

1 **UNINCORPORATED BUSINESS ENTITIES RELATED**

2 **AMENDMENTS**

3 2015 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: R. Curt Webb

7

LONG TITLE

8 **General Description:**

9 This bill modifies provisions related to unincorporated business entities.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses permitted names related to a limited liability company;
- 13 ▶ requires filings to be typewritten or computer generated;
- 14 ▶ modifies language related to entities converting to a different type of entity;
- 15 ▶ addresses location of notice of series that is filed with the division; and
- 16 ▶ makes technical and conforming amendments.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **48-1d-1041**, as enacted by Laws of Utah 2013, Chapter 412

24 **48-1d-1042**, as enacted by Laws of Utah 2013, Chapter 412

25 **48-1d-1043**, as enacted by Laws of Utah 2013, Chapter 412

26 **48-1d-1044**, as enacted by Laws of Utah 2013, Chapter 412



- 28 [48-1d-1046](#), as enacted by Laws of Utah 2013, Chapter 412
- 29 [48-2e-205](#), as enacted by Laws of Utah 2013, Chapter 412
- 30 [48-2e-1141](#), as enacted by Laws of Utah 2013, Chapter 412
- 31 [48-2e-1142](#), as enacted by Laws of Utah 2013, Chapter 412
- 32 [48-2e-1143](#), as enacted by Laws of Utah 2013, Chapter 412
- 33 [48-2e-1144](#), as enacted by Laws of Utah 2013, Chapter 412
- 34 [48-2e-1146](#), as enacted by Laws of Utah 2013, Chapter 412
- 35 [48-3a-108](#), as enacted by Laws of Utah 2013, Chapter 412
- 36 [48-3a-205](#), as enacted by Laws of Utah 2013, Chapter 412
- 37 [48-3a-1041](#), as enacted by Laws of Utah 2013, Chapter 412
- 38 [48-3a-1042](#), as enacted by Laws of Utah 2013, Chapter 412
- 39 [48-3a-1043](#), as enacted by Laws of Utah 2013, Chapter 412
- 40 [48-3a-1044](#), as enacted by Laws of Utah 2013, Chapter 412
- 41 [48-3a-1046](#), as enacted by Laws of Utah 2013, Chapter 412
- 42 [48-3a-1202](#), as enacted by Laws of Utah 2013, Chapter 412

43

44 *Be it enacted by the Legislature of the state of Utah:*

45 Section 1. Section **48-1d-1041** is amended to read:

46 **48-1d-1041. Conversion authorized.**

47 (1) As used in Sections [48-1d-1041](#) through [48-1d-1046](#), the term "subject entity"
48 includes a corporation, a business trust or association, a real estate investment trust, a
49 common-law trust, or any other unincorporated business, including a limited liability company,
50 a general partnership, a registered limited liability partnership, or a foreign limited partnership.

51 (2) A subject entity may convert to a domestic partnership by complying with Sections
52 [48-1d-1041](#) through [48-1d-1046](#).

53 ~~(1)~~ (3) By complying with Sections [48-1d-1041](#) through [48-1d-1046](#), a domestic
54 partnership may become:

55 (a) a domestic entity that is a different type of entity; or

56 (b) a foreign entity that is a different type of entity, if the conversion is authorized by
57 the law of the foreign jurisdiction.

58 ~~(2)~~ (4) By complying with the provisions of Sections [48-1d-1041](#) through [48-1d-1046](#)

59 applicable to foreign entities, a foreign entity that is not a foreign partnership may become a
60 domestic partnership if the conversion is authorized by the law of the foreign entity's
61 jurisdiction of formation.

62 ~~[(3)]~~ (5) If a protected agreement contains a provision that applies to a merger of a
63 domestic partnership but does not refer to a conversion, the provision applies to a conversion of
64 the entity as if the conversion were a merger until the provision is amended after January 1,
65 2014.

66 Section 2. Section **48-1d-1042** is amended to read:

67 **48-1d-1042. Plan of conversion.**

68 (1) A subject entity may convert to a domestic partnership or a domestic partnership
69 may convert to a different type of entity under Sections [48-1d-1041](#) through [48-1d-1046](#) by
70 approving a plan of conversion. The plan must be in a record and contain:

- 71 (a) the name of the converting subject entity or partnership;
72 (b) the name, jurisdiction of formation, and type of entity of the converted entity;
73 (c) the manner of converting the interests in the converting subject entity or partnership
74 into interests, securities, obligations, money, other property, rights to acquire interests or
75 securities, or any combination of the foregoing;
76 (d) the proposed public organic record of the converted entity if it will be a filing
77 entity;
78 (e) the full text of the private organic rules of the converted entity that are proposed to
79 be in a record;
80 (f) the other terms and conditions of the conversion; and
81 (g) any other provision required by the law of this state or the partnership agreement of
82 the converting partnership.

83 (2) In addition to the requirements of Subsection (1), a plan of conversion may contain
84 any other provision not prohibited by law.

85 Section 3. Section **48-1d-1043** is amended to read:

86 **48-1d-1043. Approval of conversion.**

87 (1) A plan of conversion is not effective unless it has been approved:

- 88 (a) by a domestic converting partnership by all the partners of the partnership entitled
89 to vote on or consent to any matter; and

90 (b) in a record, by each partner of a domestic converting partnership that will have
91 interest holder liability for debts, obligations, and other liabilities that arise after the conversion
92 becomes effective:

93 (i) the partnership agreement provides in a record for the approval of a conversion or a
94 merger in which some or all of its partners become subject to interest holder liability by the
95 vote or consent of fewer than all the interest holders; and

96 (ii) the partner voted for or consented in a record to that provision of the partnership
97 agreement or became a partner after the adoption of that provision.

98 (2) A conversion involving a domestic converting entity that is not a partnership,
99 including a subject entity, is not effective unless it is approved by the domestic converting
100 entity in accordance with its organic law.

101 (3) A conversion of a foreign converting entity is not effective unless it is approved by
102 the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

103 Section 4. Section **48-1d-1044** is amended to read:

104 **48-1d-1044. Amendment or abandonment of plan of conversion.**

105 (1) A plan of conversion of a subject entity or domestic converting partnership may be
106 amended:

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

109 (b) by the partners of the entity in the manner provided in the plan, but a partner that
110 was entitled to vote on or consent to approval of the conversion is entitled to vote on or consent
111 to any amendment of the plan that will change:

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

115 (ii) the public organic record or private organic rules of the converted entity that will be
116 in effect immediately after the conversion becomes effective, except for changes that do not
117 require approval of the interest holders of the converted entity under its organic law or organic
118 rules; or

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

121 (2) After a plan of conversion has been approved [~~by a domestic converting~~
122 ~~partnership~~] and before a statement of conversion becomes effective, the plan may be
123 abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting
124 partnership may abandon the plan in the same manner as the plan was approved.

125 (3) If a plan of conversion is abandoned after a statement of conversion has been
126 delivered to the division for filing and before the statement of conversion becomes effective, a
127 statement of abandonment, signed by the converting entity, must be delivered to the division
128 for filing before the time the statement of conversion becomes effective. The statement of
129 abandonment takes effect on filing, and the conversion is abandoned and does not become
130 effective. The statement of abandonment must contain:

- 131 (a) the name of the converting subject entity or partnership;
- 132 (b) the date on which the statement of conversion was delivered to the division for
133 filing; and
- 134 (c) a statement that the conversion has been abandoned in accordance with this section.

135 Section 5. Section **48-1d-1046** is amended to read:

136 **48-1d-1046. Effect of conversion.**

137 (1) When a conversion in which the converted entity is a subject entity or domestic
138 partnership becomes effective:

- 139 (a) the converted entity is:
 - 140 (i) organized under and subject to this chapter; and
 - 141 (ii) the same entity without interruption as the converting entity;
- 142 (b) all property of the converting entity continues to be vested in the converted entity
143 without transfer, reversion, or impairment;
- 144 (c) all debts, obligations, and other liabilities of the converting entity continue as debts,
145 obligations, and other liabilities of the converted entity;
- 146 (d) except as otherwise provided by law or the plan of conversion, all the rights,
147 privileges, immunities, powers, and purposes of the converting entity remain in the converted
148 entity;
- 149 (e) the name of the converted entity may be substituted for the name of the converting
150 entity in any pending action or proceeding;
- 151 (f) if the converted entity is a limited liability partnership, its statement of qualification

152 is effective simultaneously;

153 (g) the provisions of the partnership agreement of the converted entity that are to be in
154 a record, if any, approved as part of the plan of conversion are effective; and

155 (h) the interests in the converting entity are converted, and the interest holders of the
156 converting entity are entitled only to the rights provided to them under the plan of conversion
157 and to any appraisal rights they have under Section 48-1d-1008 and the converting entity's
158 organic law.

159 (2) Except as otherwise provided in the partnership agreement of a domestic converting
160 partnership, the conversion does not give rise to any rights that a partner or third party would
161 otherwise have upon a dissolution, liquidation, or winding up of the converting entity.

162 (3) When a conversion becomes effective, a person that did not have interest holder
163 liability with respect to the converting entity and becomes subject to interest holder liability
164 with respect to a domestic entity as a result of the conversion has interest holder liability only
165 to the extent provided by the organic law of the entity and only for those debts, obligations, and
166 other liabilities that arise after the conversion becomes effective.

167 (4) When a conversion becomes effective, the interest holder liability of a person that
168 ceases to hold an interest in a domestic partnership with respect to which the person had
169 interest holder liability is as follows:

170 (a) The conversion does not discharge any interest holder liability to the extent the
171 interest holder liability arose before the conversion became effective.

172 (b) The person does not have interest holder liability for any debt, obligation, or other
173 liability that arises after the conversion becomes effective.

174 (c) The person has whatever rights of contribution from any other person as are
175 provided by law other than this chapter, this chapter, or the partnership agreement of the
176 converting entity with respect to any interest holder liability preserved under Subsection (4)(a)
177 as if the conversion had not occurred.

178 (5) When a conversion becomes effective, a foreign entity that is the converted entity
179 may be served with process in this state for the collection and enforcement of any of its debts,
180 obligations, and other liabilities as provided in Section 16-17-301.

181 (6) If the converting entity is a registered foreign entity, its registration to do business
182 in this state is canceled when the conversion becomes effective.

183 (7) A conversion does not require the entity to wind up its affairs and does not
184 constitute or cause the dissolution of the entity.

185 Section 6. Section **48-2e-205** is amended to read:

186 **48-2e-205. Filing requirements.**

187 (1) To be filed by the division pursuant to this chapter, a record must be received by
188 the division, comply with this chapter, and satisfy the following:

189 (a) The filing of the record must be required or permitted by this chapter.

190 (b) The record must be physically delivered in written form unless and to the extent the
191 division permits electronic delivery of records.

192 (c) The record must be typewritten or computer generated.

193 [~~(c)~~] (d) The words in the record must be in English, and numbers must be in Arabic or
194 Roman numerals, but the name of an entity need not be in English if written in English letters
195 or Arabic or Roman numerals.

196 [~~(d)~~] (e) The record must be signed by a person authorized under this chapter to sign
197 the record.

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

201 (2) If law other than this chapter prohibits the disclosure by the division of information
202 contained in a record delivered to the division for filing, the division shall accept the record if
203 the record otherwise complies with this chapter but the division may redact the information.

204 (3) When a record is delivered to the division for filing, any fee required under this
205 chapter and any fee, tax, interest, or penalty required to be paid under this chapter, or law other
206 than this chapter, must be paid in a manner permitted by the division or by that law.

207 (4) The division may require that a record delivered in written form be accompanied by
208 an identical or conformed copy.

209 Section 7. Section **48-2e-1141** is amended to read:

210 **48-2e-1141. Conversion authorized.**

211 (1) As used in Sections 48-2e-1141 through 48-2e-1146, the term "subject entity"

212 includes a corporation, a business trust or association, a real estate investment trust, a

213 common-law trust, or any other unincorporated business, including a limited liability company,

214 a general partnership, a registered limited liability partnership, or a foreign limited partnership.

215 (2) A subject entity may convert to a domestic limited partnership by complying with
216 Sections [48-2e-1141](#) through [48-2e-1146](#).

217 ~~[(1)]~~ (3) By complying with Sections [48-2e-1141](#) through [48-2e-1146](#) a domestic
218 limited partnership may become:

219 (a) a domestic entity that is a different type of entity; or

220 (b) a foreign entity that is a different type of entity, if the conversion is authorized by
221 the law of the foreign jurisdiction.

222 ~~[(2)]~~ (4) By complying with the provisions of Sections [48-2e-1141](#) through [48-2e-1146](#)
223 applicable to foreign entities, a foreign entity that is not a foreign limited partnership may
224 become a domestic limited partnership if the conversion is authorized by the law of the foreign
225 entity's jurisdiction of formation.

226 ~~[(3)]~~ (5) If a protected agreement contains a provision that applies to a merger of a
227 domestic limited partnership but does not refer to a conversion, the provision applies to a
228 conversion of the entity as if the conversion were a merger until the provision is amended after
229 January 1, 2014.

230 Section 8. Section **48-2e-1142** is amended to read:

231 **48-2e-1142. Plan of conversion.**

232 (1) A subject entity may convert to a domestic limited partnership or a domestic
233 limited partnership may convert to a different type of entity under Sections [48-2e-1141](#) through
234 [48-2e-1146](#) by approving a plan of conversion. The plan must be in a record and contain:

235 (a) the name of the converting subject entity or limited partnership;

236 (b) the name, jurisdiction of formation, and type of entity of the converted entity;

237 (c) the manner of converting the interests in the converting subject entity or limited
238 partnership into interests, securities, obligations, money, other property, rights to acquire
239 interests or securities, or any combination of the foregoing;

240 (d) the proposed public organic record of the converted entity if it will be a filing
241 entity;

242 (e) the full text of the private organic rules of the converted entity that are proposed to
243 be in a record;

244 (f) the other terms and conditions of the conversion; and

245 (g) any other provision required by the law of this state or the partnership agreement of
246 the converting limited partnership.

247 (2) In addition to the requirements of Subsection (1), a plan of conversion may contain
248 any other provision not prohibited by law.

249 Section 9. Section **48-2e-1143** is amended to read:

250 **48-2e-1143. Approval of conversion.**

251 (1) A plan of conversion is not effective unless it has been approved:

252 (a) by a domestic converting limited partnership by all of the partners of the limited
253 partnership entitled to vote on or consent to any matter; and

254 (b) in a record, by each partner of a domestic converting limited partnership that will
255 have interest holder liability for debts, obligations, and other liabilities that arise after the
256 conversion becomes effective:

257 (i) the partnership agreement of the limited partnership provides in a record for the
258 approval of a conversion or a merger in which some or all of its partners become subject to
259 interest holder liability by the vote or consent of fewer than all the interest holders; and

260 (ii) the partner voted for or consented in a record to that provision of the partnership
261 agreement or became a partner after the adoption of that provision.

262 (2) A conversion involving a domestic converting entity that is not a limited
263 partnership, including a subject entity, is not effective unless it is approved by the domestic
264 converting entity in accordance with its organic law.

265 (3) A conversion of a foreign converting entity is not effective unless it is approved by
266 the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

267 Section 10. Section **48-2e-1144** is amended to read:

268 **48-2e-1144. Amendment or abandonment of plan of conversion.**

269 (1) A plan of conversion of a subject entity or domestic converting limited partnership
270 may be amended:

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

273 (b) by the partners of the limited partnership in the manner provided in the plan, but a
274 partner that was entitled to vote on or consent to approval of the conversion is entitled to vote
275 on or consent to any amendment of the plan that will change:

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

279 (ii) the public organic record or private organic rules of the converted entity that will be
280 in effect immediately after the conversion becomes effective, except for changes that do not
281 require approval of the interest holders of the converted entity under its organic law or organic
282 rules; or

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

285 (2) After a plan of conversion has been approved [~~by a domestic converting limited~~
286 ~~partnership~~] and before a statement of conversion becomes effective, the plan may be
287 abandoned as provided in the plan. Unless prohibited by the plan, a domestic converting
288 limited partnership may abandon the plan in the same manner as the plan was approved.

289 (3) If a plan of conversion is abandoned after a statement of conversion has been
290 delivered to the division for filing and before the statement becomes effective, a statement of
291 abandonment, signed by the converting entity, must be delivered to the division for filing
292 before the time the statement of conversion becomes effective. The statement of abandonment
293 takes effect on filing, and the conversion is abandoned and does not become effective. The
294 statement of abandonment must contain:

295 (a) the name of the converting subject entity or limited partnership;

296 (b) the date on which the statement of conversion was delivered to the division for
297 filing; and

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

299 Section 11. Section **48-2e-1146** is amended to read:

300 **48-2e-1146. Effect of conversion.**

301 (1) When a conversion in which the converted entity is a subject entity or domestic
302 limited partnership becomes effective:

303 (a) the converted entity is:

304 (i) organized under and subject to this chapter; and

305 (ii) the same entity without interruption as the converting entity;

306 (b) all property of the converting entity continues to be vested in the converted entity

307 without transfer, reversion, or impairment;

308 (c) all debts, obligations, and other liabilities of the converting entity continue as debts,
309 obligations, and other liabilities of the converted entity;

310 (d) except as otherwise provided by law or the plan of conversion, all the rights,
311 privileges, immunities, powers, and purposes of the converting entity remain in the converted
312 entity;

313 (e) the name of the converted entity may be substituted for the name of the converting
314 entity in any pending action or proceeding;

315 (f) the provisions of the partnership agreement of the converted entity that are to be in a
316 record, if any, approved as part of the plan of conversion are effective; and

317 (g) the interests in the converting entity are converted, and the interest holders of the
318 converting entity are entitled only to the rights provided to them under the plan of conversion
319 and to any appraisal rights they have under Section 48-2e-1108 and the converting entity's
320 organic law.

321 (2) Except as otherwise provided in the partnership agreement of a domestic converting
322 limited partnership, the conversion does not give rise to any rights that a partner or third party
323 would have upon a dissolution, liquidation, or winding up of the converting entity.

324 (3) When a conversion becomes effective, a person that did not have interest holder
325 liability with respect to the converting entity and becomes subject to interest holder liability
326 with respect to a domestic entity as a result of the conversion has interest holder liability only
327 to the extent provided by the organic law of the entity and only for those debts, obligations, and
328 other liabilities that arise after the conversion becomes effective.

329 (4) When a conversion becomes effective, the interest holder liability of a person that
330 ceases to hold an interest in a domestic limited partnership with respect to which the person
331 had interest holder liability is as follows:

332 (a) The conversion does not discharge any interest holder liability to the extent the
333 interest holder liability arose before the conversion became effective.

334 (b) The person does not have interest holder liability for any debt, obligation, or other
335 liability that arises after the conversion becomes effective.

336 (c) The person has whatever rights of contribution from any other person as are
337 provided by law other than this chapter, this chapter, or the partnership agreement of the

338 converting entity with respect to any interest holder liability preserved under Subsection (4)(a)
339 as if the conversion had not occurred.

340 (5) When a conversion becomes effective, a foreign entity that is the converted entity
341 may be served with process in this state for the collection and enforcement of any of its debts,
342 obligations, and other liabilities as provided in Section 16-17-301.

343 (6) If the converting entity is a registered foreign entity, its registration to do business
344 in this state is canceled when the conversion becomes effective.

345 (7) A conversion does not require the entity to wind up its affairs and does not
346 constitute or cause the dissolution of the entity.

347 Section 12. Section 48-3a-108 is amended to read:

348 **48-3a-108. Permitted names.**

349 (1) Except as provided in Section 48-3a-1104 or 48-3a-1302, the name of a limited
350 liability company must contain the words "limited liability company" or "limited company" or
351 the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited" may be abbreviated as "Ltd.",
352 and "company" may be abbreviated as "Co."

353 [~~(2) Except as otherwise provided in Subsection (4), the name of a limited liability
354 company, and the name under which a foreign limited liability company may register to do
355 business in this state, must be distinguishable on the records of the division from:]~~

356 [~~(a) the name of an existing person whose formation required the filing of a record by
357 the division;]~~

358 [~~(b) the name of a limited liability partnership;]~~

359 [~~(c) the name of a person registered to do business in this state by the filing of a record
360 by the division;]~~

361 [~~(d) each name reserved under Section 48-3a-109 or other law of this state providing
362 for the reservation of a name by the filing of a record by the division;]~~

363 [~~(e) each name registered under Section 48-3a-110 or other law of this state providing
364 for the registration of a name by the filing of a record by the division; and]~~

365 [~~(f) an assumed name registered under Title 42, Chapter 2, Conducting Business Under
366 Assumed Name.]~~

367 [~~(3) If a person consents in a record to the use of its name and submits an undertaking
368 in a form satisfactory to the division to change its name to a name that is distinguishable on the~~

369 records of the division from any name in any category of names in Subsection (2), the name of
 370 the consenting person may be used by the person to which the consent was given.]

371 ~~[(4) Except as otherwise provided in Subsection (5), in determining whether a name is~~
 372 ~~the same as or not distinguishable on the records of the division from the name of another~~
 373 ~~entity, words, phrases, or abbreviations indicating the type of entity, such as "corporation",~~
 374 ~~"corp.", "incorporated", "Inc.", "professional corporation", "PC", "P.C.", "professional~~
 375 ~~association", "PA", "P.A.", "Limited", "Ltd.", "limited partnership", "LP", "L.P.", "limited~~
 376 ~~liability partnership", "LLP", "L.L.P.", "registered limited liability partnership", "RLLP",~~
 377 ~~"R.L.L.P.", "limited liability limited partnership", "LLLLP", "L.L.L.P.", "registered limited~~
 378 ~~liability limited partnership", "RLLLLP", "R.L.L.L.P.", "limited liability company", "LLC",~~
 379 ~~"L.L.C.", "professional limited liability company", "PLLC", or "P.L.L.C.", may not be taken~~
 380 ~~into account.]~~

381 ~~[(5) A person may consent in a record to the use of a name that is not distinguishable~~
 382 ~~on the records of the division from its name except for the addition of a word, phrase, or~~
 383 ~~abbreviation indicating the type of person as provided in Subsection (4). In such a case, the~~
 384 ~~person need not change its name pursuant to Subsection (2).]~~

385 (2) Except as authorized by Subsection (3), the name of a company must be
 386 distinguishable as defined in Subsection (4) upon the records of the division from:

387 (a) the actual name, reserved name, or fictitious or assumed name of any entity
 388 registered with the division; or

389 (b) any tradename, trademark, or service mark registered with the division.

390 (3) (a) A company may apply to the division for approval to file its ~~Ŝ~~→ [articles]
 390a certificate ←Ŝ of
 391 organization under or to reserve a name that is not distinguishable upon the division's records
 392 from one or more of the names described in Subsection (2).

393 (b) The division shall approve the name for which the company applies under
 394 Subsection (3)(a) if:

395 (i) the other person whose name is not distinguishable from the name under which the
 396 applicant desires to file:

397 (A) consents to the filing in writing; and

398 (B) submits an undertaking in a form satisfactory to the division to change its name to
 399 a name that is distinguishable from the name of the applicant; or

400 (ii) the applicant delivers to the division a certified copy of the final judgment of a
401 court of competent jurisdiction establishing the applicant's right to use the name in this state.

402 (4) A name is distinguishable from other names, trademarks, and service marks
403 registered with the division if it contains one or more different words, letters, or numerals from
404 other names upon the division's records.

405 (5) The following differences are not distinguishing:

406 (a) the term:

407 (i) "corp.";

408 (ii) "corporation";

409 (iii) "Inc.";

410 (iv) "incorporated";

411 (v) "professional corporation";

412 (vi) "P.C." or "PC";

413 (vii) "professional association";

414 (viii) "P.A." or "PA";

415 (ix) "professional limited liability company";

416 (x) "P.L.L.C." or "PLLC";

417 (xi) "company";

418 (xii) "limited partnership";

419 (xiii) "limited";

420 (xiv) "L.P." or "LP";

421 (xv) "Ltd.";

422 (xvi) "limited liability company";

423 (xvii) "limited company";

424 (xviii) "L.C." or "LC";

425 (xix) "L.L.C." or "LLC";

426 (xx) "registered limited liability partnership";

427 (xxi) "R.L.L.P." or "RLLP";

428 (xxii) "limited liability partnership";

429 (xxiii) "L.L.P." or "LLP";

430 (xxiv) "limited liability limited partnership";

- 431 (xxv) "L.L.L.P." or "LLL.P.";
432 (xxvi) "registered limited liability limited partnership"; or
433 (xxvii) "R.L.L.L.P." or "RLLL.P.";
434 (b) an abbreviation of a word listed in Subsection (5)(a);
435 (c) the presence or absence of the words or symbols of the words "the," "and," "a," or
436 "plus";
437 (d) differences in punctuation and special characters;
438 (e) differences in capitalization; or
439 (f) for a company that is formed in this state on or after May 4, 1998, or registered as a
440 foreign company in this state on or after May 4, 1998, differences in singular and plural forms
441 of words.
- 442 (6) The division may not approve for filing a name that implies that a limited liability
443 company is an agency of this state or any of its political subdivisions, if it is not actually such a
444 legally established agency or subdivision.
- 445 (7) The authorization to file a certificate under or to reserve or register a limited
446 liability company name as granted by the division does not:
- 447 (a) abrogate or limit the law governing unfair competition or unfair trade practices;
448 (b) derogate from the common law, the principles of equity, or the statutes of this state
449 or of the United States with respect to the right to acquire and protect names and trademarks; or
450 (c) create an exclusive right in geographic or generic terms contained within a name.
- 451 (8) The name of a limited liability company or foreign limited liability company may
452 not contain:
- 453 (a) the [words] term:
454 (i) "association";
455 (ii) "corporation";
456 (iii) "incorporated";
457 (iv) "partnership"; [or]
458 (v) "limited partnership"; or
459 (vi) "L.P.";
460 (b) any word or abbreviation that is of like import to the words listed in Subsection
461 (8)(a);

462 (c) without the written consent of the United States Olympic Committee, the words:

463 (i) "Olympic";

464 (ii) "Olympiad"; or

465 (iii) "Citius Altius Fortius"; and

466 (d) without the written consent of the Division of Consumer Protection issued in
467 accordance with Section [13-34-114](#) the words:

468 (i) "university";

469 (ii) "college"; or

470 (iii) "institute" or "institution".

471 (9) (a) A person, other than a company formed under this chapter or a foreign company
472 authorized to transact business in this state, may not use in its name in this state the term:

473 (i) "limited liability company";

474 (ii) "limited company";

475 (iii) "L.L.C.";

476 (iv) "L.C.";

477 (v) "LLC"; or

478 (vi) "LC".

479 (b) Notwithstanding Subsection (2)(a):

480 (i) a foreign corporation whose actual name includes the term "limited" or "Ltd." may
481 use its actual name in this state if it also uses:

482 (A) "corporation" or "corp."; or

483 (B) "incorporated" or "Inc."; and

484 (ii) a limited liability partnership may use in its name the term:

485 (A) "limited liability partnership";

486 (B) "L.L.P."; or

487 (C) "LLP".

488 Section 13. Section **48-3a-205** is amended to read:

489 **48-3a-205. Filing requirements.**

490 (1) To be filed by the division pursuant to this chapter, a record must be received by
491 the division, comply with this chapter, and satisfy the following:

492 (a) The filing of the record must be required or permitted by this chapter.

493 (b) The record must be physically delivered in written form unless and to the extent the
494 division permits electronic delivery of records.

495 (c) The record must be typewritten or computer generated.

496 ~~[(c)]~~ (d) The words in the record must be in English, and numbers must be in Arabic or
497 Roman numerals, but the name of an entity need not be in English if written in English letters
498 or Arabic or Roman numerals.

499 ~~[(d)]~~ (e) The record must be signed by a person authorized or required under this
500 chapter to sign the record.

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

504 (2) If law other than this chapter prohibits the disclosure by the division of information
505 contained in a record delivered to the division for filing, the division shall accept the record if
506 the record otherwise complies with this chapter, but the division may redact the information.

507 (3) When a record is delivered to the division for filing, any fee required under this
508 chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other
509 than this chapter must be paid in a manner permitted by the division or by that law.

510 (4) The division may require that a record delivered in written form be accompanied by
511 an identical or conformed copy.

512 Section 14. Section **48-3a-1041** is amended to read:

513 **48-3a-1041. Conversion authorized.**

514 (1) As used in Sections 48-3a-1041 through 48-3a-1046, the term "subject entity"
515 includes a corporation, a business trust or association, a real estate investment trust, a
516 common-law trust, or any other unincorporated business, including a general partnership, a
517 registered limited liability partnership, a limited partnership, a nonprofit corporation, or a
518 foreign company.

519 (2) A subject entity may convert to a domestic company by complying with Sections
520 48-3a-1041 through 48-3a-1046.

521 ~~[(1)]~~ (3) By complying with Sections 48-3a-1041 through 48-3a-1046, a domestic
522 limited liability company may become:

523 (a) a domestic entity that is a different type of entity; or

524 (b) a foreign entity that is a different type of entity, if the conversion is authorized by
525 the law of the foreign jurisdiction.

526 ~~[(2)]~~ (4) By complying with the provisions of Sections 48-3a-1041 through 48-3a-1046
527 applicable to foreign entities, a foreign entity that is not a foreign limited liability company may
528 become a domestic limited liability company if the conversion is authorized by the law of the
529 foreign entity's jurisdiction of formation.

530 ~~[(3)]~~ (5) If a protected agreement contains a provision that applies to a merger of a
531 domestic limited liability company but does not refer to a conversion, the provision applies to a
532 conversion of the entity as if the conversion were a merger until the provision is amended after
533 January 1, 2014.

534 Section 15. Section 48-3a-1042 is amended to read:

535 **48-3a-1042. Plan of conversion.**

536 (1) A subject entity may convert to a domestic limited liability company or a domestic
537 limited liability company may convert to a different type of entity under Sections 48-3a-1041
538 through 48-3a-1046 by approving a plan of conversion. The plan must be in a record and
539 contain:

- 540 (a) the name of the converting subject entity or limited liability company;
- 541 (b) the name, jurisdiction of formation, and type of entity of the converted entity;
- 542 (c) the manner of converting the interests in the converting subject entity or limited
543 liability company into interests, securities, obligations, money, other property, rights to acquire
544 interests or securities, or any combination of the foregoing;
- 545 (d) the proposed public organic record of the converted entity if it will be a filing
546 entity;
- 547 (e) the full text of the private organic rules of the converted entity that are proposed to
548 be in a record;
- 549 (f) the other terms and conditions of the conversion; and
- 550 (g) any other provision required by the law of this state or the operating agreement of
551 the converting limited liability company.

552 (2) In addition to the requirements of Subsection (1), a plan of conversion may contain
553 any other provision not prohibited by law.

554 Section 16. Section 48-3a-1043 is amended to read:

555 **48-3a-1043. Approval of conversion.**

556 (1) A plan of conversion is not effective unless it has been approved:

557 (a) by a domestic converting limited liability company by all the members of the
558 limited liability company entitled to vote on or consent to any matter; and559 (b) in a record, by each member of a domestic converting limited liability company that
560 will have interest holder liability for debts, obligations, and other liabilities that arise after the
561 conversion becomes effective:562 (i) the operating agreement of the limited liability company provides in a record for the
563 approval of a conversion or a merger in which some or all of its interest holders become subject
564 to interest holder liability by the vote or consent of fewer than all the interest holders; and565 (ii) the member voted for or consented in a record to that provision of the operating
566 agreement or became a member after the adoption of that provision.567 (2) A conversion involving a domestic converting entity that is not a limited liability
568 company, including a subject entity, is not effective unless it is approved by the domestic
569 converting entity in accordance with its organic law.570 (3) A conversion of a foreign converting entity is not effective unless it is approved by
571 the foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.572 Section 17. Section **48-3a-1044** is amended to read:573 **48-3a-1044. Amendment or abandonment of plan of conversion.**574 (1) A plan of conversion of a subject entity or domestic converting limited liability
575 company may be amended:576 (a) in the same manner as the plan was approved, if the plan does not provide for the
577 manner in which it may be amended; or578 (b) by the managers or members of the entity in the manner provided in the plan, but a
579 member that was entitled to vote on or consent to approval of the conversion is entitled to vote
580 on or consent to any amendment of the plan that will change:581 (i) the amount or kind of interests, securities, obligations, money, other property, rights
582 to acquire interests or securities, or any combination of the foregoing, to be received by any of
583 the interest holders of the converting entity under the plan;584 (ii) the public organic record or private organic rules of the converted entity that will be
585 in effect immediately after the conversion becomes effective, except for changes that do not

586 require approval of the interest holders of the converted entity under its organic law or organic
587 rules; or

588 (iii) any other terms or conditions of the plan, if the change would adversely affect the
589 interest holder in any material respect.

590 (2) After a plan of conversion has been approved [~~by a domestic converting limited~~
591 ~~liability company~~] and before a statement of conversion becomes effective, the plan may be
592 abandoned as provided in the plan. Unless prohibited by the plan, a subject entity or domestic
593 converting limited liability company may abandon the plan in the same manner as the plan was
594 approved.

595 (3) If a plan of conversion is abandoned after a statement of conversion has been
596 delivered to the division for filing and before the statement of conversion becomes effective, a
597 statement of abandonment, signed by the converting entity, must be delivered to the division
598 for filing before the time the statement of conversion becomes effective. The statement of
599 abandonment takes effect on filing, and the conversion is abandoned and does not become
600 effective. The statement of abandonment must contain:

- 601 (a) the name of the converting subject entity or limited liability company;
602 (b) the date on which the statement of conversion was delivered to the division for
603 filing; and
604 (c) a statement that the conversion has been abandoned in accordance with this section.

605 Section 18. Section **48-3a-1046** is amended to read:

606 **48-3a-1046. Effect of conversion.**

607 (1) When a conversion in which the converted entity is a subject entity or domestic
608 limited liability company becomes effective:

- 609 (a) the converted entity is:
610 (i) organized under and subject to this chapter; and
611 (ii) the same entity without interruption as the converting entity;
612 (b) all property of the converting entity continues to be vested in the converted entity
613 without transfer, reversion, or impairment;
614 (c) all debts, obligations, and other liabilities of the converting entity continue as debts,
615 obligations, and other liabilities of the converted entity;
616 (d) except as otherwise provided by law or the plan of conversion, all the rights,

617 privileges, immunities, powers, and purposes of the converting entity remain in the converted
618 entity;

619 (e) the name of the converted entity may be substituted for the name of the converting
620 entity in any pending action or proceeding;

621 (f) the provisions of the operating agreement of the converted entity that are to be in a
622 record, if any, approved as part of the plan of conversion are effective; and

623 (g) the interests in the converting entity are converted, and the interest holders of the
624 converting entity are entitled only to the rights provided to them under the plan of conversion
625 and to any appraisal rights they have under Section 48-3a-1008 and the converting entity's
626 organic law.

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

631 (3) When a conversion becomes effective, a person that did not have interest holder
632 liability with respect to the converting entity and becomes subject to interest holder liability
633 with respect to a domestic entity as a result of the conversion has interest holder liability only
634 to the extent provided by the organic law of the entity and only for those debts, obligations, and
635 other liabilities that arise after the conversion becomes effective.

636 (4) When a conversion becomes effective, the interest holder liability of a person that
637 ceases to hold an interest in a domestic limited liability company with respect to which the
638 person had interest holder liability is as follows:

639 (a) the conversion does not discharge any interest holder liability to the extent the
640 interest holder liability arose before the conversion became effective;

641 (b) the person does not have interest holder liability for any debt, obligation, or other
642 liability that arises after the conversion becomes effective; and

643 (c) the person has whatever rights of contribution from any other person as are
644 provided by law other than this chapter, this chapter, or the operating agreement of the
645 converting entity with respect to any interest holder liability preserved under Subsection (4)(a)
646 as if the conversion had not occurred.

647 (5) When a conversion becomes effective, a foreign entity that is the converted entity

648 may be served with process in this state for the collection and enforcement of any of its debts,
 649 obligations, and liabilities as provided in Section 16-17-301.

650 (6) If the converting entity is a registered foreign entity, the registration to do business
 651 in this state of the converting entity is canceled when the conversion becomes effective.

652 (7) A conversion does not require the entity to wind up its affairs and does not
 653 constitute or cause the dissolution of the entity.

654 Section 19. Section 48-3a-1202 is amended to read:

655 **48-3a-1202. Notice of limitation on liability of a series.**

656 (1) (a) Notice in a limited liability company's certificate of organization of the
 657 limitation on liabilities of a series as referenced in Subsection 48-3a-1201(2)(e) is sufficient for
 658 all purposes of this part whether or not the limited liability company has established a series at
 659 the time the notice is included in the certificate of organization.

660 (b) For a certificate of organization or an amendment to a certificate of organization
 661 made to include notice of series that is filed on or after May 12, 2015, notice in a company's
 662 ↳ [articles] certificate ← of organization is sufficient for purposes of Subsection (1) only if the
 662a notice of series
 663 appears immediately following the provision stating the name of the company.

664 (2) The notice of a limitation on liability of a series as referenced in Subsection
 665 48-3a-1201(2)(e) is not required to reference a specific series.

666 (3) The filing by the division of the certificate of organization containing a notice of
 667 the limitation on liabilities of a series constitutes notice of the limitation on liabilities of the
 668 series.

Legislative Review Note
 as of 1-16-15 3:40 PM

Office of Legislative Research and General Counsel