b)(2) to effectuate a charging order, an
14 amendment to the operating agreement made after a person becomes a transferee
15 or is dissociated as a member:

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

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

22 (c) If a record delivered by a limited liability company to the
23 Secretary of State for filing becomes effective and contains a provision that
24 would be ineffective under § 4-38-105(c) or § 4-38-105(d)(3) if contained in
25 the operating agreement, the provision is ineffective in the record.

26 (d) Subject to subsection (c), if a record delivered by a limited
27 liability company to the Secretary of State for filing becomes effective and
28 conflicts with a provision of the operating agreement:

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

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

33
34 4-38-108. Nature, purpose, and duration of limited liability company.

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

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

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

4
5 4-38-109. Powers.

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

9
10 4-38-110. Application to existing relationships.

11 (a) Before September 1, 2021, this chapter governs only:

12 (1) a limited liability company formed on or after September 1,
13 2021; and

14 (2) except as otherwise provided in subsection (c), a limited
15 liability company formed before September 1, 2021, which elects, in the
16 manner provided in its operating agreement or by law for amending the
17 operating agreement, to be subject to this chapter.

18 (b) Except as otherwise provided in subsection (c), on and after
19 September 1, 2021, this chapter governs all limited liability companies.

20 (c) For purposes of applying this chapter to a limited liability
21 company formed before September 1, 2021:

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

24 (2) for purposes of applying § 4-38-102(10) and subject to § 4-
25 38-107(d), language in the company's articles of organization designating the
26 company's management structure operates as if that language were in the
27 operating agreement.

28
29 4-38-111. Supplemental principles of law.

30 Unless displaced by particular provisions of this chapter, the
31 principles of law and equity supplement this chapter.

32
33 4-38-112. Permitted names.

34 (a) The name of a limited liability company must contain the phrase
35 “limited liability company” or “limited company” or the abbreviation
36 “L.L.C.”, “LLC”, “L.C.”, or “LC”. “Limited” may be abbreviated as “Ltd.”, and

1 “company” may be abbreviated as “Co.”.

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

6 (1) name of an existing person whose formation required the
7 filing of a record by the Secretary of State and which is not at the time
8 administratively dissolved;

9 (2) name of a limited liability partnership whose statement of
10 qualification is in effect;

11 (3) name under which a person is registered to do business in
12 this state by the filing of a record by the Secretary of State;

13 (4) name reserved under § 4-38-113 or other law of this state
14 providing for the reservation of a name by the filing of a record by the
15 Secretary of State;

16 (5) name registered under § 4-38-114 or other law of this state
17 providing for the registration of a name by the filing of a record by the
18 Secretary of State; and

19 (6) name registered under § 4-26-405, § 4-27-404, § 4-38-122,
20 and § 4-42-707.

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

27 (d) Except as otherwise provided in subsection (e), in determining
28 whether a name is the same as or not distinguishable on the records of the
29 Secretary of State from the name of another person, words, phrases, or
30 abbreviations indicating a type of person, such as “corporation”, “corp.”,
31 “incorporated”, “Inc.”, “professional corporation”, “P.C.”, “PC”,
32 “professional association”, “P.A.”, “PA”, “Limited”, “Ltd.”, “limited
33 partnership”, “L.P.”, “LP”, “limited liability partnership”, “L.L.P.”, “LLP”,
34 “registered limited liability partnership”, “R.L.L.P.”, “RLLP”, “limited
35 liability limited partnership”, “L.L.L.P.”, “LLLp”, “registered limited
36 liability limited partnership”, “R.L.L.L.P.”, “RLLLLP”, “limited liability

1 company”, “L.L.C.”, “LLC”, “limited cooperative association”, “limited
2 cooperative”, or “L.C.A.”, or “LCA” may not be taken into account.

3 (e) A person may consent in a record that is satisfactory to the
4 Secretary of State to the use of a name that is not distinguishable on the
5 records of the Secretary of State from its name except for the addition of a
6 word, phrase, or abbreviation indicating the type of person as provided in
7 subsection (d). In such a case, the person need not change its name pursuant
8 to subsection (c).

9 (f) The name of a limited liability company or foreign limited
10 liability company may not contain the name of any person who is not a member,
11 except that the name of a former member or member of a predecessor
12 organization may continue to be included in the name.

13 (g) A limited liability company or foreign limited liability company
14 may use a name that is not distinguishable from a name described in
15 subsections (b)(1) through (6) if the company delivers to the Secretary of
16 State a certified copy of a final judgment of a court of competent
17 jurisdiction establishing the right of the company to use the name in this
18 state.

19
20 4-38-113. Reservation of name.

21 (a) A person may reserve the exclusive use of a name that complies
22 with § 4-38-112 by delivering an application to the Secretary of State for
23 filing. The application must state the name and address of the applicant and
24 the name to be reserved. If the Secretary of State finds that the name is
25 available, the Secretary of State shall reserve the name for the applicant’s
26 exclusive use for 120 days.

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

31
32 4-38-114. Registration of name.

33 (a) A foreign limited liability company not registered to do business
34 in this state under § 4-38-901 et seq. may register its name, or an alternate
35 name adopted pursuant to § 4-38-906, if the name is distinguishable on the
36 records of the Secretary of State from the names that are not available under

1 § 4-38-112.

2 (b) To register its name or an alternate name adopted pursuant to § 4-
3 38-906, a foreign limited liability company must deliver to the Secretary of
4 State for filing an application stating the company's name, the jurisdiction
5 and date of its formation, and any alternate name adopted pursuant to § 4-38-
6 906. If the Secretary of State finds that the name applied for is available,
7 the Secretary of State shall register the name for the applicant's exclusive
8 use.

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

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

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

21
22 4-38-115. Registered agent.

23 (a) Each limited liability company and each registered foreign limited
24 liability company shall designate and maintain a registered agent in this
25 state in compliance with the Model Registered Agents Act, § 4-20-101 et seq.

26 (b) The designation of a registered agent is an affirmation of fact by
27 the limited liability company or registered foreign limited liability company
28 that the agent has consented to serve.

29 (c) A registered agent for a limited liability company or registered
30 foreign limited liability company must have a place of business in this
31 state.

32 (d) The only duties under this chapter of a registered agent that has
33 complied with this chapter are as described in § 4-20-114.

34
35 4-38-116. Change of registered agent or address for registered agent
36 by limited liability company.

1 (a) A limited liability company or registered foreign limited
2 liability company may change its registered agent or the address of its
3 registered agent as provided under § 4-20-108.

4 (b) Any change by a noncommercial registered agent shall comply with §
5 4-20-109.

6 (c) Any change by a commercial registered agent shall comply with § 4-
7 20-110.

8
9 4-38-117. Resignation of registered agent.

10 (a) A registered agent may resign as an agent for a limited liability
11 company or registered foreign limited liability company as directed under §
12 4-20-111.

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

14 (1) the 31st day after the day on which it is filed by the
15 Secretary of State; or

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

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

21 (d) When a statement of resignation takes effect, the registered agent
22 ceases to have responsibility under this chapter for any matter thereafter
23 tendered to it as agent for the limited liability company or registered
24 foreign limited liability company. The resignation does not affect any
25 contractual rights the company or foreign company has against the agent or
26 that the agent has against the company or foreign company.

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

30
31 4-38-118. Change of name or address by a registered agent.

32 (a) If a noncommercial registered agent changes its name, its address
33 as currently in effect with respect to a represented entity pursuant to § 4-
34 20-105(a), the agent shall file with the Secretary of State, with respect to
35 each entity represented by the agent, a statement of change signed by or on
36 behalf of the agent which states:

- 1 (1) the name of the entity;
2 (2) the name and address of the agent as currently in effect
3 with respect to the entity;
4 (3) if the name of the agent has changed, its new name; and
5 (4) if the address of the agent has changed, the new address.

6 (b) If a commercial registered agent changes its name, its address as
7 currently listed under § 4-20-106(a), or its type or jurisdiction of
8 organization, the agent shall file with the Secretary of State a statement of
9 change signed by or on behalf of the agent which states:

10 (1) the name of the agent as currently listed under § 4-20-
11 106(a);

12 (2) if the name of the agent has changed, its new name;

13 (3) if the address of the agent has changed, the new address;

14 and

15 (4) if the type or jurisdiction of organization of the agent has
16 changed, the new type or jurisdiction of organization.

17 (c) The filing of a statement of change under subsection (b) is
18 effective to change the information regarding the commercial registered agent
19 with respect to each entity represented by the agent.

20 (d) A statement of change filed under this section takes effect on
21 filing.

22 (e) A commercial registered agent shall promptly furnish each entity
23 represented by it with notice in a record of the filing of a statement of
24 change relating to the name or address of the agent and the changes made by
25 the filing.

26 (f) If a commercial registered agent changes its address without
27 filing a statement of change as required by this section, the Secretary of
28 State may cancel the listing of the agent under § 4-20-106. A cancellation
29 under this subsection has the same effect as a termination under § 4-20-107.
30 Promptly after canceling the listing of an agent, the Secretary of State
31 shall serve notice in a record in the manner provided in § 4-20-113(b) or (c)
32 on:

33 (1) each entity represented by the agent, stating that the agent
34 has ceased to be an agent for service of process on the entity and that,
35 until the entity appoints a new registered agent, service of process may be
36 made on the entity as provided in § 4-20-113; and

1 (2) the agent, stating that the listing of the agent has been
2 cancelled under this section.

3 (g) The Secretary of State shall note the filing of the commercial
4 registered agent change statement in the index of filings maintained by the
5 Secretary of State for each entity represented by the registered agent at the
6 time of the filing.

7 (h) A noncommercial registered agent shall promptly furnish the
8 represented entity with notice in a record of the filing of a statement of
9 change and the changes made by the filing.

10
11 4-38-119. Service of process, notice, or demand.

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

15 (b) If a limited liability company or registered foreign limited
16 liability company ceases to have a registered agent, or if its registered
17 agent cannot with reasonable diligence be served, the company or foreign
18 company may be served by registered or certified mail, return receipt
19 requested, or by similar commercial delivery service, addressed to the
20 company or foreign company at its principal office. The address of the
21 principal office must be as shown on the company's or foreign company's most
22 recent annual report filed with the Secretary of State. Service is effected
23 under this subsection on the earliest of:

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

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

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

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

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

3 (e) Service of process, notice, or demand may be made by other means
4 under law other than this chapter.

5
6 4-38-120. Delivery of record.

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

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

12
13 4-38-121. Reservation of power to amend or repeal.

14 The General Assembly has power to amend or repeal all or part of this
15 chapter at any time, and all limited liability companies and foreign limited
16 liability companies subject to this chapter are governed by the amendment or
17 repeal.

18
19 4-38-122. Use of fictitious names.

20 (a) A limited liability company, domestic or foreign, shall not
21 conduct any business in this state under a fictitious name unless it first
22 files with the Secretary of State a form supplied or approved by the
23 Secretary of State giving the following information:

24 (1) the fictitious name under which business is being or will be
25 conducted by the applicant limited liability company;

26 (2) a brief statement of the character of business to be
27 conducted under the fictitious name; and

28 (3) the name of the limited liability company, the state of
29 organization, and location, giving the city and street address, of the
30 registered office in the state of the applicant limited liability company.

31 (b)(1) Each form shall be executed, without verification, in duplicate
32 and filed with the Secretary of State.

33 (2) The Secretary of State shall retain one (1) counterpart of
34 the form described in subsection (a) of this section and the other
35 counterpart, bearing the file marks of the Secretary of State, shall be
36 returned to the limited liability company.

1 (c) The Secretary of State shall not accept a filing if the proposed
2 fictitious name is the same as, or confusingly similar to, the name of any
3 domestic corporation, limited liability company, limited partnership, limited
4 liability partnership or any other entity registered with the Secretary of
5 State, or any foreign entity authorized to do business in the state or any
6 name reserved or registered under §§ 4-27-402, 4-27-403, 4-38-113, or 4-47-
7 109.

8 (d) Copies of the filed forms, certified by the respective filing
9 officers, shall be admitted in evidence where the question of filing may be
10 material.

11 (e)(1) If, after a filing under this section, the applicant limited
12 liability company is dissolved, or, being a foreign limited liability
13 company, surrenders or forfeits its rights to do business in Arkansas or,
14 whether a domestic or foreign limited liability company, ceases to do
15 business in Arkansas under the specified fictitious name, the limited
16 liability company shall be obligated to file with the Secretary of State a
17 cancellation of its privilege hereunder.

18 (2) If the cancellation is not filed, the Secretary of State,
19 upon satisfactory evidence, may cancel the privilege.

20 (f) If a limited liability company that has not filed under this
21 section, but has or shall become a party to any contract, deed, conveyance,
22 assignment, or instrument of encumbrance in which the limited liability
23 company is referred to exclusively by a fictitious name, the obligations
24 imposed upon the limited liability company under the instrument and the right
25 sought to be conferred upon third parties thereunder may be enforced against
26 it, but the rights accruing to the limited liability company under the
27 instrument shall not be enforced by the limited liability company in the
28 courts of this state until it complies with this section and pays to the
29 Treasurer of State a civil penalty of three hundred dollars (\$300), and in
30 any suit by a limited liability company upon an instrument which identified
31 it exclusively by a fictitious name, the limited liability company shall be
32 required to allege compliance with this section.

33 (g) Compliance with this section does not give a limited liability
34 company an exclusive right to the use of the fictitious name, and the
35 registration of a fictitious name under this section will not bar the use of
36 the same name as the name of any domestic entity or any foreign entity

1 authorized to do business in this state, but this chapter is not intended to
2 bar any aggrieved party in such a situation from applying for equitable
3 relief under principles of fair trade law.

4
5 Subchapter 2 – Formation; Certificate of organization and other filings.

6
7 4-38-201. Formation of limited liability company; Certificate of
8 organization.

9 (a) One or more persons may act as organizers to form a limited
10 liability company by delivering to the Secretary of State for filing a
11 certificate of organization.

12 (b) A certificate of organization must state:

13 (1) the name of the limited liability company, which must comply
14 with § 4-38-112;

15 (2) the street and mailing addresses of the company's principal
16 office; and

17 (3) the information required by § 4-20-105(a).

18 (c) A certificate of organization may contain statements as to matters
19 other than those required by subsection (b), but may not vary or otherwise
20 affect the provisions specified in § 4-38-105(c) and (d) in a manner
21 inconsistent with that section. However, a statement in a certificate of
22 organization is not effective as a statement of authority.

23 (d) A limited liability company is formed when the certificate of
24 organization becomes effective and at least one person has become a member or
25 manager.

26
27 4-38-202. Amendment or restatement of certificate of organization.

28 (a) A certificate of organization may be amended or restated at any
29 time.

30 (b) To amend its certificate of organization, a limited liability
31 company must deliver to the Secretary of State for filing an amendment
32 stating:

33 (1) the name of the company;

34 (2) the date of filing of its initial certificate; and

35 (3) the text of the amendment.

36 (c) To restate its certificate of organization, a limited liability

1 company must deliver to the Secretary of State for filing a restatement,
2 designated as such in its heading.

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

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

9 (2) if appropriate, deliver to the Secretary of State for filing
10 a statement of change under § 4-38-116 or a statement of correction under §
11 4-38-209.

12
13 4-38-203. Signing of records to be delivered for filing to Secretary
14 of State.

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

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

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

22 (3) A record delivered on behalf of a dissolved company that has
23 no member must be signed by the person winding up the company's activities
24 and affairs under § 4-38-702(c) or a person appointed under § 4-38-702(d) to
25 wind up the activities and affairs.

26 (4) A statement of denial by a person under § 4-38-303 must be
27 signed by that person.

28 (5) Any other record delivered on behalf of a person to the
29 Secretary of State for filing must be signed by that person.

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

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

36

1 4-38-204. Signing and filing pursuant to judicial order.

2 (a) If a person required by this chapter to sign a record or deliver a
3 record to the Secretary of State for filing under this chapter does not do
4 so, any other person that is aggrieved may petition circuit court to order:

5 (1) the person to sign the record;

6 (2) the person to deliver the record to the Secretary of State
7 for filing; or

8 (3) the Secretary of State to file the record unsigned.

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

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

15
16 4-38-205 Liability for inaccurate information in filed record.

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

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

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

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

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

33 (i) effected an amendment under § 4-38-202;

34 (ii) filed a petition under § 4-38-204; or

35 (iii) delivered to the Secretary of State for filing
36 a statement of change under § 4-38-116 or a statement of correction under §

1 4-38-209.

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

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

12
13 4-38-206. Filing requirements.

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

17 (1) The filing of the record must be required or permitted by
18 this chapter.

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

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

25 (4) The record must be signed by a person authorized or required
26 under this chapter to sign the record.

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

31 (b) If law other than this chapter prohibits the disclosure by the
32 Secretary of State of information contained in a record delivered to the
33 Secretary of State for filing, the Secretary of State shall file the record
34 if the record otherwise complies with this chapter but may redact the
35 information.

36 (c) When a record is delivered to the Secretary of State for filing,

1 any fee required under this chapter and any fee, tax, interest, or penalty
2 required to be paid under this chapter or law other than this chapter must be
3 paid in a manner permitted by the Secretary of State or by that law.

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

6 (e) The Secretary of State may provide forms for filings required or
7 permitted to be made by this chapter, but, except as otherwise provided in
8 subsection (f), their use is not required.

9 (f) The Secretary of State may require that a cover sheet for a filing
10 be on a form prescribed by the Secretary of State.

11
12 4-38-207. Effective date and time.

13 Except as otherwise provided in § 4-38-208 and subject to § 4-38-
14 209(d), a record filed under this chapter is effective:

15 (1) on the date and at the time of its filing by the Secretary
16 of State, as provided in § 4-38-210(b);

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

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

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

24
25 4-38-208. Withdrawal of filed record before effectiveness.

26 (a) Except as otherwise provided in §§ 4-38-1024, 4-38-1034, 4-38-
27 1044, and 4-38-1054, a record delivered to the Secretary of State for filing
28 may be withdrawn before it takes effect by delivering to the Secretary of
29 State for filing a statement of withdrawal.

30 (b) A statement of withdrawal must:

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

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

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

1 (c) On filing by the Secretary of State of a statement of withdrawal,
2 the action or transaction evidenced by the original record does not take
3 effect.

4
5 4-38-209. Correcting filed record.

6 (a) A person on whose behalf a filed record was delivered to the
7 Secretary of State for filing may correct the record if:

8 (1) the record at the time of filing was inaccurate;

9 (2) the record was defectively signed; or

10 (3) the electronic transmission of the record to the Secretary
11 of State was defective.

12 (b) To correct a filed record, a person on whose behalf the record was
13 delivered to the Secretary of State must deliver to the Secretary of State
14 for filing a statement of correction.

15 (c) A statement of correction:

16 (1) may not state a delayed effective date;

17 (2) must be signed by the person correcting the filed record;

18 (3) must identify the filed record to be corrected;

19 (4) must specify the inaccuracy or defect to be corrected;

20 (5) must correct the inaccuracy or defect; and

21 (6) may not correct original certificate of organization.

22 (d) A statement of correction is effective as of the effective date of
23 the filed record that it corrects except for purposes of § 4-38-103(d) and as
24 to persons relying on the uncorrected filed record and adversely affected by
25 the correction. For those purposes and as to those persons, the statement of
26 correction is effective when filed.

27
28 4-38-210. Duty of Secretary of State to file – Review of refusal to
29 file – Delivery of record by Secretary of State.

30 (a) The Secretary of State shall file a record delivered to the
31 Secretary of State for filing which satisfies this chapter. The duty of the
32 Secretary of State under this section is ministerial.

33 (b) When the Secretary of State files a record, the Secretary of State
34 shall record it as filed on the date and at the time of its delivery. After
35 filing a record, the Secretary of State shall deliver to the person that
36 submitted the record a copy of the record with an acknowledgment of the date

1 and time of filing and, in the case of a statement of denial, also to the
2 limited liability company to which the statement pertains.

3 (c) If the Secretary of State refuses to file a record, the Secretary
4 of State shall, not later than 15 business days after the record is
5 delivered:

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

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

10 (d) If the Secretary of State refuses to file a record, the person
11 that submitted the record may petition the circuit court to compel filing of
12 the record. The record and the explanation of the Secretary of State of the
13 refusal to file must be attached to the petition. The court may decide the
14 matter in a summary proceeding.

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

16 (1) affect the validity or invalidity of the record in whole or
17 in part; or

18 (2) create a presumption that the information contained in the
19 record is correct or incorrect.

20 (f) Except as otherwise provided by 4-38-119 or by law other than this
21 chapter, the Secretary of State may deliver any record to a person by
22 delivering it:

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

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

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

26 (4) to another address the person provides to the Secretary of
27 State for delivery.

28
29 4-38-211. Certificate of good standing or registration.

30 (a) On request of any person, the Secretary of State shall issue a
31 certificate of good standing for a limited liability company or a certificate
32 of registration for a registered foreign limited liability company.

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

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

36 (2) in the case of a limited liability company:

1 (A) that a certificate of organization has been filed and
2 has taken effect;

3 (B) the date the certificate became effective;

4 (C) the period of the company's duration if the records of
5 the Secretary of State reflect that its period of duration is less than
6 perpetual; and

7 (D) that:

8 (i) no statement of dissolution, statement of
9 administrative dissolution, or statement of termination has been filed;

10 (ii) the records of the Secretary to State do not
11 otherwise reflect that the company has been dissolved or terminated; and

12 (iii) a proceeding is not pending under § 4-38-708;

13 (3) in the case of a registered foreign limited liability
14 company, that it is registered to do business in this state;

15 (4) that all fees, taxes, interest, and penalties owed to this
16 state by the limited liability company or foreign limited liability company
17 and collected through the Secretary of State have been paid, if:

18 (A) payment is reflected in the records of the Secretary
19 of State; and

20 (B) nonpayment affects the good standing or registration
21 of the company or foreign company;

22 (5) that the most recent annual report required by § 4-38-212
23 has been delivered to the Secretary of State for filing; and

24 (6) other facts reflected in the records of the Secretary of
25 State pertaining to the limited liability company or foreign limited
26 liability company which the person requesting the certificate reasonably
27 requests.

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

31
32 4-38-212. Annual report for Secretary of State.

33 (a) A limited liability company or registered foreign limited
34 liability company shall deliver to the Secretary of State for filing an
35 annual report that states:

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

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

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

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

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

8 (6) in the case of a foreign company, its jurisdiction of
9 formation and any alternate name adopted under § 4-38-906(a).

10 (b) Information in the annual report must be current as of the date
11 the report is signed by the limited liability company or registered foreign
12 limited liability company.

13 (c) The first annual report must be delivered to the Secretary of
14 State for filing after January 1 and before April 1 of the year following the
15 calendar year in which the limited liability company's certificate of
16 organization became effective or the registered foreign limited liability
17 company registered to do business in this state. Subsequent annual reports
18 must be delivered to the Secretary of State for filing after January 1 and
19 before April 1 of each calendar year thereafter.

20 (d) If an annual report does not contain the information required by
21 this section, the Secretary of State promptly shall notify the reporting
22 limited liability company or registered foreign limited liability company in
23 a record and return the report for correction.

24 (e) If an annual report contains the name or address of a registered
25 agent which differs from the information shown in the records of the
26 Secretary of State immediately before the report becomes effective, the
27 differing information in the report is considered a statement of change under
28 § 4-38-116.

29 (f) A limited liability company has satisfied the annual report
30 requirements under § 4-38-212 if the requirements under the Arkansas
31 Corporate Franchise Tax Act of 1979, § 26-54-101 et seq., have been met.

32
33 Subchapter 3 – Relations of Members and Managers to Persons Dealing with
34 Limited Liability Company.

35
36 4-38-301. No agency power of member as member.

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

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

6
7 4-38-302. Statement of limited liability company authority.

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

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

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

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

17 (B) enter into other transactions on behalf of, or
18 otherwise act for or bind, the company; and

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

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

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

25 (b) To amend or cancel a statement of authority filed by the Secretary
26 of State, a limited liability company must deliver to the Secretary of State
27 for filing an amendment or cancellation stating:

28 (1) the name of the company;

29 (2) the name and street and mailing addresses of the company's
30 registered agent;

31 (3) the date the statement being affected became effective; and

32 (4) the contents of the amendment or a declaration that the
33 statement is canceled.

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

36 (d) Subject to subsection (c) and § 4-38-103(d), and except as

1 otherwise provided in subsections (f), (g), and (h), a limitation on the
2 authority of a person or a position contained in an effective statement of
3 authority is not by itself evidence of any person's knowledge or notice of
4 the limitation.

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

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

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

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

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

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

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

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

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

1 of subsection (g).

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

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

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

15
16 4-38-303. Statement of denial.

17 A person named in a filed statement of authority granting that person
18 authority may deliver to the Secretary of State for filing a statement of
19 denial that:

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

23 (2) denies the grant of authority.

24
25 4-38-304. Liability of members and managers.

26 (a) A debt, obligation, or other liability of a limited liability
27 company is solely the debt, obligation, or other liability of the company. A
28 member or manager is not personally liable, directly or indirectly, by way of
29 contribution or otherwise, for a debt, obligation, or other liability of the
30 company solely by reason of being or acting as a member or manager. This
31 subsection applies regardless of the dissolution of the company.

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

36

1 Subchapter 4 – Relations of Members to Each Other and to Limited Liability
2 Company

3
4 4-38-401. Becoming member.

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

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

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

16 (1) as provided in the operating agreement;

17 (2) as the result of a transaction effective under § 4-38-1001
18 et seq.;

19 (3) with the affirmative vote or consent of all the members; or

20 (4) as provided in § 4-38-701(a)(3).

21 (d) A person may become a member without:

22 (1) acquiring a transferable interest; or

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

25
26 4-38-402. Form of contribution.

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

31
32 4-38-403. Liability for contributions.

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

36 (b) If a person does not fulfill an obligation to make a contribution

1 other than money, the person is obligated at the option of the limited
2 liability company to contribute money equal to the value of the part of the
3 contribution which has not been made.

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

10
11 4-38-404. Sharing of and right to distributions before dissolution.

12 (a) Any distribution made by a limited liability company before its
13 dissolution and winding up must be in equal shares among members and persons
14 dissociated as members, except to the extent necessary to comply with a
15 transfer effective under § 4-38-502 or charging order in effect under § 4-38-
16 503.

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

21 (c) A person does not have a right to demand or receive a distribution
22 from a limited liability company in any form other than money. Except as
23 otherwise provided in § 4-38-707(d), a company may distribute an asset in
24 kind only if each part of the asset is fungible with each other part and each
25 person receives a percentage of the asset equal in value to the person's
26 share of distributions.

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

34
35 4-38-405. Limitations on distributions.

36 (a) A limited liability company may not make a distribution, including

1 a distribution under § 4-38-707, if after the distribution:

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

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

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

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

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

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

18 (1) in the case of a distribution as defined in § 4-38-
19 102(4)(A), as of the earlier of:

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

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

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

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

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

30 (B) the payment is made, if the payment occurs more than
31 120 days after the distribution is authorized.

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

36 (e) A limited liability company's indebtedness, including indebtedness

1 issued as a distribution, is not a liability for purposes of subsection (a)
2 if the terms of the indebtedness provide that payment of principal and
3 interest is made only if and to the extent that payment of a distribution
4 could then be made under this section. If the indebtedness is issued as a
5 distribution, each payment of principal or interest is treated as a
6 distribution, the effect of which is measured on the date the payment is
7 made.

8 (f) In measuring the effect of a distribution under § 4-38-707, the
9 liabilities of a dissolved limited liability company do not include any claim
10 that has been disposed of under § 4-38-704, § 4-38-705, or § 4-38-706.

11
12 4-38-406. Liability for improper distributions.

13 (a) Except as otherwise provided in subsection (b), if a member of a
14 member-managed limited liability company or manager of a manager-managed
15 limited liability company consents to a distribution made in violation of §
16 4-38-405 and in consenting to the distribution fails to comply with § 4-38-
17 409, the member or manager is personally liable to the company for the amount
18 of the distribution which exceeds the amount that could have been distributed
19 without the violation of § 4-38-405.

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

26 (c) A person that receives a distribution knowing that the
27 distribution violated § 4-38-405 is personally liable to the limited
28 liability company but only to the extent that the distribution received by
29 the person exceeded the amount that could have been properly paid under § 4-
30 38-405.

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

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

35 (2) implead any person that received a distribution in violation
36 of subsection (c) and seek to enforce a right of contribution from the person

1 in the amount the person received in violation of subsection (c).

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

4
5 4-38-407. Management of limited liability company.

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

8 (1) expressly provides that:

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

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

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

13 (2) includes words of similar import.

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

16 (1) Except as expressly provided in this chapter, the management
17 and conduct of the company are vested in the members.

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

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

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

25 (A) undertake an act outside the ordinary course of the
26 activities and affairs of the company; or

27 (B) amend the operating agreement.

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

30 (1) Except as expressly provided in this chapter, any matter
31 relating to the activities and affairs of the company is decided exclusively
32 by the manager, or, if there is more than one manager, by a majority of the
33 managers.

34 (2) Each manager has equal rights in the management and conduct
35 of the company’s activities and affairs.

36 (3) The affirmative vote or consent of all members is required

1 to:

2 (A) undertake an act outside the ordinary course of the
3 company's activities and affairs; or

4 (B) amend the operating agreement.

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

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

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

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

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

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

29 (g) A payment or advance made by a member which gives rise to a
30 limited liability company obligation under subsection (f) or § 4-38-408(a)
31 constitutes a loan to the company which accrues interest from the date of the
32 payment or advance.

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

1
2 4-38-408. Reimbursement – Indemnification – Advancement – Insurance.

3 (a) A limited liability company shall reimburse a member of a member-
4 managed company or the manager of a manager-managed company for any payment
5 made by the member or manager in the course of the member’s or manager’s
6 activities on behalf of the company, if the member or manager complied with §
7 4-38-405, § 4-38-407, and § 4-38-409 in making the payment.

8 (b) A limited liability company shall indemnify and hold harmless a
9 person with respect to any claim or demand against the person and any debt,
10 obligation, or other liability incurred by the person by reason of the
11 person’s former or present capacity as a member or manager, if the claim,
12 demand, debt, obligation, or other liability does not arise from the person’s
13 breach of § 4-38-405, § 4-38-407, or § 4-38-409.

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

21 (d) A limited liability company may purchase and maintain insurance on
22 behalf of a member or manager against liability asserted against or incurred
23 by the member or manager in that capacity or arising from that status even
24 if, under § 4-38-105(c)(7), the operating agreement could not eliminate or
25 limit the person’s liability to the company for the conduct giving rise to
26 the liability.

27
28 4-38-409. Standards of conduct for members and managers.

29 (a) A member of a member-managed limited liability company owes to the
30 company and, subject to § 4-38-801, the other members the duties of loyalty
31 and care stated in subsections (b) and (c).

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

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

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

1 activities and affairs;

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

3 (C) from the appropriation of a company opportunity;

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

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

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

13 (d) A member shall discharge the duties and obligations under this
14 chapter or under the operating agreement and exercise any rights consistently
15 with the contractual obligation of good faith and fair dealing.

16 (e) A member does not violate a duty or obligation under this chapter
17 or under the operating agreement solely because the member's conduct furthers
18 the member's own interest.

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

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

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

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

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

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

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

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

3 (5) The power to ratify under subsection (f) applies only to the
4 members.

5 (6) Subject to subsection (d), a member does not have any duty
6 to the company or to any other member solely by reason of being a member.

7
8 4-38-410. Rights to information of member, manager, and person
9 dissociated as member.

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

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

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

19 (A) without demand, any information concerning the
20 company's activities, affairs, financial condition, and other circumstances
21 which the company knows and is material to the proper exercise of the
22 member's rights and duties under the operating agreement or this chapter,
23 except to the extent the company can establish that it reasonably believes
24 the member already knows the information; and

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

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

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

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

36 (2) During regular business hours and at a reasonable location

1 specified by the company, a member may inspect and copy information regarding
2 the activities, affairs, financial condition, and other circumstances of the
3 company as is just and reasonable if:

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

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

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

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

14 (A) what information the company will provide in response
15 to the demand and when and where the company will provide the information;
16 and

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

19 (4) Whenever this chapter or an operating agreement provides for
20 a member to vote on or give or withhold consent to a matter, before the vote
21 is cast or consent is given or withheld, the company shall, without demand,
22 provide the member with all information that is known to the company and is
23 material to the member's decision.

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

28 (1) the information pertains to the period during which the
29 person was a member;

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

31 (3) the person satisfies the requirements imposed on a member by
32 subsection (b)(2).

33 (d) A limited liability company shall respond to a demand made
34 pursuant to subsection (c) in the manner provided in subsection (b)(3).

35 (e) A limited liability company may charge a person that makes a
36 demand under this section the reasonable costs of copying, limited to the

1 costs of labor and material.

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

8 (g) Subject to § 4-38-504, the rights under this section do not extend
9 to a person as transferee.

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

18
19 Subchapter 5 – Transferable Interests and Rights of Transferees and Creditors

20
21 4-38-501. Nature of transferrable interest.

22 A transferable interest is personal property.

23
24 4-38-502. Transfer of transferable interest.

25 (a) Subject to § 4-38-503(f), a transfer, in whole or in part, of a
26 transferable interest:

27 (1) is permissible;

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

31 (3) subject to § 4-38-504, does not entitle the transferee to:

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

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

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

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

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

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

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

17 (g) Except as otherwise provided in § 4-38-602(5)(B), if a member
18 transfers a transferable interest, the transferor retains the rights of a
19 member other than the transferable interest transferred and retains all the
20 duties and obligations of a member.

21 (h) If a member transfers a transferable interest to a person that
22 becomes a member with respect to the transferred interest, the transferee is
23 liable for the member's obligations under §§ 4-38-403 and 4-38-406 known to
24 the transferee when the transferee becomes a member.

25
26 4-38-503. Charging order.

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

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

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

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

6 (c) Upon a showing that distributions under a charging order will not
7 pay the judgment debt within a reasonable time, the court may foreclose the
8 lien and order the sale of the transferable interest. Except as otherwise
9 provided in subsection (f), the purchaser at the foreclosure sale obtains
10 only the transferable interest, does not thereby become a member, and is
11 subject to § 4-38-502.

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

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

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

24 (1) the court shall confirm the sale;

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

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

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

30 (g) This chapter does not deprive any member or transferee of the
31 benefit of any exemption law applicable to the transferable interest of the
32 member or transferee.

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

1
2 4-38-504. Power of legal representative of deceased member.

3 If a member dies, the deceased member's legal representative may
4 exercise:

5 (1) the rights of a transferee provided in § 4-38-502(c); and

6 (2) for the purposes of settling the estate, the rights the
7 deceased member had under § 4-38-410.

8
9 Subchapter 6 – Dissociation

10
11 4-38-601. Power to dissociate as member – Wrongful dissociation.

12 (a) A person has the power to dissociate as a member at any time,
13 rightfully or wrongfully, by withdrawing as a member by express will under §
14 4-38-602(1).

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

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

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

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

22 (B) the person is expelled as a member by judicial order
23 under § 4-38-602(6);

24 (C) the person is dissociated under § 4-38-602(8); or

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

29 (c) A person that wrongfully dissociates as a member is liable to the
30 limited liability company and, subject to § 4-38-801, to the other members
31 for damages caused by the dissociation. The liability is in addition to any
32 debt, obligation, or other liability of the member to the company or the
33 other members.

34
35 4-38-602. Events causing dissociation.

36 A person is dissociated as a member when:

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

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

7 (3) the person's entire interest is transferred in a foreclosure
8 sale under § 4-38-503(f);

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

11 (5) the person is expelled as a member by the affirmative vote
12 or consent of all the other members if:

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

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

17 (i) a transfer for security purposes; or

18 (ii) a charging order in effect under § 4-38-503
19 which has not been foreclosed;

20 (C) the person is an entity and:

21 (i) the company notifies the person that it will be
22 expelled as a member because the person has filed a statement of dissolution
23 or the equivalent, the person has been administratively dissolved, the
24 person's charter or the equivalent has been revoked, or the person's right to
25 conduct business has been suspended by the person's jurisdiction of
26 formation; and

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

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

34 (6) on application by the limited liability company or a member
35 in a direct action under § 4-38-801, the person is expelled as a member by
36 judicial order because the person:

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

4 (B) has committed willfully or persistently, or is
5 committing willfully or persistently, a material breach of the operating
6 agreement or a duty or obligation under § 4-38-409; or

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

10 (7) in the case of an individual:

11 (A) the individual dies; or

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

13 (i) a guardian or general conservator for the
14 individual is appointed; or

15 (ii) a court orders that the individual has
16 otherwise become incapable of performing the individual's duties as a member
17 under this chapter or the operating agreement;

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

19 (A) becomes a debtor in bankruptcy;

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

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

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

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

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

34 (12) the limited liability company participates in a merger
35 under § 4-38-1001 et seq. and:

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

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

3 (13) the limited liability company participates in an interest
4 exchange under § 4-38-1001 et seq. and, as a result of the interest exchange,
5 the person ceases to be a member;

6 (14) the limited liability company participates in a conversion
7 under § 4-38-1001 et seq.;

8 (15) the limited liability company participates in a
9 domestication under § 4-38-1001 et seq. and, as a result of the
10 domestication, the person ceases to be a member; or

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

13
14 4-38-603. Effect of dissociation.

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

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

19 (2) the person's duties and obligations under § 4-38-409 as a
20 member end with regard to matters arising and events occurring after the
21 person's dissociation; and

22 (3) subject to § 4-38-504 and § 4-38-1001 et seq., any
23 transferable interest owned by the person in the person's capacity as a
24 member immediately before dissociation is owned by the person solely as a
25 transferee.

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

30
31 Subchapter 7 – Dissolution and Winding Up

32
33 4-38-701. Events causing dissolution.

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

36 (1) an event or circumstance that the operating agreement states

1 causes dissolution;

2 (2) the affirmative vote or consent of all the members;

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

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

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

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

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

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

17 (C) the managers or those members in control of the
18 company:

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

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

23 (5) the signing and filing of a statement of administrative
24 dissolution by the Secretary of State under § 4-38-708.

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

27
28 4-38-702. Winding up.

29 (a) A dissolved limited liability company shall wind up its activities
30 and affairs and, except as otherwise provided in § 4-38-703, the company
31 continues after dissolution only for the purpose of winding up.

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

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

- 1 (2) may:
- 2 (A) deliver to the Secretary of State for filing a
3 statement of dissolution stating the name of the company and that the company
4 is dissolved;
- 5 (B) preserve the company activities, affairs, and property
6 as a going concern for a reasonable time;
- 7 (C) prosecute and defend actions and proceedings, whether
8 civil, criminal, or administrative;
- 9 (D) transfer the company's property;
- 10 (E) settle disputes by mediation or arbitration;
- 11 (F) deliver to the Secretary of State for filing a
12 statement of termination stating the name of the company and that the company
13 is terminated; and
- 14 (G) perform other acts necessary or appropriate to the
15 winding up.
- 16 (c) If a dissolved limited liability company has no members, the legal
17 representative of the last person to have been a member may wind up the
18 activities and affairs of the company. If the person does so, the person has
19 the powers of a sole manager under § 4-38-407(c) and is deemed to be a
20 manager for the purposes of § 4-38-304(a).
- 21 (d) If the legal representative under subsection (c) declines or fails
22 to wind up the limited liability company's activities and affairs, a person
23 may be appointed to do so by the consent of transferees owning a majority of
24 the rights to receive distributions as transferees at the time the consent is
25 to be effective. A person appointed under this subsection:
- 26 (1) has the powers of a sole manager under § 4-38-407(c) and is
27 deemed to be a manager for the purposes of § 4-38-304(a); and
- 28 (2) shall deliver promptly to the Secretary of State for filing
29 an amendment to the company's certificate of organization stating:
- 30 (A) that the company has no members;
- 31 (B) the name and street and mailing addresses of the
32 person; and
- 33 (C) that the person has been appointed pursuant to this
34 subsection to wind up the company.
- 35 (e) The circuit court may order judicial supervision of the winding up
36 of a dissolved limited liability company, including the appointment of a

1 person to wind up the company's activities and affairs:

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

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

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

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

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

10 (3) in connection with a proceeding under § 4-38-701(a)(4).

11
12 4-38-703. Rescinding dissolution.

13 (a) A limited liability company may rescind its dissolution within 120
14 days after the election to dissolve unless:

15 (1) termination has become effective;

16 (2) a court has entered an order dissolving the limited
17 liability company; or

18 (3) the Secretary of State has dissolved the limited liability
19 company under § 4-38-708.

20 (b) Rescinding dissolution under this section requires:

21 (1) the affirmative vote or consent of each member; and

22 (2) if the limited liability company has delivered to the
23 Secretary of State for filing a statement of dissolution and:

24 (A) the statement has not become effective, delivery to
25 the Secretary of State for filing of a statement of withdrawal under § 4-38-
26 208 applicable to the statement of dissolution; or

27 (B) if the statement of dissolution has become effective,
28 delivery to the Secretary of State for filing of a statement of rescission
29 stating the name of the company and that dissolution has been rescinded under
30 this section.

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

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

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

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

4
5 4-38-704. Known claims against dissolved limited liability company.

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

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

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

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

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

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

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

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

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

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

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

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

30
31 4-38-705. Other claims against dissolved limited liability company.

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

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

36 (1) be published at least once in a newspaper of general

1 circulation in the county in this state in which the dissolved limited
2 liability company's principal office is located or, if the principal office
3 is not located in this state, in the county in which the office of the
4 company's registered agent is or was last located;

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

8 (3) state that a claim against the company is barred unless an
9 action to enforce the claim is commenced not later than three years after
10 publication of the notice.

11 (c) If a dissolved limited liability company publishes a notice in
12 accordance with subsection (b), the claim of each of the following claimants
13 is barred unless the claimant commences an action to enforce the claim
14 against the company not later than three years after the publication date of
15 the notice:

16 (1) a claimant that did not receive notice in a record under §
17 4-38-704;

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

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

22 (d) A claim not barred under this section or § 4-38-704 may be
23 enforced:

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

26 (2) except as otherwise provided in § 4-38-706, if assets of the
27 company have been distributed after dissolution, against a member or
28 transferee to the extent of that person's proportionate share of the claim or
29 of the company's assets distributed to the member or transferee after
30 dissolution, whichever is less, but a person's total liability for all claims
31 under this paragraph may not exceed the total amount of assets distributed to
32 the person after dissolution.

33
34 4-38-706. Court proceedings.

35 (a) A dissolved limited liability company that has published a notice
36 under § 4-38-705 may file an application with the circuit court in the county

1 where the company's principal office is located or, if the principal office
2 is not located in this state, where the office of its registered agent is or
3 was last located, for a determination of the amount and form of security to
4 be provided for payment of claims that are reasonably expected to arise after
5 the date of dissolution based on facts known to the company and:

6 (1) at the time of application:

7 (A) are contingent; or

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

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

11 (b) Security is not required for any claim that is or is reasonably
12 anticipated to be barred under § 4-38-705.

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

17 (d) In a proceeding under this section, the court may appoint a
18 guardian ad litem to represent all claimants whose identities are unknown.
19 The reasonable fees and expenses of the guardian, including all reasonable
20 expert witness fees, must be paid by the dissolved limited liability company.

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

27
28 4-38-707. Disposition of assets in the winding up.

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

32 (b) After a limited liability company complies with subsection (a),
33 any surplus must be distributed in the following order, subject to any
34 charging order in effect under § 4-38-503:

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

1 of the unreturned contributions; and

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

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

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

11
12 4-38-708. Administrative dissolution.

13 (a) The Secretary of State may commence a proceeding under subsection
14 (b) to dissolve a limited liability company administratively if the company
15 does not:

16 (1) pay any fee, tax, interest, or penalty required to be paid
17 to the Secretary of State not later than six months after it is due;

18 (2) deliver an annual report to the Secretary of State not later
19 than six months after it is due; or

20 (3) have a registered agent in this state for 60 consecutive
21 days.

22 (b) If the Secretary of State determines that one or more grounds
23 exist for administratively dissolving a limited liability company, the
24 Secretary of State shall serve the company with notice in a record of the
25 Secretary of State's determination.

26 (c) If a limited liability company, not later than 60 days after
27 service of the notice under subsection (b), does not cure or demonstrate to
28 the satisfaction of the Secretary of State the nonexistence of each ground
29 determined by the Secretary of State, the Secretary of State shall
30 administratively dissolve the company by signing a statement of
31 administrative dissolution that recites the grounds for dissolution and the
32 effective date of dissolution. The Secretary of State shall file the
33 statement and serve a copy on the company pursuant to § 4-38-210.

34 (d) A limited liability company that is administratively dissolved
35 continues in existence as an entity but may not carry on any activities
36 except as necessary to wind up its activities and affairs and liquidate its

1 assets under § 4-38-702, § 4-38-704, § 4-38-705, § 4-38-706, and § 4-38-707,
2 or to apply for reinstatement under § 4-38-709.

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

5 (f) If a limited liability company is dissolved, administratively or
6 otherwise, the name is available for use by another formed limited liability
7 company, and the dissolved company would be required, upon reinstatement, to
8 use a new name if the prior name was taken.

9
10 4-38-709. Reinstatement.

11 (a) A limited liability company that is administratively dissolved
12 under § 4-38-708 may apply to the Secretary of State for reinstatement not
13 later than two years after the effective date of dissolution. The
14 application must state:

15 (1) the name of the company at the time of its administrative
16 dissolution and, if needed, a different name that satisfies § 4-38-112;

17 (2) the address of the principal office of the company and the
18 name and street and mailing addresses of its registered agent;

19 (3) the effective date of the company's administrative
20 dissolution; and

21 (4) that the grounds for dissolution did not exist or have been
22 cured.

23 (b) To be reinstated, a limited liability company must pay all fees,
24 taxes, interest, and penalties that were due to the Secretary of State at the
25 time of the company's administrative dissolution and all fees, taxes,
26 interest, and penalties that would have been due to the Secretary of State
27 while the company was administratively dissolved.

28 (c) If the Secretary of State determines that an application under
29 subsection (a) contains the required information, is satisfied that the
30 information is correct, and determines that all payments required to be made
31 to the Secretary of State by subsection (b) have been made, the Secretary of
32 State shall:

33 (1) cancel the statement of administrative dissolution and
34 prepare a statement of reinstatement that states the Secretary of State's
35 determination and the effective date of reinstatement; and

36 (2) file the statement of reinstatement and serve a copy on the

1 limited liability company.

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

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

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

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

11
12 4-38-710. Judicial review of denial of reinstatement.

13 (a) If the Secretary of State denies a limited liability company's
14 application for reinstatement following administrative dissolution, the
15 Secretary of State shall serve the company with a notice in a record that
16 explains the reasons for the denial.

17 (b) A limited liability company may seek judicial review of denial of
18 reinstatement in the circuit court not later than 30 days after service of
19 the notice of denial.

20
21 Subchapter 8 – Actions by Members

22
23 4-38-801. Direct action by member.

24 (a) Subject to subsection (b), a member may maintain a direct action
25 against another member, a manager, or the limited liability company to
26 enforce the member's rights and protect the member's interests, including
27 rights and interests under the operating agreement or this chapter or arising
28 independently of the membership relationship.

29 (b) A member maintaining a direct action under this section must plead
30 and prove an actual or threatened injury that is not solely the result of an
31 injury suffered or threatened to be suffered by the limited liability
32 company.

33
34 4-38-802. Derivative action.

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

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

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

7
8 4-38-803. Proper plaintiff.

9 A derivative action to enforce a right of a limited liability company
10 may be maintained only by a person that is a member at the time the action is
11 commenced and:

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

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

17
18 4-38-804. Pleading.

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

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

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

23
24 4-38-805. Special litigation committee.

25 (a) If a limited liability company is named as or made a party in a
26 derivative proceeding, the company may appoint a special litigation committee
27 to investigate the claims asserted in the proceeding and determine whether
28 pursuing the action is in the best interests of the company. If the company
29 appoints a special litigation committee, on motion by the committee made in
30 the name of the company, except for good cause shown, the court shall stay
31 discovery for the time reasonably necessary to permit the committee to make
32 its investigation. This subsection does not prevent the court from:

33 (1) enforcing a person's right to information under add a § 4-
34 38-410; or

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (4) be dismissed.

21 (e) After making a determination under subsection (d), a special
22 litigation committee shall file with the court a statement of its
23 determination and its report supporting its determination and shall serve
24 each party with a copy of the determination and report. The court shall
25 determine whether the members of the committee were disinterested and
26 independent and whether the committee conducted its investigation and made
27 its recommendation in good faith, independently, and with reasonable care,
28 with the committee having the burden of proof. If the court finds that the
29 members of the committee were disinterested and independent and that the
30 committee acted in good faith, independently, and with reasonable care, the
31 court shall enforce the determination of the committee. Otherwise, the court
32 shall dissolve the stay of discovery entered under subsection (a) and allow
33 the action to continue under the control of the plaintiff.

34
35 4-38-806. Proceeds and expenses.

36 (a) Except as otherwise provided in subsection (b):

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

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

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

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

12
13 Subchapter 9 – Foreign Limited Liability Companies

14
15 4-38-901. Governing law.

16 (a) The law of the jurisdiction of formation of a foreign limited
17 liability company governs:

18 (1) the internal affairs of the company;

19 (2) the liability of a member as member and a manager as manager
20 for a debt, obligation, or other liability of the company; and

21 (3) the liability of a series of the company.

22 (b) A foreign limited liability company is not precluded from
23 registering to do business in this state because of any difference between
24 the law of its jurisdiction of formation and the law of this state.

25 (c) Registration of a foreign limited liability company to do business
26 in this state does not authorize the foreign company to engage in any
27 activities and affairs or exercise any power that a limited liability company
28 may not engage in or exercise in this state.

29
30 4-38-902. Registration to do business in this state.

31 (a) A foreign limited liability company may not do business in this
32 state until it registers with the Secretary of State under this subchapter.

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

36 (c) The failure of a foreign limited liability company to register to

1 do business in this state does not impair the validity of a contract or act
2 of the company or preclude it from defending an action or proceeding in this
3 state.

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

7 (e) Section 4-38-901(a) and (b) applies even if a foreign limited
8 liability company fails to register under this subchapter.

9
10 4-38-903. Foreign registration statement.

11 To register to do business in this state, a foreign limited liability
12 company must deliver a foreign registration statement to the Secretary of
13 State for filing. The statement must state:

14 (1) the name of the company and, if the name does not comply
15 with § 4-38-112, an alternate name adopted pursuant to § 4-38-906(a);

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

17 (3) the company's jurisdiction of formation;

18 (4) the street and mailing addresses of the company's principal
19 office and, if the law of the company's jurisdiction of formation requires
20 the company to maintain an office in that jurisdiction, the street and
21 mailing addresses of the required office; and

22 (5) the name and street and mailing addresses of the company's
23 registered agent in this state.

24
25 4-38-904. Amendment of foreign registration statement.

26 A registered foreign limited liability company shall deliver to the
27 Secretary of State for filing an amendment to its foreign registration
28 statement if there is a change in:

29 (1) the name of the company;

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

31 (3) an address required by § 4-38-903(4); or

32 (4) the information required by § 4-38-903(5).

33
34 4-38-905. Activities not constituting doing business.

35 (a) Activities of a foreign limited liability company which do not
36 constitute doing business in this state under this subchapter include:

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

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

5 (3) maintaining accounts in financial institutions;

6 (4) maintaining offices or agencies for the transfer, exchange,
7 and registration of securities of the company or maintaining trustees or
8 depositories with respect to those securities;

9 (5) selling through independent contractors;

10 (6) soliciting or obtaining orders by any means if the orders
11 require acceptance outside this state before they become contracts;

12 (7) creating or acquiring indebtedness, mortgages, or security
13 interests in property;

14 (8) securing or collecting debts or enforcing mortgages or
15 security interests in property securing the debts and holding, protecting, or
16 maintaining property;

17 (9) conducting an isolated transaction that is not in the course
18 of similar transactions;

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

20 (11) doing business in interstate commerce.

21 (b) A person does not do business in this state solely by being a
22 member or manager of a foreign limited liability company that does business
23 in this state.

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

28
29 4-38-906. Noncomplying name of foreign limited liability company.

30 (a) A foreign limited liability company whose name does not comply
31 with § 4-38-112 may not register to do business in this state until it
32 adopts, for the purpose of doing business in this state, an alternate name
33 that complies with § 4-38-112. A company that registers under an alternate
34 name under this subsection need not comply with § 4-26-405, § 4-27-404, or §
35 4-42-707. After registering to do business in this state with an alternate
36 name, a company shall do business in this state under:

- 1 (1) the alternate name;
2 (2) the company's name, with the addition of its jurisdiction of
3 formation; or
4 (3) a name the company is authorized to use under § 4-26-405, §
5 4-27-404, and § 4-42-707.

6 (b) If a registered foreign limited liability company changes its name
7 to one that does not comply with § 4-38-112, it may not do business in this
8 state until it complies with subsection (a) by amending its registration to
9 adopt an alternate name that complies with § 4-38-112.

10

11 4-38-907. Withdrawal deemed on conversion to domestic filing entity or
12 domestic limited liability partnership.

13 A registered foreign limited liability company that converts to a
14 domestic limited liability partnership or to a domestic entity whose
15 formation requires delivery of a record to the Secretary of State for filing
16 is deemed to have withdrawn its registration on the effective date of the
17 conversion.

18

19 4-38-908. Withdrawal on dissolution or conversion to nonfiling entity
20 other than limited liability partnership.

21 (a) A registered foreign limited liability company that has dissolved
22 and completed winding up or has converted to a domestic or foreign entity
23 whose formation does not require the public filing of a record, other than a
24 limited liability partnership, shall deliver a statement of withdrawal to the
25 Secretary of State for filing. The statement must state:

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

27 (A) its name and jurisdiction of formation;

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

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

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

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

35 (C) that the converted entity surrenders the converting
36 company's registration to do business in this state and revokes the authority

1 of the converting company's registered agent to act as registered agent in
2 this state on behalf of the company or the converted entity; and

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

5 (b) After a withdrawal under this section has become effective,
6 service of process in any action or proceeding based on a cause of action
7 arising during the time the foreign limited liability company was registered
8 to do business in this state may be made pursuant to § 4-38-119.

9
10 4-38-909. Transfer of registration.

11 (a) When a registered foreign limited liability company has merged
12 into a foreign entity that is not registered to do business in this state or
13 has converted to a foreign entity required to register with the Secretary of
14 State to do business in this state, the foreign entity shall deliver to the
15 Secretary of State for filing an application for transfer of registration.
16 The application must state:

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

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

21 (3) the name of the applicant foreign entity into which the
22 foreign limited liability company has merged or to which it has been
23 converted and, if the name does not comply with § 4-38-112, an alternate name
24 adopted pursuant to § 4-38-906(a);

25 (4) the type of entity of the applicant foreign entity and its
26 jurisdiction of formation;

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

31 (6) the name and street and mailing addresses of the applicant
32 foreign entity's registered agent in this state.

33 (b) When an application for transfer of registration takes effect, the
34 registration of the foreign limited liability company to do business in this
35 state is transferred without interruption to the foreign entity into which
36 the company has merged or to which it has been converted.

1
2 4-38-910. Termination of registration.

3 (a) The Secretary of State may terminate the registration of a
4 registered foreign limited liability company in the manner provided in
5 subsections (b) and (c) if the company does not:

6 (1) pay, not later than 60 days after the due date, any fee,
7 tax, interest, or penalty required to be paid to the Secretary of State under
8 this chapter or law other than this chapter;

9 (2) deliver to the Secretary of State for filing, not later than
10 60 days after the due date, an annual report required under § 4-38-212;

11 (3) have a registered agent as required by § 4-38-115; or

12 (4) deliver to the Secretary of State for filing a statement of
13 a change under § 4-38-116 not later than 30 days after a change has occurred
14 in the name or address of the registered agent.

15 (b) The Secretary of State may terminate the registration of a
16 registered foreign limited liability company by:

17 (1) filing a notice of termination or noting the termination in
18 the records of the Secretary of State; and

19 (2) delivering a copy of the notice or the information in the
20 notation to the company's registered agent or, if the company does not have a
21 registered agent, to the company's principal office.

22 (c) The notice must state or the information in the notation must
23 include:

24 (1) the effective date of the termination, which must be at
25 least 60 days after the date the Secretary of State delivers the copy; and

26 (2) the grounds for termination under subsection (a).

27 (d) The authority of a registered foreign limited liability company to
28 do business in this state ceases on the effective date of the notice of
29 termination or notation under subsection (b), unless before that date the
30 company cures each ground for termination stated in the notice or notation.
31 If the company cures each ground, the Secretary of State shall file a record
32 so stating.

33
34 4-38-911. Withdrawal of registration of registered foreign limited
35 liability company.

36 (a) A registered foreign limited liability company may withdraw its

1 registration by delivering a statement of withdrawal to the Secretary of
2 State for filing. The statement of withdrawal must state:

3 (1) the name of the company and its jurisdiction of formation;

4 (2) that the company is not doing business in this state and
5 that it withdraws its registration to do business in this state;

6 (3) that the company revokes the authority of its registered
7 agent to accept service on its behalf in this state; and

8 (4) an address to which service of process may be made under
9 subsection (b).

10 (b) After the withdrawal of the registration of a foreign limited
11 liability company, service of process in any action or proceeding based on a
12 cause of action arising during the time the company was registered to do
13 business in this state may be made pursuant to § 4-38-119.

14
15 4-38-912. Action by Attorney General.

16 The Attorney General may maintain an action to enjoin a foreign limited
17 liability company from doing business in this state in violation of this
18 chapter.

19
20 4-38-913. Transaction of business without registration.

21 (a) A foreign limited liability company transacting business in this
22 state shall not maintain an action, suit, or proceeding in a court of this
23 state until it has registered in this state.

24 (b) The failure of a foreign limited liability company to register in
25 this state does not:

26 (1) impair the validity of any contract or act of the foreign
27 limited liability company;

28 (2) affect the right of any other party to the contract to
29 maintain any action, suit, or proceeding on the contract; or

30 (3) prevent the foreign limited liability company from defending
31 any action, suit, or proceeding in any court of this state.

32 (c) A foreign limited liability company transacting business in this
33 state without registration may be served with process under § 4-20-113 if the
34 foreign limited liability company:

35 (1) fails to appoint an agent for service of process under § 4-
36 20-112;

1 (2) no longer has an agent for service of process; or
2 (3) has an agent for service of process that cannot with
3 reasonable diligence be served.

4 (d)(1) A foreign limited liability company which transacts business in
5 this state without registration shall be liable to the state for the years or
6 parts thereof during which it transacted business in this state without
7 registration in an amount equal to all fees which would have been imposed by
8 this chapter upon that foreign limited liability company had it duly
9 registered and all penalties imposed by this chapter.

10 (2) The Attorney General may bring proceedings to recover all
11 amounts due this state under the provisions of this section.

12 (e) A foreign limited liability company which transacts business in
13 this state without registration shall be subject to a civil penalty, payable
14 to the state, not to exceed five thousand dollars (\$5,000) for each twelve-
15 month period or part thereof, beginning with the date it began transacting
16 business in this state and ending on the date it becomes registered.

17 (f)(1) The civil penalty set forth in subsection (e) of this section
18 may be recovered in an action brought within a court by the Attorney General.

19 (2) Upon a finding by the court that a foreign limited liability
20 company has transacted business in this state in violation of this chapter,
21 the court shall issue, in addition to the imposition of a civil penalty, an
22 injunction restraining further transactions of the business of the foreign
23 limited liability company and the further exercise of any limited liability
24 company's rights and privileges in this state.

25 (3) The foreign limited liability company shall be enjoined from
26 transacting business in this state until all civil penalties plus any
27 interest and court costs which the court may assess have been paid and until
28 the foreign limited liability company has otherwise complied with this
29 subchapter.

30 (g) A member or manager of a foreign limited liability company is not
31 liable for the debts and obligations of the limited liability company solely
32 because the limited liability company transacted business in this state
33 without registration.

34
35 Subchapter 10 – Merger, Interest Exchange, Conversion, and Domestication
36

1 PART 1 – General Provisions

2
3 4-38-1001. Definitions.

4 In this subchapter:

5 (1) “Acquired entity” means the entity, all of one or more
6 classes or series of interests of which are acquired in an interest exchange.

7 (2) “Acquiring entity” means the entity that acquires all of one
8 or more classes or series of interests of the acquired entity in an interest
9 exchange.

10 (3) “Conversion” means a transaction authorized by Part 4.

11 (4) “Converted entity” means the converting entity as it
12 continues in existence after a conversion.

13 (5) “Converting entity” means the domestic entity that approves
14 a plan of conversion pursuant to § 4-38-1043 or the foreign entity that
15 approves a conversion pursuant to the law of its jurisdiction of formation.

16 (6) “Distributional interest” means the right under an
17 unincorporated entity’s organic law and organic rules to receive
18 distributions from the entity.

19 (7) “Domestic”, with respect to an entity, means governed as to
20 its internal affairs by the law of this state.

21 (8) “Domesticated limited liability company” means the
22 domesticating limited liability company as it continues in existence after a
23 domestication.

24 (9) “Domesticating limited liability company” means the domestic
25 limited liability company that approves a plan of domestication pursuant to §
26 4-38-1053 or the foreign limited liability company that approves a
27 domestication pursuant to the law of its jurisdiction of formation.

28 (10) “Domestication” means a transaction authorized by Part 5.

29 (11) “Entity”:

30 (A) means:

31 (i) a business corporation;

32 (ii) a nonprofit corporation;

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

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

- 1 (v) a limited liability company;
2 (vi) a general cooperative association;
3 (vii) a limited cooperative association;
4 (viii) an unincorporated nonprofit association;
5 (ix) a statutory trust, business trust, or common-
6 law business trust; or
7 (x) any other person that has:
8 (I) a legal existence separate from any
9 interest holder of that person; or
10 (II) the power to acquire an interest in real
11 property in its own name; and
12 (B) does not include:
13 (i) an individual;
14 (ii) a trust with a predominantly donative purpose
15 or a charitable trust;
16 (iii) an association or relationship that is not an
17 entity listed in subparagraph A and is not a partnership under the rules
18 stated in § 4-46-202(c) of the Uniform Partnership Act (1996) or a similar
19 provision of the law of another jurisdiction;
20 (iv) a decedent's estate; or
21 (v) a government or a governmental subdivision,
22 agency, or instrumentality.
23 (12) "Filing entity" means an entity whose formation requires
24 the filing of a public organic record. The term does not include a limited
25 liability partnership.
26 (13) "Foreign", with respect to an entity, means an entity
27 governed as to its internal affairs by the law of a jurisdiction other than
28 this state.
29 (14) "Governance interest" means a right under the organic law
30 or organic rules of an unincorporated entity, other than as a governor,
31 agent, assignee, or proxy, to:
32 (A) receive or demand access to information concerning, or
33 the books and records of, the entity;
34 (B) vote for or consent to the election of the governors
35 of the entity; or
36 (C) receive notice of or vote on or consent to an issue

1 involving the internal affairs of the entity.

2 (15) "Governor" means:

3 (A) a director of a business corporation;

4 (B) a director or trustee of a nonprofit corporation;

5 (C) a general partner of a general partnership;

6 (D) a general partner of a limited partnership;

7 (E) a manager of a manager-managed limited liability

8 company;

9 (F) a member of a member-managed limited liability

10 company;

11 (G) a director of a general cooperative association;

12 (H) a director of a limited cooperative association;

13 (I) a manager of an unincorporated nonprofit association;

14 (J) a trustee of a statutory trust, business trust, or

15 common-law business trust; or

16 (K) any other person under whose authority the powers of
17 an entity are exercised and under whose direction the activities and affairs
18 of the entity are managed pursuant to the organic law and organic rules of
19 the entity.

20 (16) "Interest" means:

21 (A) a share in a business corporation;

22 (B) a membership in a nonprofit corporation;

23 (C) a partnership interest in a general partnership;

24 (D) a partnership interest in a limited partnership;

25 (E) a membership interest in a limited liability company;

26 (F) a share in a general cooperative association;

27 (G) a member's interest in a limited cooperative

28 association;

29 (H) a membership in an unincorporated nonprofit

30 association;

31 (I) a beneficial interest in a statutory trust, business
32 trust, or common-law business trust; or

33 (J) a governance interest or distributional interest in
34 any other type of unincorporated entity.

35 (17) "Interest exchange" means a transaction authorized by Part
36 3.

1 (18) "Interest holder" means:

2 (A) a shareholder of a business corporation;

3 (B) a member of a nonprofit corporation;

4 (C) a general partner of a general partnership;

5 (D) a general partner of a limited partnership;

6 (E) a limited partner of a limited partnership;

7 (F) a member of a limited liability company;

8 (G) a shareholder of a general cooperative association;

9 (H) a member of a limited cooperative association;

10 (I) a member of an unincorporated nonprofit association;

11 (J) a beneficiary or beneficial owner of a statutory

12 trust, business trust, or common-law business trust; or

13 (K) any other direct holder of an interest.

14 (19) "Interest holder liability" means:

15 (A) personal liability for a liability of an entity which
16 is imposed on a person:

17 (i) solely by reason of the status of the person as
18 an interest holder; or

19 (ii) by the organic rules of the entity which make
20 one or more specified interest holders or categories of interest holders
21 liable in their capacity as interest holders for all or specified liabilities
22 of the entity; or

23 (B) an obligation of an interest holder under the organic
24 rules of an entity to contribute to the entity.

25 (20) "Merger" means a transaction authorized by Part 2.

26 (21) "Merging entity" means an entity that is a party to a
27 merger and exists immediately before the merger becomes effective.

28 (22) "Organic law" means the law of an entity's jurisdiction of
29 formation governing the internal affairs of the entity.

30 (23) "Organic rules" means the public organic record and private
31 organic rules of an entity.

32 (24) "Plan" means a plan of merger, plan of interest exchange,
33 plan of conversion, or plan of domestication.

34 (25) "Plan of conversion" means a plan under § 4-38-1042.

35 (26) "Plan of domestication" means a plan under § 4-38-1052.

36 (27) "Plan of interest exchange" means a plan under § 4-38-1032.

1 (28) “Plan of merger” means a plan under § 4-38-1022.

2 (29) “Private organic rules” means the rules, whether or not in
3 a record, that govern the internal affairs of an entity, are binding on all
4 its interest holders, and are not part of its public organic record, if any.

5 The term includes:

6 (A) the bylaws of a business corporation;

7 (B) the bylaws of a nonprofit corporation;

8 (C) the partnership agreement of a general partnership;

9 (D) the partnership agreement of a limited partnership;

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

12 (F) the bylaws of a general cooperative association;

13 (G) the bylaws of a limited cooperative association;

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

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

18 (30) “Protected agreement” means:

19 (A) a record evidencing indebtedness and any related
20 agreement in effect on the effective date of this chapter;

21 (B) an agreement that is binding on an entity on the
22 effective date of this chapter;

23 (C) the organic rules of an entity in effect on the
24 effective date of this chapter; or

25 (D) an agreement that is binding on any of the governors
26 or interest holders of an entity on the effective date of this chapter.

27 (31) “Public organic record” means the record the filing of
28 which by the Secretary of State is required to form an entity and any
29 amendment to or restatement of that record. The term includes:

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

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

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

36 (D) the certificate of organization of a limited liability

1 company;

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

4 (F) the articles of organization of a limited cooperative
5 association; and

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

8 (32) "Registered foreign entity" means a foreign entity that is
9 registered to do business in this state pursuant to a record filed by the
10 Secretary of State.

11 (33) "Statement of conversion" means a statement under § 4-38-
12 1045.

13 (34) "Statement of domestication" means a statement under § 4-
14 38-1055.

15 (35) "Statement of interest exchange" means a statement under §
16 4-38-1035.

17 (36) "Statement of merger" means a statement under § 4-38-1025.

18 (37) "Surviving entity" means the entity that continues in
19 existence after or is created by a merger.

20 (38) "Type of entity" means a generic form of entity:

21 (A) recognized at common law; or

22 (B) formed under an organic law, whether or not some
23 entities formed under that organic law are subject to provisions of that law
24 that create different categories of the form of entity.

25
26 4-38-1002. Relationship of chapter to other laws.

27 (a) This chapter does not authorize an act prohibited by, and does not
28 affect the application or requirements of, law other than this chapter.

29 (b) A transaction effected under this chapter may not create or impair
30 a right, duty or obligation of a person under the statutory law of this state
31 other than this chapter relating to a change in control, takeover, business
32 combination, control-share acquisition, or similar transaction involving a
33 domestic merging, acquired, converting, or domesticating business corporation
34 unless:

35 (1) if the corporation does not survive the transaction, the
36 transaction satisfies any requirements of the law; or

1 (2) if the corporation survives the transaction, the approval of
2 the plan is by a vote of the shareholders or directors which would be
3 sufficient to create or impair the right, duty, or obligation directly under
4 the law.

5
6 4-38-1003. Required notice or approval.

7 (a) A domestic or foreign entity that is required to give notice to,
8 or obtain the approval of, a governmental agency or officer of this state to
9 be a party to a merger must give the notice or obtain the approval to be a
10 party to an interest exchange, conversion, or domestication.

11 (b) Property held for a charitable purpose under the law of this state
12 by a domestic or foreign entity immediately before a transaction under this
13 chapter becomes effective may not, as a result of the transaction, be
14 diverted from the objects for which it was donated, granted, devised, or
15 otherwise transferred unless, to the extent required by or pursuant to the
16 law of this state concerning cy pres or other law dealing with nondiversion
17 of charitable assets, the entity obtains an appropriate order of the circuit
18 court the Attorney General specifying the disposition of the property.

19 (c) A bequest, devise, gift, grant, or promise contained in a will or
20 other instrument of donation, subscription, or conveyance which is made to a
21 merging entity that is not the surviving entity and which takes effect or
22 remains payable after the merger inures to the surviving entity.

23 (d) A trust obligation that would govern property if transferred to a
24 nonsurviving entity applies to property that is transferred to the surviving
25 entity under this section.

26
27 4-38-1004. Nonexclusivity.

28 The fact that a transaction under this chapter produces a certain
29 result does not preclude the same result from being accomplished in any other
30 manner permitted by law other than this chapter.

31
32 4-38-1005. Reference to external facts.

33 A plan may refer to facts ascertainable outside the plan if the manner
34 in which the facts will operate upon the plan is specified in the plan. The
35 facts may include the occurrence of an event or a determination or action by
36 a person, whether or not the event, determination, or action is within the

1 control of a party to the transaction.

2
3 4-38-1006. Appraisal rights.

4 An interest holder of a domestic merging, acquired, converting, or
5 domesticating limited liability company is entitled to contractual appraisal
6 rights in connection with a transaction under this chapter to the extent
7 provided in:

8 (1) the operating agreement; or

9 (2) the plan.

10
11 PART 2 – Merger

12
13 4-38-1021. Merger authorized.

14 (a) By complying with this part:

15 (1) one or more domestic limited liability companies may merge
16 with one or more domestic or foreign entities into a domestic or foreign
17 surviving entity; and

18 (2) two or more foreign entities may merge into a domestic
19 limited liability company.

20 (b) By complying with the provisions of this part applicable to
21 foreign entities, a foreign entity may be a party to a merger under this part
22 or may be the surviving entity in such a merger if the merger is authorized
23 by the law of the foreign entity's jurisdiction of formation.

24
25 4-38-1022. Plan of merger.

26 (a) A domestic limited liability company may become a party to a
27 merger under this part by approving a plan of merger. The plan must be in a
28 record and contain:

29 (1) as to each merging entity, its name, jurisdiction of
30 formation, and type of entity;

31 (2) if the surviving entity is to be created in the merger, a
32 statement to that effect and the entity's name, jurisdiction of formation,
33 and type of entity;

34 (3) the manner of converting the interests in each party to the
35 merger into interests, securities, obligations, money, other property, rights
36 to acquire interests or securities, or any combination of the foregoing;

1 (4) if the surviving entity exists before the merger, any
2 proposed amendments to:

3 (A) its public organic record, if any; and

4 (B) its private organic rules that are, or are proposed to
5 be, in a record;

6 (5) if the surviving entity is to be created in the merger:

7 (A) its proposed public organic record, if any; and

8 (B) the full text of its private organic rules that are
9 proposed to be in a record;

10 (6) the other terms and conditions of the merger; and

11 (7) any other provision required by the law of a merging
12 entity's jurisdiction of formation or the organic rules of a merging entity.

13 (b) In addition to the requirements of subsection (a), a plan of
14 merger may contain any other provision not prohibited by law.

15
16 4-38-1023. Approval of merger.

17 (a) A plan of merger is not effective unless it has been approved:

18 (1) by a domestic merging limited liability company, by all the
19 members of the company entitled to vote on or consent to any matter; and

20 (2) in a record, by each member of a domestic merging limited
21 liability company which will have interest holder liability for debts,
22 obligations, and other liabilities that are incurred after the merger becomes
23 effective, unless:

24 (A) the operating agreement of the company provides in a
25 record for the approval of a merger in which some or all of its members
26 become subject to interest holder liability by the affirmative vote or
27 consent of fewer than all the members; and

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

31 (b) A merger involving a domestic merging entity that is not a limited
32 liability company is not effective unless the merger is approved by that
33 entity in accordance with its organic law.

34 (c) A merger involving a foreign merging entity is not effective
35 unless the merger is approved by the foreign entity in accordance with the
36 law of the foreign entity's jurisdiction of formation.

1
2 4-38-1024. Amendment or abandonment of plan of merger.

3 (a) A plan of merger may be amended only with the consent of each
4 party to the plan, except as otherwise provided in the plan.

5 (b) A domestic merging limited liability company may approve an
6 amendment of a plan of merger:

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

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

13 (A) the amount or kind of interests, securities,
14 obligations, money, other property, rights to acquire interests or
15 securities, or any combination of the foregoing, to be received by the
16 interest holders of any party to the plan;

17 (B) the public organic record, if any, or private organic
18 rules of the surviving entity that will be in effect immediately after the
19 merger becomes effective, except for changes that do not require approval of
20 the interest holders of the surviving entity under its organic law or organic
21 rules; or

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

24 (c) After a plan of merger has been approved and before a statement of
25 merger becomes effective, the plan may be abandoned as provided in the plan.
26 Unless prohibited by the plan, a domestic merging limited liability company
27 may abandon the plan in the same manner as the plan was approved.

28 (d) If a plan of merger is abandoned after a statement of merger has
29 been delivered to the Secretary of State for filing and before the statement
30 becomes effective, a statement of abandonment, signed by a party to the plan,
31 must be delivered to the Secretary of State for filing before the statement
32 of merger becomes effective. The statement of abandonment takes effect on
33 filing, and the merger is abandoned and does not become effective. The
34 statement of abandonment must contain:

35 (1) the name of each party to the plan of merger;

36 (2) the date on which the statement of merger was filed by the

1 Secretary of State; and

2 (3) a statement that the merger has been abandoned in accordance
3 with this section.

4
5 4-38-1025. Statement of merger – Effective date of merger.

6 (a) A statement of merger must be signed by each merging entity and
7 delivered to the Secretary of State for filing.

8 (b) A statement of merger must contain:

9 (1) the name, jurisdiction of formation, and type of entity of
10 each merging entity that is not the surviving entity;

11 (2) the name, jurisdiction of formation, and type of entity of
12 the surviving entity;

13 (3) a statement that the merger was approved by each domestic
14 merging entity, if any, in accordance with this part and by each foreign
15 merging entity, if any, in accordance with the law of its jurisdiction of
16 formation;

17 (4) if the surviving entity exists before the merger and is a
18 domestic filing entity, any amendment to its public organic record approved
19 as part of the plan of merger;

20 (5) if the surviving entity is created by the merger and is a
21 domestic filing entity, its public organic record, as an attachment; and

22 (6) if the surviving entity is created by the merger and is a
23 domestic limited liability partnership, its statement of qualification, as an
24 attachment.

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

27 (d) If the surviving entity is a domestic entity, its public organic
28 record, if any, must satisfy the requirements of the law of this state,
29 except that the public organic record does not need to be signed.

30 (e) A plan of merger that is signed by all the merging entities and
31 meets all the requirements of subsection (b) may be delivered to the
32 Secretary of State for filing instead of a statement of merger and on filing
33 has the same effect. If a plan of merger is filed as provided in this
34 subsection, references in this article to a statement of merger refer to the
35 plan of merger filed under this subsection.

36 (f) If the surviving entity is a domestic limited liability company,

1 the merger becomes effective when the statement of merger is effective. In
2 all other cases, the merger becomes effective on the later of:

3 (1) the date and time provided by the organic law of the
4 surviving entity; and

5 (2) when the statement is effective.

6
7 4-38-1026. Effect of merger.

8 (a) When a merger becomes effective:

9 (1) the surviving entity continues or comes into existence;

10 (2) each merging entity that is not the surviving entity ceases
11 to exist;

12 (3) all property of each merging entity vests in the surviving
13 entity without transfer, reversion, or impairment;

14 (4) all debts, obligations, and other liabilities of each
15 merging entity are debts, obligations, and other liabilities of the surviving
16 entity;

17 (5) except as otherwise provided by law or the plan of merger,
18 all the rights, privileges, immunities, powers, and purposes of each merging
19 entity vest in the surviving entity;

20 (6) if the surviving entity exists before the merger:

21 (A) all its property continues to be vested in it without
22 transfer, reversion, or impairment;

23 (B) it remains subject to all its debts, obligations, and
24 other liabilities; and

25 (C) all its rights, privileges, immunities, powers, and
26 purposes continue to be vested in it;

27 (7) the name of the surviving entity may be substituted for the
28 name of any merging entity that is a party to any pending action or
29 proceeding;

30 (8) if the surviving entity exists before the merger:

31 (A) its public organic record, if any, is amended to the
32 extent provided in the statement of merger; and

33 (B) its private organic rules that are to be in a record,
34 if any, are amended to the extent provided in the plan of merger;

35 (9) if the surviving entity is created by the merger, its
36 private organic rules are effective and;

1 (A) if it is a filing entity, its public organic record
2 becomes effective; and

3 (B) if it is a limited liability partnership, its
4 statement of qualification becomes effective; and

5 (10) the interests in each merging entity which are to be
6 converted in the merger are converted, and the interest holders of those
7 interests are entitled only to the rights provided to them under the plan of
8 merger and to any appraisal rights they have under § 4-38-1006 and the
9 merging entity's organic law.

10 (b) Except as otherwise provided in the organic law or organic rules
11 of a merging entity, the merger does not give rise to any rights that an
12 interest holder, governor, or third party would have upon a dissolution,
13 liquidation, or winding up of the merging entity.

14 (c) When a merger becomes effective, a person that did not have
15 interest holder liability with respect to any of the merging entities and
16 becomes subject to interest holder liability with respect to a domestic
17 entity as a result of the merger has interest holder liability only to the
18 extent provided by the organic law of that entity and only for those debts,
19 obligations, and other liabilities that are incurred after the merger becomes
20 effective.

21 (d) When a merger becomes effective, the interest holder liability of
22 a person that ceases to hold an interest in a domestic merging limited
23 liability company with respect to which the person had interest holder
24 liability is subject to the following rules:

25 (1) The merger does not discharge any interest holder liability
26 under this chapter to the extent the interest holder liability was incurred
27 before the merger became effective;

28 (2) The person does not have interest holder liability under
29 this chapter for any debt, obligation, or other liability that is incurred
30 after the merger becomes effective;

31 (3) This chapter continues to apply to the release, collection,
32 or discharge of any interest holder liability preserved under paragraph (1)
33 as if the merger had not occurred; and

34 (4) The person has whatever rights of contribution from any
35 other person as are provided by this chapter, law other than this chapter, or
36 the operating agreement of the domestic merging limited liability company

1 with respect to any interest holder liability preserved under paragraph (1)
2 as if the merger had not occurred.

3 (e) When a merger becomes effective, a foreign entity that is the
4 surviving entity may be served with process in this state for the collection
5 and enforcement of any debts, obligations, or other liabilities of a domestic
6 merging limited liability company as provided in § 4-38-119.

7 (f) When a merger becomes effective, the registration to do business
8 in this state of any foreign merging entity that is not the surviving entity
9 is canceled.

10
11 PART 3 – Interest Exchange

12
13 4-38-1031. Interest exchange authorized.

14 (a) By complying with this part:

15 (1) a domestic limited liability company may acquire all of one
16 or more classes or series of interests of another domestic entity or a
17 foreign entity in exchange for interests, securities, obligations, money,
18 other property, rights to acquire interests or securities, or any combination
19 of the foregoing; or

20 (2) all of one or more classes or series of interests of a
21 domestic limited liability company may be acquired by another domestic entity
22 or a foreign entity in exchange for interests, securities, obligations,
23 money, other property, rights to acquire interests or securities, or any
24 combination of the foregoing.

25 (b) By complying with the provisions of this part applicable to
26 foreign entities, a foreign entity may be the acquiring or acquired entity in
27 an interest exchange under this part if the interest exchange is authorized
28 by the law of the foreign entity's jurisdiction of formation.

29 (c) If a protected agreement contains a provision that applies to a
30 merger of a domestic limited liability company but does not refer to an
31 interest exchange, the provision applies to an interest exchange in which the
32 domestic limited liability company is the acquired entity as if the interest
33 exchange were a merger until the provision is amended after the effective
34 date of this chapter.

35
36 4-38-1032. Plan of interest exchange.

1 (a) A domestic limited liability company may be the acquired entity in
2 an interest exchange under this part by approving a plan of interest
3 exchange. The plan must be in a record and contain:

4 (1) the name of the acquired entity;

5 (2) the name, jurisdiction of formation, and type of entity of
6 the acquiring entity;

7 (3) the manner of converting the interests in the acquired
8 entity into interests, securities, obligations, money, other property, rights
9 to acquire interests or securities, or any combination of the foregoing;

10 (4) any proposed amendments to:

11 (A) the certificate of organization of the acquired
12 entity; and

13 (B) the operating agreement of the acquired entity that
14 are, or are proposed to be, in a record;

15 (5) the other terms and conditions of the interest exchange; and

16 (6) any other provision required by the law of this state or the
17 operating agreement of the acquired entity.

18 (b) In addition to the requirements of subsection (a), a plan of
19 interest exchange may contain any other provision not prohibited by law.

20
21 4-38-1033. Approval of interest exchange.

22 (a) A plan of interest exchange is not effective unless it has been
23 approved:

24 (1) by all the members of a domestic acquired limited liability
25 company entitled to vote on or consent to any matter; and

26 (2) in a record, by each member of the domestic acquired limited
27 liability company that will have interest holder liability for debts,
28 obligations, and other liabilities that are incurred after the interest
29 exchange becomes effective, unless:

30 (A) the operating agreement of the company provides in a
31 record for the approval of an interest exchange or a merger in which some or
32 all of its members become subject to interest holder liability by the
33 affirmative vote or consent of fewer than all the members; and

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

1 (b) An interest exchange involving a domestic acquired entity that is
2 not a limited liability company is not effective unless it is approved by the
3 domestic entity in accordance with its organic law.

4 (c) An interest exchange involving a foreign acquired entity is not
5 effective unless it is approved by the foreign entity in accordance with the
6 law of the foreign entity's jurisdiction of formation.

7 (d) Except as otherwise provided in its organic law or organic rules,
8 the interest holders of the acquiring entity are not required to approve the
9 interest exchange.

10
11 4-38-1034. Amendment or abandonment of plan of interest exchange.

12 (a) A plan of interest exchange may be amended only with the consent
13 of each party to the plan, except as otherwise provided in the plan.

14 (b) A domestic acquired limited liability company may approve an
15 amendment of a plan of interest exchange:

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

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

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

26 (B) the certificate of organization or operating agreement
27 of the acquired company that will be in effect immediately after the interest
28 exchange becomes effective, except for changes that do not require approval
29 of the members of the acquired company under this chapter or the operating
30 agreement; or

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

33 (c) After a plan of interest exchange has been approved and before a
34 statement of interest exchange becomes effective, the plan may be abandoned
35 as provided in the plan. Unless prohibited by the plan, a domestic acquired
36 limited liability company may abandon the plan in the same manner as the plan

1 was approved.

2 (d) If a plan of interest exchange is abandoned after a statement of
3 interest exchange has been delivered to the Secretary of State for filing and
4 before the statement becomes effective, a statement of abandonment, signed by
5 the acquired limited liability company, must be delivered to the Secretary of
6 State for filing before the statement of interest exchange becomes effective.
7 The statement of abandonment takes effect on filing, and the interest
8 exchange is abandoned and does not become effective. The statement of
9 abandonment must contain:

10 (1) the name of the acquired company;

11 (2) the date on which the statement of interest exchange was
12 filed by the Secretary of State; and

13 (3) a statement that the interest exchange has been abandoned in
14 accordance with this section.

15
16 4-38-1035. Statement of interest exchange; Effective date of interest
17 exchange.

18 (a) A statement of interest exchange must be signed by a domestic
19 acquired limited liability company and delivered to the Secretary of State
20 for filing.

21 (b) A statement of interest exchange must contain:

22 (1) the name of the acquired limited liability company;

23 (2) the name, jurisdiction of formation, and type of entity of
24 the acquiring entity;

25 (3) a statement that the plan of interest exchange was approved
26 by the acquired company in accordance with this part; and

27 (4) any amendments to the acquired company's certificate of
28 organization approved as part of the plan of interest exchange.

29 (c) In addition to the requirements of subsection (b), a statement of
30 interest exchange may contain any other provision not prohibited by law.

31 (d) A plan of interest exchange that is signed by a domestic acquired
32 limited liability company and meets all the requirements of subsection (b)
33 may be delivered to the Secretary of State for filing instead of a statement
34 of interest exchange and on filing has the same effect. If a plan of
35 interest exchange is filed as provided in this subsection, references in this
36 subchapter to a statement of interest exchange refer to the plan of interest

1 exchange filed under this subsection.

2 (e) An interest exchange becomes effective when the statement of
3 interest exchange is effective.

4
5 4-38-1036. Effect of interest exchange.

6 (a) When an interest exchange in which the acquired entity is a
7 domestic limited liability company becomes effective:

8 (1) the interests in the acquired company which are the subject
9 of the interest exchange are converted, and the members holding those
10 interests are entitled only to the rights provided to them under the plan of
11 interest exchange and to any appraisal rights they have under § 4-38-1006;

12 (2) the acquiring entity becomes the interest holder of the
13 interests in the acquired company stated in the plan of interest exchange to
14 be acquired by the acquiring entity;

15 (3) the certificate of organization of the acquired company is
16 amended to the extent provided in the statement of interest exchange; and

17 (4) the provisions of the operating agreement of the acquired
18 company that are to be in a record, if any, are amended to the extent
19 provided in the plan of interest exchange.

20 (b) Except as otherwise provided in the operating agreement of a
21 domestic acquired limited liability company, the interest exchange does not
22 give rise to any rights that a member, manager, or third party would have
23 upon a dissolution, liquidation, or winding up of the acquired company.

24 (c) When an interest exchange becomes effective, a person that did not
25 have interest holder liability with respect to a domestic acquired limited
26 liability company and becomes subject to interest holder liability with
27 respect to a domestic entity as a result of the interest exchange has
28 interest holder liability only to the extent provided by the organic law of
29 the entity and only for those debts, obligations, and other liabilities that
30 are incurred after the interest exchange becomes effective.

31 (d) When an interest exchange becomes effective, the interest holder
32 liability of a person that ceases to hold an interest in a domestic acquired
33 limited liability company with respect to which the person had interest
34 holder liability is subject to the following rules:

35 (1) The interest exchange does not discharge any interest holder
36 liability under this chapter to the extent the interest holder liability was

1 incurred before the interest exchange became effective.

2 (2) The person does not have interest holder liability under
3 this chapter for any debt, obligation, or other liability that is incurred
4 after the interest exchange becomes effective.

5 (3) This chapter continues to apply to the release, collection,
6 or discharge of any interest holder liability preserved under paragraph (1)
7 as if the interest exchange had not occurred.

8 (4) The person has whatever rights of contribution from any
9 other person as are provided by this chapter, law other than this chapter, or
10 the operating agreement of the acquired company with respect to any interest
11 holder liability preserved under paragraph (1) as if the interest exchange
12 had not occurred.

13 Part 4 – Conversion

14 4-38-1041. Conversion authorized.

15
16
17 (a) By complying with this part, a domestic limited liability company
18 may become:

19 (1) a domestic entity that is a different type of entity; or

20 (2) a foreign entity that is a different type of entity, if the
21 conversion is authorized by the law of the foreign entity's jurisdiction of
22 formation.

23 (b) By complying with the provisions of this part applicable to
24 foreign entities, a foreign entity that is not a foreign limited liability
25 company may become a domestic limited liability company if the conversion is
26 authorized by the law of the foreign entity's jurisdiction of formation.

27 (c) If a protected agreement contains a provision that applies to a
28 merger of a domestic limited liability company but does not refer to a
29 conversion, the provision applies to a conversion of the company as if the
30 conversion were a merger until the provision is amended after the effective
31 date of this chapter.

32 4-38-1042. Plan of conversion.

33
34 (a) A domestic limited liability company may convert to a different
35 type of entity under this part by approving a plan of conversion. The plan
36 must be in a record and contain:

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

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

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

8 (4) the proposed public organic record of the converted entity
9 if it will be a filing entity;

10 (5) the full text of the private organic rules of the converted
11 entity which are proposed to be in a record;

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

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

15 (b) In addition to the requirements of subsection (a), a plan of
16 conversion may contain any other provision not prohibited by law.

17
18 4-38-1043. Approval of conversion.

19 (a) A plan of conversion is not effective unless it has been approved:

20 (1) by a domestic converting limited liability company, by all
21 the members of the limited liability company entitled to vote on or consent
22 to any matter; and

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

27 (A) the operating agreement of the company provides in a
28 record for the approval of a conversion or a merger in which some or all of
29 its members become subject to interest holder liability by the affirmative
30 vote or consent of fewer than all the members; and

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

34 (b) A conversion involving a domestic converting entity that is not a
35 limited liability company is not effective unless it is approved by the
36 domestic converting entity in accordance with its organic law.

1 (c) A conversion of a foreign converting entity is not effective
2 unless it is approved by the foreign entity in accordance with the law of the
3 foreign entity's jurisdiction of formation.

4
5 4-38-1044. Amendment or abandonment of plan of conversion.

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

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

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

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

18 (B) the public organic record, if any, or private organic
19 rules of the converted entity which will be in effect immediately after the
20 conversion becomes effective, except for changes that do not require approval
21 of the interest holders of the converted entity under its organic law or
22 organic rules; or

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

25 (b) After a plan of conversion has been approved by a domestic
26 converting limited liability company and before a statement of conversion
27 becomes effective, the plan may be abandoned as provided in the plan. Unless
28 prohibited by the plan, a domestic converting limited liability company may
29 abandon the plan in the same manner as the plan was approved.

30 (c) If a plan of conversion is abandoned after a statement of
31 conversion has been delivered to the Secretary of State for filing and before
32 the statement becomes effective, a statement of abandonment, signed by the
33 converting entity, must be delivered to the Secretary of State for filing
34 before the statement of conversion becomes effective. The statement of
35 abandonment takes effect on filing, and the conversion is abandoned and does
36 not become effective. The statement of abandonment must contain:

1 (1) the name of the converting limited liability company;
2 (2) the date on which the statement of conversion was filed by
3 the Secretary of State; and
4 (3) a statement that the conversion has been abandoned in
5 accordance with this section.

6
7 4-38-1045. Statement of conversion – Effective date of conversion.

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

10 (b) A statement of conversion must contain:

11 (1) the name, jurisdiction of formation, and type of entity of
12 the converting entity;

13 (2) the name, jurisdiction of formation, and type of entity of
14 the converted entity;

15 (3) if the converting entity is a domestic limited liability
16 company, a statement that the plan of conversion was approved in accordance
17 with this part or, if the converting entity is a foreign entity, a statement
18 that the conversion was approved by the foreign entity in accordance with the
19 law of its jurisdiction of formation;

20 (4) if the converted entity is a domestic filing entity, its
21 public organic record, as an attachment; and

22 (5) if the converted entity is a domestic limited liability
23 partnership, its statement of qualification, as an attachment.

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

26 (d) If the converted entity is a domestic entity, its public organic
27 record, if any, must satisfy the requirements of the law of this state,
28 except that the public organic record does not need to be signed.

29 (e) A plan of conversion that is signed by a domestic converting
30 limited liability company and meets all the requirements of subsection (b)
31 may be delivered to the Secretary of State for filing instead of a statement
32 of conversion and on filing has the same effect. If a plan of conversion is
33 filed as provided in this subsection, references in this chapter to a
34 statement of conversion refer to the plan of conversion filed under this
35 subsection.

36 (f) If the converted entity is a domestic limited liability company,

1 the conversion becomes effective when the statement of conversion is
2 effective. In all other cases, the conversion becomes effective on the later
3 of:

4 (1) the date and time provided by the organic law of the
5 converted entity; and

6 (2) when the statement is effective.

7
8 4-38-1046. Effect of conversion.

9 (a) When a conversion becomes effective:

10 (1) the converted entity is:

11 (A) organized under and subject to the organic law of the
12 converted entity; and

13 (B) the same entity without interruption as the converting
14 entity;

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

17 (3) all debts, obligations, and other liabilities of the
18 converting entity continue as debts, obligations, and other liabilities of
19 the converted entity;

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

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

25 (6) the certificate of organization of the converted entity
26 becomes effective;

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

30 (8) the interests in the converting entity are converted, and
31 the interest holders of the converting entity are entitled only to the rights
32 provided to them under the plan of conversion and to any appraisal rights
33 they have under § 4-38-1006.

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

1 dissolution, liquidation, or winding up of the converting entity.

2 (c) When a conversion becomes effective, a person that did not have
3 interest holder liability with respect to the converting entity and becomes
4 subject to interest holder liability with respect to a domestic entity as a
5 result of the conversion has interest holder liability only to the extent
6 provided by the organic law of the entity and only for those debts,
7 obligations, and other liabilities that are incurred after the conversion
8 becomes effective.

9 (d) When a conversion becomes effective, the interest holder liability
10 of a person that ceases to hold an interest in a domestic converting limited
11 liability company with respect to which the person had interest holder
12 liability is subject to the following rules:

13 (1) The conversion does not discharge any interest holder
14 liability under this chapter to the extent the interest holder liability was
15 incurred before the conversion became effective;

16 (2) The person does not have interest holder liability under
17 this chapter for any debt, obligation, or other liability that arises after
18 the conversion becomes effective;

19 (3) This chapter continues to apply to the release, collection,
20 or discharge of any interest holder liability preserved under paragraph (1)
21 as if the conversion had not occurred; and

22 (4) The person has whatever rights of contribution from any
23 other person as are provided by this chapter, law other than this chapter, or
24 the organic rules of the converting entity with respect to any interest
25 holder liability preserved under paragraph (1) as if the conversion had not
26 occurred.

27 (e) When a conversion becomes effective, a foreign entity that is the
28 converted entity may be served with process in this state for the collection
29 and enforcement of any of its debts, obligations, and other liabilities as
30 provided in § 4-38-119.

31 (f) If the converting entity is a registered foreign entity, its
32 registration to do business in this state is canceled when the conversion
33 becomes effective.

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

36

1 PART 5 – Domestication

2
3 4-38-1051. Domestication authorized.

4 (a) By complying with this part, a domestic limited liability company
5 may become a foreign limited liability company if the domestication is
6 authorized by the law of the foreign jurisdiction.

7 (b) By complying with the provisions of this part applicable to
8 foreign limited liability companies, a foreign limited liability company may
9 become a domestic limited liability company if the domestication is
10 authorized by the law of the foreign limited liability company's jurisdiction
11 of formation.

12 (c) If a protected agreement contains a provision that applies to a
13 merger of a domestic limited liability company but does not refer to a
14 domestication, the provision applies to a domestication of the limited
15 liability company as if the domestication were a merger until the provision
16 is amended after the effective date of this chapter.

17
18 4-38-1052. Plan of domestication.

19 (a) A domestic limited liability company may become a foreign limited
20 liability company in a domestication by approving a plan of domestication.
21 The plan must be in a record and contain:

22 (1) the name of the domesticating limited liability company;

23 (2) the name and jurisdiction of formation of the domesticated
24 limited liability company;

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

29 (4) the proposed certificate of organization of the domesticated
30 limited liability company;

31 (5) the full text of the provisions of the operating agreement
32 of the domesticated limited liability company that are proposed to be in a
33 record;

34 (6) the other terms and conditions of the domestication; and

35 (7) any other provision required by the law of this state or the
36 operating agreement of the domesticating limited liability company.

1 (b) In addition to the requirements of subsection (a), a plan of
2 domestication may contain any other provision not prohibited by law.

3
4 4-38-1053. Approval of domestication.

5 (a) A plan of domestication of a domestic domesticating limited
6 liability company is not effective unless it has been approved:

7 (1) by all the members entitled to vote on or consent to any
8 matter; and

9 (2) in a record, by each member that will have interest holder
10 liability for debts, obligations, and other liabilities that are incurred
11 after the domestication becomes effective, unless:

12 (A) the operating agreement of the domesticating company
13 in a record provides for the approval of a domestication or merger in which
14 some or all of its members become subject to interest holder liability by the
15 affirmative vote or consent of fewer than all the members; and

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

19 (b) A domestication of a foreign domesticating limited liability
20 company is not effective unless it is approved in accordance with the law of
21 the foreign limited liability company's jurisdiction of formation.

22
23 4-38-1054. Amendment or abandonment of plan of domestication.

24 (a) A plan of domestication of a domestic domesticating limited
25 liability company may be amended:

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

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

32 (A) the amount or kind of interests, securities,
33 obligations, money, other property, rights to acquire interests or
34 securities, or any combination of the foregoing, to be received by any of the
35 members of the domesticating limited liability company under the plan;

36 (B) the certificate of organization or operating agreement

1 of the domesticated limited liability company that will be in effect
2 immediately after the domestication becomes effective, except for changes
3 that do not require approval of the members of the domesticated limited
4 liability company under its organic law or operating agreement; or

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

7 (b) After a plan of domestication has been approved by a domestic
8 domesticating limited liability company and before a statement of
9 domestication becomes effective, the plan may be abandoned as provided in the
10 plan. Unless prohibited by the plan, a domestic domesticating limited
11 liability company may abandon the plan in the same manner as the plan was
12 approved.

13 (c) If a plan of domestication is abandoned after a statement of
14 domestication has been delivered to the Secretary of State for filing and
15 before the statement becomes effective, a statement of abandonment, signed by
16 the domesticating limited liability company, must be delivered to the
17 Secretary of State for filing before the statement of domestication becomes
18 effective. The statement of abandonment takes effect on filing, and the
19 domestication is abandoned and does not become effective. The statement of
20 abandonment must contain:

21 (1) the name of the domesticating limited liability company;

22 (2) the date on which the statement of domestication was filed
23 by the Secretary of State; and

24 (3) a statement that the domestication has been abandoned in
25 accordance with this section.

26
27 4-38-1055. Statement of domestication – Effective date of
28 domestication.

29 (a) A statement of domestication must be signed by the domesticating
30 limited liability company and delivered to the Secretary of State for filing.

31 (b) A statement of domestication must contain:

32 (1) the name and jurisdiction of formation of the domesticating
33 limited liability company;

34 (2) the name and jurisdiction of formation of the domesticated
35 limited liability company;

36 (3) if the domesticating limited liability company is a domestic

1 limited liability company, a statement that the plan of domestication was
2 approved in accordance with this part or, if the domesticating limited
3 liability company is a foreign limited liability company, a statement that
4 the domestication was approved in accordance with the law of its jurisdiction
5 of formation; and

6 (4) the certificate of organization of the domesticated limited
7 liability company, as an attachment.

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

10 (d) The certificate of organization of a domestic domesticated limited
11 liability company must satisfy the requirements of this chapter, but the
12 certificate does not need to be signed.

13 (e) A plan of domestication that is signed by a domesticating domestic
14 limited liability company and meets all the requirements of subsection (b)
15 may be delivered to the Secretary of State for filing instead of a statement
16 of domestication and on filing has the same effect. If a plan of
17 domestication is filed as provided in this subsection, references in this
18 subchapter to a statement of domestication refer to the plan of domestication
19 filed under this subsection.

20 (f) If the domesticated entity is a domestic limited liability
21 company, the domestication becomes effective when the statement of
22 domestication is effective. If the domesticated entity is a foreign limited
23 liability company, the domestication becomes effective on the later of:

24 (1) the date and time provided by the organic law of the
25 domesticated entity; and

26 (2) when the statement is effective.

27
28 4-38-1056. Effect of domestication.

29 (a) When a domestication becomes effective:

30 (1) the domesticated entity is:

31 (A) organized under and subject to the organic law of the
32 domesticated entity; and

33 (B) the same entity without interruption as the
34 domesticating entity;

35 (2) all property of the domesticating entity continues to be
36 vested in the domesticated entity without transfer, reversion, or impairment;

1 (3) all debts, obligations, and other liabilities of the
2 domesticating entity continue as debts, obligations, and other liabilities of
3 the domesticated entity;

4 (4) except as otherwise provided by law or the plan of
5 domestication, all the rights, privileges, immunities, powers, and purposes
6 of the domesticating entity remain in the domesticated entity;

7 (5) the name of the domesticated entity may be substituted for
8 the name of the domesticating entity in any pending action or proceeding;

9 (6) the certificate of organization of the domesticated entity
10 becomes effective;

11 (7) the provisions of the operating agreement of the
12 domesticated entity that are to be in a record, if any, approved as part of
13 the plan of domestication become effective; and

14 (8) the interests in the domesticating entity are converted to
15 the extent and as approved in connection with the domestication, and the
16 members of the domesticating entity are entitled only to the rights provided
17 to them under the plan of domestication and to any appraisal rights they have
18 under § 4-38-1006.

19 (b) Except as otherwise provided in the organic law or operating
20 agreement of the domesticating limited liability company, the domestication
21 does not give rise to any rights that a member, manager, or third party would
22 otherwise have upon a dissolution, liquidation, or winding up of the
23 domesticating company.

24 (c) When a domestication becomes effective, a person that did not have
25 interest holder liability with respect to the domesticating limited liability
26 company and becomes subject to interest holder liability with respect to a
27 domestic company as a result of the domestication has interest holder
28 liability only to the extent provided by this chapter and only for those
29 debts, obligations, and other liabilities that are incurred after the
30 domestication becomes effective.

31 (d) When a domestication becomes effective, the interest holder
32 liability of a person that ceases to hold an interest in a domestic
33 domesticating limited liability company with respect to which the person had
34 interest holder liability is subject to the following rules:

35 (1) The domestication does not discharge any interest holder
36 liability under this chapter to the extent the interest holder liability was

1 incurred before the domestication became effective.

2 (2) A person does not have interest holder liability under this
3 chapter for any debt, obligation, or other liability that is incurred after
4 the domestication becomes effective.

5 (3) This chapter continues to apply to the release, collection,
6 or discharge of any interest holder liability preserved under paragraph (1)
7 as if the domestication had not occurred.

8 (4) A person has whatever rights of contribution from any other
9 person as are provided by this chapter, law other than this chapter, or the
10 operating agreement of the domestic domesticating limited liability company
11 with respect to any interest holder liability preserved under paragraph (1)
12 as if the domestication had not occurred.

13 (e) When a domestication becomes effective, a foreign limited
14 liability company that is the domesticated company may be served with process
15 in this state for the collection and enforcement of any of its debts,
16 obligations, and other liabilities as provided in § 4-38-119.

17 (f) If the domesticating limited liability company is a registered
18 foreign entity, the registration of the company is canceled when the
19 domestication becomes effective.

20 (g) A domestication does not require a domestic domesticating limited
21 liability company to wind up its affairs and does not constitute or cause the
22 dissolution of the company.

23 Subchapter 11 – Miscellaneous Provisions

24 4-38-1101. Uniformity of application and construction.

25
26 In applying and construing this uniform act, consideration must be
27 given to the need to promote uniformity of the law with respect to its
28 subject matter among states that enact it.

29 30 31 4-38-1102. Relation to Electronic Signatures in Global and National 32 Commerce Act.

33 This chapter modifies, limits, or supersedes the Electronic Signatures
34 in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does
35 not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section
36 7001(c), or authorize electronic delivery of any of the notices described in

1 Section 103(b) of that act, 15 U.S.C. Section 7003(b).

3 4-38-1103. Savings clause.

4 This chapter does not affect an action commenced, proceeding brought,
5 or right accrued before the effective date of this chapter.

7 4-38-1104. Filing, service, and copying fees.

8 (a) The Secretary of State shall collect the following fees when the
9 documents described in this subsection are delivered to him or her for
10 filing:

<u>DOCUMENT</u>	<u>FEE</u>
13 <u>(1) Certificate of organization</u>	<u>\$50.00</u>
14 <u>(2) Application for use of indistinguishable name</u>	<u>25.00</u>
15 <u>(3) Application for reserved name</u>	<u>25.00</u>
16 <u>(4) Notice of transfer of reserved name</u>	<u>25.00</u>
17 <u>(5) Amendment of certificate of organization</u>	<u>25.00</u>
18 <u>(6) Restatement of certificate of organization with</u>	
19 <u>amendment of certificate of organization</u>	<u>25.00</u>
20 <u>(7) Articles of merger or share exchange</u>	<u>50.00</u>
21 <u>(8) Articles of dissolution</u>	<u>50.00</u>
22 <u>(9) Certificate of judicial dissolution</u>	<u>No fee</u>
23 <u>(10) Application for certificate of authority by</u>	
24 <u>foreign limited liability company</u>	<u>300.00</u>
25 <u>(11) Application for amended certificate of authority</u>	
26 <u>by foreign limited liability company</u>	<u>300.00</u>
27 <u>(12) Application for certificate of withdrawal by</u>	
28 <u>foreign limited liability company</u>	<u>50.00</u>
29 <u>(13) Certificate of revocation of authority to</u>	
30 <u>transact business</u>	<u>No fee</u>
31 <u>(14) Articles of correction</u>	<u>30.00</u>
32 <u>(15) Application for certificate of existence or</u>	
33 <u>authorization by domestic limited liability</u>	
34 <u>company</u>	<u>15.00</u>
35 <u>(16) Annual report</u>	<u>No fee</u>
36 <u>(17) Registration of foreign name</u>	<u>50.00</u>

1 (18) Any other document required or permitted to
 2 be filed by this chapter 25.00

3 (19) Application of foreign limited liability company
 4 to move domicile to Arkansas 300.00

5 (b)(1) The Secretary of State shall collect a fee of twenty-five
 6 dollars (\$25.00) each time process is served on him or her under this
 7 chapter.

8 (2) The party to a proceeding causing service of process is
 9 entitled to recover the process fee as costs if the party prevails in the
 10 proceeding.

11 (c) The Secretary of State shall collect the following fees for
 12 copying and certifying the copy of any filed document relating to a domestic
 13 or foreign limited liability company:

14 (1) fifty cents (50¢) a page for copying with a minimum charge
 15 of two dollars and fifty cents (\$2.50); and

16 (2) five dollars (\$5.00) for the certificate.

17 (d) The Secretary of State shall collect the following fees when the
 18 documents described in this subsection are delivered to him or her by
 19 electronic means:

<u>DOCUMENT</u>	<u>FEE</u>	<u>PROCESSING</u>
		<u>FEE</u>
23 <u>(1) Certificate of organization for domestic</u>		
24 <u>limited liability company \$40.00</u>		<u>\$5.00</u>
25 <u>(2) Certificate of amendment to certificate</u>		
26 <u>of organization for a domestic</u>		
27 <u>limited liability company \$18.50</u>		<u>\$4.00</u>
28 <u>(3) Application for reservation of</u>		
29 <u>limited liability company name\$18.50</u>		<u>\$4.00</u>
30 <u>(4) Notice of transfer of reserved name\$18.50</u>		<u>\$4.00</u>
31 <u>(5) Application for certificate of</u>		
32 <u>registration of foreign limited</u>		
33 <u>liability company\$258.00</u>		<u>\$12.00</u>
34 <u>(6) Application for amended certificate</u>		
35 <u>of authority by foreign limited</u>		
36 <u>liability company\$258.00</u>		<u>\$12.00</u>

1 (7) Application for fictitious name for
2 foreign limited liability company\$18.50 \$4.00

3 (8) For any other document not listed above, the cost for electronic
4 filing is:

5 (A) Four dollars (\$4.00) for the processing fee when the filing fee is
6 zero dollars (\$0.00) to fifty dollars (\$50.00);

7 (B) Five dollars (\$5.00) for the processing fee when the filing fee is
8 fifty-one dollars (\$51.00) to ninety-nine dollars (\$99.00);

9 (C) Ten dollars (\$10.00) for the processing fee when the filing fee is
10 one hundred dollars (\$100) to two hundred ninety-nine dollars (\$299); and

11 (D) Twelve dollars (\$12.00) for the processing fee when the filing fee
12 is three hundred dollars (\$300) or more.

13
14 4-38-1105. Powers of Secretary of State.

15 The Secretary of State has the power reasonably necessary to perform
16 the duties required of him or her by this chapter.

17
18 4-38-1106. Confidentiality.

19 All member information contained in an annual report or in an annual
20 franchise tax report shall be confidential and not available for public
21 inspection, except:

22 (1) the name and address of the limited liability company;

23 (2) the registered agent of the limited liability company; and

24 (3) the state where the limited liability company is registered
25 to do business.

26
27 4-38-1107. Tax status.

28 A limited liability company and its member or members shall be
29 classified and taxed for Arkansas income tax purposes in the same manner as
30 the limited liability company and its member or members are classified and
31 taxed for federal income tax purposes.

32
33 4-38-1108. Effective date.

34 This chapter takes effect on September 1, 2021.

35
36 Subchapter 12 – Medical or Dental Limited Liability Company

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4-38-1201. Certification of registration.

(a) A limited liability company formed under this chapter and that will engage in the practice of medicine must obtain a certificate of registration from the Arkansas State Medical Board and must comply with the statutes of the Medical Corporation Act, § 4-29-301 et seq.

(b) A limited liability company formed under this chapter and that will engage in the practice of dentistry must obtain a certificate of registration and comply with the statutes in the Dental Corporation Act, § 4-29-401 et seq.

4-38-1202. Name – Medical or dental limited liability company.

(a) The name of a limited liability company which performs professional service shall contain the words “Professional Limited Liability Company” or “Professional Limited Company” or the abbreviations “P.L.L.C.”, “P.L.C.”, “PLLC”, “PLC”, and the words “Limited” and “Company” may be abbreviated as “Ltd.” or “Co.” and may not contain the name of any person who is not a member, except that the name of a former member or member of a predecessor organization may continue to be included in the name.

(b) A limited liability company formed under this chapter, including medical, dental, and professional companies, shall have only one (1) corporate suffix, as allowed by subsection (b) of this section.

SECTION 27. Arkansas Code § 4-42-707(b), concerning the use of fictitious names, is amended to read as follows:

(b) Each such form shall be executed, without verification, in duplicate and filed with the Secretary of State. The Secretary of State shall retain one (1) counterpart and the other counterpart, bearing the file marks of the Secretary of State, shall be returned to the registered limited liability partnership. However, the Secretary of State shall not accept such filing if the proposed fictitious name is the same as, or confusingly similar to, the name of any domestic corporation, limited liability company, limited partnership, limited liability partnership, or any other entity registered with the Secretary of State, or any such foreign entity authorized to do business in the state or any name reserved or registered under § 4-27-402, § 4-27-403, ~~§ 4-32-104~~ § 4-38-112 or § 4-47-109.

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SECTION 28. Arkansas Code § 4-47-905(a), concerning the noncomplying name of foreign limited partnerships under the Uniform Limited Partnership Act (2001), is amended to read as follows:

(a) A foreign limited partnership whose name does not comply with § 4-47-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with § 4-47-108. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with ~~§ 4-32-108~~ § 4-38-112. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under the name unless the foreign limited partnership is authorized under ~~§ 4-32-108~~ § 4-38-112 to transact business in this State under another name.

SECTION 29. Arkansas Code § 4-70-201(c), concerning the applicability of the subchapter to businesses under assumed names, is amended to read as follows:

(c) This subchapter shall not apply to any limited liability company which has filed its articles of organization with the Secretary of State pursuant to ~~§ 4-32-202~~ § 4-38-201.

SECTION 30. Arkansas Code § 15-4-1215(b), concerning the dividends and distributions under the County and Regional Industrial Development Company Act, is amended to read as follows:

(b) The management committee of a limited liability company, subject to such limitations as may be set forth in the articles of organization or the operating agreement, may declare distributions to the holders of the units of interest in the limited liability company consistent with the provisions of the ~~Small Business Entity Tax Pass Through Act, § 4-32-101 et seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq.

SECTION 31. Arkansas Code § 26-18-303(b)(14)(B), concerning exceptions to confidential and privileged records for state tax procedures [Effective January 1, 2020 until May 1, 2021], is amended to read as follows:

(B) In the case of a franchise tax report filed by an

1 organization formed under the ~~Small Business Entity Tax Pass Through Act, §~~
2 ~~4-32-101 et seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq.,
3 the confidentiality provision of subsection (a) of this section shall apply
4 to the names of members of the organization, except those designated in the
5 organization's franchise tax report as a manager, president, vice president,
6 secretary, treasurer, or controller of the organization, unless the
7 organization has no registered agent for service of process, in which case
8 the confidentiality provisions of subsection (a) of this section shall not
9 apply;

10
11 SECTION 32. Arkansas Code § 26-18-303(b)(14)(B), concerning exceptions
12 to confidential and privileged records for state tax procedures [Effective
13 May 1, 2021], is amended to read as follows:

14 (B) In the case of a franchise tax report filed by an
15 organization formed under the ~~Small Business Entity Tax Pass Through Act, §~~
16 ~~4-32-101 et seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq.,
17 the confidentiality provision of subsection (a) of this section shall apply
18 to the names of members of the organization, except those designated in the
19 organization's franchise tax report as a manager, president, vice president,
20 secretary, treasurer, or controller of the organization, unless the
21 organization has:

22 (i) No registered agent for service of process, in
23 which case the confidentiality provisions of subsection (a) of this section
24 shall not apply; or

25 (ii) Failed to take an action required under the
26 Arkansas Corporate Franchise Tax Act of 1979, § 26-54-101 et seq., in which
27 case the disclosures identified in subdivision (b)(14)(A) of this section are
28 allowed;

29
30 SECTION 33. Arkansas Code Title 26, Chapter 51, Subchapter 8, is
31 amended to add an additional section to read as follows:

32 26-51-817. Tax filing – Limited liability company.

33 (a) A limited liability company and its member or members shall be
34 classified and taxed for Arkansas income tax purposes in the same manner as
35 the limited liability company and its member or members are classified and
36 taxed for federal income tax purposes.

1 (b) Subsection (a) of this section does not apply to a limited
2 liability company and its member or members electing to pay income tax under
3 the Elective Pass-Through Entity Tax Act, § 26-65-101 et seq.

4
5 SECTION 34. Arkansas Code § 26-54-104(8), concerning the annual
6 franchise tax, is amended to read as follows:

7 (8) An organization formed pursuant to the ~~Small Business Entity~~
8 ~~Tax Pass Through Act, § 4-32-101 et seq.~~ Uniform Limited Liability Company
9 Act, § 4-38-101 et seq., shall pay the minimum franchise tax.

10
11 SECTION 35. Arkansas Code § 26-54-105(h)(2), concerning franchise tax
12 reports [Effective until May 1, 2021], is amended to read as follows:

13 (2) In the case of a franchise tax report filed by an
14 organization formed under the ~~Small Business Entity Tax Pass Through Act, §~~
15 ~~4-32-101 et seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq.,
16 the names of members, except those designated in the organizations' franchise
17 tax report as a manager, president, vice president, secretary, treasurer, or
18 controller of the organization, shall be confidential and not available for
19 public inspection unless the organization has no registered agent for service
20 of process.

21
22 SECTION 36. Arkansas Code § 26-54-105(h)(2), concerning franchise tax
23 reports [Effective May 1, 2021], is amended to read as follows:

24 (2) In the case of a franchise tax report filed by an
25 organization formed under the ~~Small Business Entity Tax Pass Through Act, §~~
26 ~~4-32-101 et seq.~~ Uniform Limited Liability Company Act, § 4-38-101 et seq.,
27 the names of members, except those designated in the organizations' franchise
28 tax report as a manager, president, vice president, secretary, treasurer, or
29 controller of the organization, shall be confidential and not available for
30 public inspection unless the organization has no registered agent for service
31 of process.

32
33
34 /s/J. Dismang