CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5030

Chapter 188, Laws of 2015

64th Legislature
2015 Regular Session

LIMITED LIABILITY COMPANIES

EFFECTIVE DATE: 1/1/2016

Passed by the Senate April 16, 2015
Yeas 45 Nays 0

BRAD OWEN

President of the Senate

Passed by the House April 8, 2015
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Approved May 7, 2015 2:51 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5030** as passed by Senate and the House of Representatives on the dates hereon set forth.

HUNTER G. GOODMAN

Secretary

FILED

May 7, 2015

Secretary of State
State of Washington

SUBSTITUTE SENATE BILL 5030

AS AMENDED BY THE HOUSE

Passed Legislature - 2015 Regular Session

State of Washington 64th Legislature 2015 Regular Session

By Senate Law & Justice (originally sponsored by Senators Pedersen and O'Ban; by request of Washington State Bar Association)

READ FIRST TIME 01/21/15.

AN ACT Relating to the limited liability company act; amending RCW 23B.11.080, 23B.11.090, 23B.11.110, 25.05.375, 25.05.380, 25.05.385, 25.05.390, 25.05.425, 25.10.781, 30A.08.025, 32.08.025, and 82.32.145; adding new sections to chapter 25.15 RCW; repealing RCW 25.15.005, 25.15.007, 25.15.010, 25.15.015, 25.15.020, 25.15.025, 25.15.030, 25.15.035, 25.15.040, 25.15.045, 25.15.050, 25.15.055, 25.15.060, 25.15.070, 25.15.075, 25.15.085, 25.15.090, 25.15.095, 25.15.100, 25.15.105, 25.15.115, 25.15.120, 25.15.125, 25.15.130, 25.15.135, 25.15.140, 25.15.150, 25.15.155, 25.15.160, 25.15.165, 25.15.170, 25.15.175, 25.15.180, 25.15.185, 25.15.190, 25.15.195, 25.15.200, 25.15.205, 25.15.215, 25.15.220, 25.15.225, 25.15.230, 25.15.235, 25.15.245, 25.15.250, 25.15.255, 25.15.260, 25.15.270, 25.15.273, 25.15.275, 25.15.280, 25.15.285, 25.15.290, 25.15.293, 25.15.295, 25.15.298, 25.15.300, 25.15.303, 25.15.310, 25.15.315, 25.15.320, 25.15.325, 25.15.330, 25.15.335, 25.15.340, 25.15.345, 25.15.350, 25.15.355, 25.15.360, 25.15.365, 25.15.366, 25.15.370, 25.15.375, 25.15.380, 25.15.385, 25.15.390, 25.15.395, 25.15.400, 25.15.405, 25.15.410, 25.15.415, 25.15.417, 25.15.419, 25.15.420, 25.15.422, 25.15.423, 25.15.425, 25.15.430, 25.15.435, 25.15.440, 25.15.445, 25.15.450, 25.15.455, 25.15.460, 25.15.465, 25.15.470, 25.15.475, 25.15.480, 25.15.800, 25.15.805, 25.15.810, 25.15.900, 25.15.901, and 25.15.902; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

ARTICLE I. GENERAL PROVISIONS

NEW SECTION. **Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreed value" means the value of the contributions made by a member to the limited liability company. Such value shall equal the amount agreed upon in a limited liability company agreement or, if no value is agreed upon, the value shall be determined based on the records of the limited liability company.

(2) "Certificate of formation" means the certificate of formation required by section 18 of this act and such certificate as amended or restated.

(3) "Distribution" means a transfer of money or other property from a limited liability company to a member in the member's capacity as a member or to a transferee on account of a transferable interest owned by the transferee.

(4) "Execute," "executes," or "executed" means, with respect to a record, either (a) signed with respect to a written record or (b) electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission.

(5) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

(6) "Limited liability company" or "domestic limited liability company" means a limited liability company having one or more members or transferees that is formed under this chapter.

(7) "Limited liability company agreement" means the agreement, including the agreement as amended or restated, whether oral, implied, in a record, or in any combination, of the member or members of a limited liability company concerning the affairs of the limited liability company and the conduct of its business.

(8) "Manager" means a person, or a board, committee, or other group of persons, named as a manager of a limited liability company in, or designated as a manager of a limited liability company pursuant to, a limited liability company agreement.

(9) "Manager-managed" means, with respect to a limited liability company, that the limited liability company agreement vests management of the limited liability company in one or more managers.

(10) "Member" means a person who has been admitted to a limited liability company as a member as provided in section 25 of this act and who has not been dissociated from the limited liability company.

(11) "Member-managed" means, with respect to a limited liability company, that the limited liability company is not manager-managed.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

(13) "Principal office" means the office, in or out of this state, so designated in the annual report, where the principal executive offices of a domestic or foreign limited liability company are located.

(14) "Professional limited liability company" means a limited liability company that is formed in accordance with section 13 of this act for the purpose of rendering professional service.

(15) "Professional service" means the same as defined under RCW 18.100.030.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

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

(18) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, gift, and transfer by operation of law, except as otherwise provided in section 49(6) of this act.

(19) "Transferable interest" means a member's or transferee's right to receive distributions of the limited liability company's assets.

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

NEW SECTION. **Sec. 2.** The secretary of state may adopt rules to facilitate electronic filing. The rules must detail the circumstances under which the electronic filing of records is permitted, how the records must be filed, and how the secretary of state returns filed records. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities or records permitted.

NEW SECTION. **Sec. 3.** (1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(b) Must not contain language stating or implying that the limited liability company is formed for a purpose other than those permitted by section 8 of this act;

(c) Must not contain any of the words or phrases: "Cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "ltd.," or "inc.," or "LP," "L.P.," "LLP," "L.L.P.," "LLLP," "L.L.L.P.," or any words or phrases prohibited by any statute of this state; and

(d) Unless authorized by subsection (2) of this section, must be distinguishable in the records of the secretary of state from (i) the name of each person incorporated, formed, or authorized to transact business in this state through a filing or registration with the secretary of state; and (ii) each name reserved under section 4 of this act or under other statutes of this state providing for the reservation of names with the secretary of state.

(2) A limited liability company may apply to the secretary of state for authorization to use any name which is not distinguishable upon the records of the secretary of state from one or more of the names described in subsection (1)(d) of this section. The secretary of state shall authorize use of the name applied for if the other person consents in writing to the use and files with the secretary of state records necessary to change its name or the name reserved to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

(3) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "professional corporation," "professional service," "limited," "partnership," "limited partnership," "limited liability limited partnership," "limited liability company," "professional limited liability company," or "limited liability partnership," or their permitted abbreviations;

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) This chapter does not control the use of assumed business names or "trade names."

(5) Violation of subsection (1)(c) of this section by a limited liability company whose certificate of formation or amendment thereto has been accepted for filing by the secretary of state shall not, in itself, invalidate the formation or existence of a limited liability company or render this chapter inapplicable to a limited liability company.

NEW SECTION. **Sec. 4.** (1) Reserved Name--Domestic Limited Liability Company.

(a) A person may reserve the exclusive use of a limited liability company name by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred eighty-day period.

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

(2) Reserved Name--Foreign Limited Liability Company.

(a) A foreign limited liability company may reserve its name if the name is distinguishable upon the records of the secretary of state from the names specified in section 3 of this act.

(b) A foreign limited liability company reserves its name by delivering to the secretary of state for filing an application that:

(i) Sets forth its name and the state or country and date of its formation; and

(ii) Is accompanied by a certificate of existence, or a record of similar import, from the state or country of formation.

(c) The name is reserved for the applicant's exclusive use upon the effective date of the application and until the close of the calendar year in which the application for name reservation is filed.

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

(e) A foreign limited liability company whose name reservation is effective may thereafter register as a foreign limited liability company under the reserved name, or consent in writing to the use of that name by a domestic limited liability company, domestic corporation, domestic limited partnership, or domestic limited liability partnership thereafter formed, or by another foreign limited liability company, foreign corporation, foreign limited partnership, or foreign limited liability partnership thereafter authorized to transact business in this state. The name reservation terminates when the domestic limited liability company is formed, the domestic corporation is incorporated, the domestic limited liability partnership is formed, or the domestic limited partnership is formed, or the foreign limited liability company registers or consents to the registration of another foreign limited liability company, corporation, limited partnership, or limited liability partnership under the reserved name.

NEW SECTION. **Sec. 5.** (1) Except as otherwise provided in subsections (2) and (3) of this section, the limited liability company agreement governs:

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

(b) The rights and duties under this chapter of a person in the capacity of manager.

(2) To the extent the limited liability company agreement does not otherwise provide for a matter described in subsection (1) of this section, this chapter governs the matter.

(3) A limited liability company agreement may not:

(a) Vary a limited liability company's power under section 8 of this act to sue, be sued, and defend in its own name;

(b) Vary the law applicable to a limited liability company under section 9 of this act;

(c) Eliminate or limit the duties of a member or manager in a manner prohibited by section 11(6) of this act;

(d) Eliminate or limit the liability of a member or manager in a manner prohibited by section 11(7) of this act;

(e) Indemnify a member or manager in a manner prohibited by section 12 of this act;

(f) Vary the requirements of section 21 of this act;

(g) Vary the records required under section 29(1) of this act or unreasonably restrict the right to records or information under section 29 of this act;

(h) Vary the power of a manager to resign under section 37 of this act;

(i) Vary the requirements of section 46 of this act;

(j) Eliminate or limit the liability of a member, manager, or transferee under section 47 of this act;

(k) Vary the power of a court to decree dissolution in the circumstances specified in section 53 of this act;

(l) Vary the requirement to wind up the limited liability company's business as specified in section 58 (1), (2), (4), and (5) of this act;

(m) Unreasonably restrict the right to maintain an action under Article X of this chapter;

(n) Restrict the right of a member that will have personal liability with respect to a surviving or converted organization to approve a merger or conversion under section 88 of this act; or

(o) Restrict the rights under this chapter of a person other than a member, a transferee, or a manager.

NEW SECTION. **Sec. 6.** (1) Each limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific

geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent that may be:

(i) An individual residing in this state whose business office is identical with the limited liability company's registered office;

(ii) The limited liability company itself, whose business office is identical with such registered office;

(iii) A domestic corporation, partnership, limited partnership, or limited liability company whose business office is identical with such registered office; or

(iv) A government, governmental subdivision, agency, or instrumentality, or a foreign corporation, partnership, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior consent in a record to the appointment. The consent shall be filed with the secretary of state in such form and at such time as the secretary may prescribe.

(2) A limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accordance with subsection (1) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's consent in a record, which shall be filed with the secretary of state in such form and at such time as the secretary of state may prescribe; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company of the change either (a) in a written record, or (b) if the limited liability company has designated an address, location, or system to which the notices may be electronically transmitted and the registered agent electronically transmits the notice to the limited liability company at the designated address, location, or system in an electronically transmitted record and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (2) of this section and recites that the limited liability company has been notified of the change.

(4) A registered agent may resign as agent by executing and delivering to the secretary of state for filing a statement of resignation. The statement may include a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

NEW SECTION. **Sec. 7.** (1) A limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

(2) The secretary of state shall be an agent of a limited liability company upon whom any such process, notice, or demand may be served if:

(a) The limited liability company fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the

secretary of state, or with any duly authorized clerk of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause a copy thereof to be forwarded by certified mail, addressed to the limited liability company at its principal office as it appears on the records of the secretary of state. Any service so had on the secretary of state shall be returnable in not less than thirty days.

(4) The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company in any other manner now or hereafter permitted by law.

NEW SECTION. **Sec. 8.** (1) A limited liability company may be formed under this chapter for any lawful purpose, regardless of whether for profit.

(2) Unless this chapter, its certificate of formation, or its limited liability company agreement provides otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its activities.

NEW SECTION. **Sec. 9.** The law of this state governs:

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

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

NEW SECTION. **Sec. 10.** A member or manager may lend money to and transact other business with a limited liability company and, subject to other applicable law, has the same rights and obligations with respect to the loan or other transaction as a person who is not a member or manager.

NEW SECTION. **Sec. 11.** (1)(a) The only fiduciary duties that a member in a member-managed limited liability company or a manager has

to the limited liability company and its members are the duties of loyalty and care under subsections (2) and (3) of this section.

(b) If a manager is a board, committee, or other group of persons, this section applies to each person included in such board, committee, or other group of persons as if such person were a manager.

(2) The duty of loyalty is limited to the following:

(a) To account to the limited liability company and hold as trustee for it any property, profit, or benefit derived by such manager or member in the conduct and winding up of the limited liability company's activities or derived from a use by such manager or member of limited liability company property, including the appropriation of a limited liability company opportunity;

(b) To refrain from dealing with the limited liability company as or on behalf of a party having an interest adverse to the limited liability company; and

(c) To refrain from competing with the limited liability company in the conduct or winding up of the limited liability company's activities.

(3)(a) The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law in the conduct and winding up of the limited liability company's activities.

(b) A member or manager is not in violation of the duty of care as set forth in (a) of this subsection if, in discharging such duty, the member or manager relies in good faith upon the records of the limited liability company and upon such opinions, reports, or statements presented to the limited liability company by any person, including any manager, member, officer, or employee of the limited liability company, as to matters which the member or manager reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the limited liability company, including opinions, reports, or statements as to the value and amount of the assets, liabilities, profits, or losses of the limited liability company or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

(4) A manager or member does not violate a duty under this chapter or under the limited liability company agreement merely

because the manager's or member's conduct furthers the manager's or member's own interest.

(5) A manager or member is not liable to the limited liability company or its members for the manager's or member's good faith reliance on the limited liability company agreement.

(6) To the extent that, at law or in equity, a member or manager has duties (including fiduciary duties) to a limited liability company or to another member, manager, or other person bound by a limited liability company agreement, the member's or manager's duties may be modified, expanded, restricted, or eliminated by the provisions of a limited liability company agreement; provided that such provisions are not inconsistent with law and do not eliminate or limit:

(a) The duty of a member or manager to avoid intentional misconduct and knowing violations of law, or violations of section 46 of this act; or

(b) The implied contractual duty of good faith and fair dealing.

(7) A limited liability company agreement may contain provisions not inconsistent with law that eliminate or limit the personal liability of a member or manager to the limited liability company or its members or other persons bound by a limited liability company agreement for conduct as a member or manager, provided that such provisions do not eliminate or limit the liability of a member or manager for acts or omissions that involve intentional misconduct or a knowing violation of law by a member or manager, for conduct of the member or manager violating section 46 of this act, or for any act or omission that constitutes a violation of the implied contractual duty of good faith and fair dealing.

NEW SECTION. **Sec. 12.** (1) A limited liability company may indemnify any member or manager from and against any judgments, settlements, penalties, fines, or expenses incurred in a proceeding or obligate itself to advance or reimburse expenses incurred in a proceeding to which a person is a party because such person is, or was, a member or a manager, provided that no such indemnity shall indemnify a member or a manager from or on account of acts or omissions of the member or manager finally adjudged to be intentional misconduct or a knowing violation of law by the member or manager, or conduct of the member or manager adjudged to be in violation of section 46 of this act.

(2) A limited liability company may indemnify and advance expenses under subsection (1) of this section to an officer, employee, or agent of the limited liability company who is not a member or manager to the same extent as to a member or manager.

(3) For purposes of this section:

(a) "Expenses" include counsel fees.

(b) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(c) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

NEW SECTION. **Sec. 13.** (1) A person or group of persons duly licensed or otherwise legally authorized to render the same professional services within this state may form and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service.

(2) A professional limited liability company is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation. A professional limited liability company's managers, members, agents, and employees are subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section and section 14 of this act.

(3) If the limited liability company's members are required to be licensed to practice such profession, and the limited liability company fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or a greater amount as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the limited liability company's members are personally liable to the extent that, had the insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(4) For purposes of applying chapter 18.100 RCW to a professional limited liability company, the terms "director" or "officer" means manager, "shareholder" means member, "corporation" means professional limited liability company, "articles of incorporation" means certificate of formation, "shares" or "capital stock" means a limited liability company interest, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.

(5) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC" provided that the name of a professional limited liability company formed to render dental services must contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(6) Subject to Article VII of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:

(a) A professional corporation, if its shareholders, directors, and its officers, other than the secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and

(b) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

(7) Formation of a limited liability company under this section does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

NEW SECTION. **Sec. 14.** (1) No limited liability company formed under this chapter may render professional services except through a person or persons who are duly licensed or otherwise legally

authorized to render such professional services within this state. However, this chapter does not:

(a) Prohibit a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional limited liability company formed in this state for the purpose of rendering the same professional services; or

(b) Prohibit a professional limited liability company from rendering services outside this state through individuals who are not duly licensed or otherwise legally authorized to render professional services within this state.

(2) Persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(a) At least one manager of the limited liability company is duly licensed or otherwise legally authorized to practice the profession in this state; or

(b) A member is in charge of each office of the limited liability company in this state and that member is duly licensed or otherwise legally authorized to practice the profession in this state.

NEW SECTION. **Sec. 15.** A foreign professional limited liability company may render professional services in this state so long as it complies with Article IX of this chapter and each individual rendering professional services in this state is duly licensed or otherwise legally authorized to render such professional services within this state.

NEW SECTION. **Sec. 16.** This chapter does not require a limited liability company to restrict membership to persons residing in or engaging in business in this state.

NEW SECTION. **Sec. 17.** Members of a limited liability company are personally liable for any act, debt, obligation, or liability of the limited liability company to the extent that shareholders of a Washington business corporation would be liable in analogous circumstances. In this regard, the court may consider the factors and

policies set forth in established case law with regard to piercing the corporate veil, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings is not a factor tending to establish that the members have personal liability for any act, debt, obligation, or liability of the limited liability company if the certificate of formation and limited liability company agreement do not expressly require the holding of meetings of members or managers.

ARTICLE II. FORMATION: CERTIFICATE OF FORMATION, AMENDMENT, FILING, AND EXECUTION

NEW SECTION. **Sec. 18.** (1) In order to form a limited liability company, one or more persons must execute a certificate of formation. The certificate of formation must be filed in the office of the secretary of state and set forth:

(a) The name of the limited liability company;

(b) The address of the registered office and the name of the registered agent for service of process required to be maintained by section 6 of this act;

(c) The address of the principal office of the limited liability company;

(d) If the limited liability company is to have a specific date of dissolution, the latest date on which the limited liability company is to dissolve;

(e) Any other matters the members decide to include; and

(f) The name and address of each person executing the certificate of formation.

(2)(a) Unless a delayed effective date is specified, a limited liability company is formed when its certificate of formation is filed by the secretary of state. A delayed effective date for a certificate of formation may be no later than the ninetieth day after the date it is filed.

(b) The secretary of state's filing of the certificate of formation is conclusive proof that the persons executing the certificate satisfied all conditions precedent to the formation.

(3) A limited liability company formed under this chapter is a separate legal entity and has a perpetual existence.

(4) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic limited liability company or

a certificate of authorization for a foreign limited liability company.

(5) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic limited liability company is duly formed under the laws of this state or that the foreign limited liability company is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this title have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign limited liability company;

(c) The limited liability company's initial report or its most recent annual report required by section 24 of this act has been delivered to the secretary of state;

(d) In the case of a domestic limited liability company, a certificate of dissolution has not been filed with the secretary of state, or a filed certificate of dissolution has been revoked in accordance with section 57 of this act;

(e) In the case of a foreign limited liability company, a certificate of cancellation has not been filed with the secretary of state; and

(f) The limited liability company has not been administratively dissolved under section 55 of this act or, if administratively dissolved, has been reinstated under section 56 of this act.

(6) A person may apply to the secretary of state to issue a certificate covering any fact of record.

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

NEW SECTION. **Sec. 19.** (1) A certificate of formation is amended by filing a certificate of amendment thereto with the secretary of state. The certificate of amendment shall set forth:

(a) The name of the limited liability company; and

(b) The amendment to the certificate of formation.

(2) A manager or, if there is no manager, then any member who becomes aware that any statement in a certificate of formation was

false when made, or that any matter described has changed making the certificate of formation false in any material respect, must promptly amend the certificate of formation.

(3) A certificate of formation may be amended at any time for any other proper purpose.

(4) Unless otherwise provided in this chapter or unless a later effective date, which is a date not later than the ninetieth day after the date it is filed, is provided for in the certificate of amendment, a certificate of amendment is effective when filed by the secretary of state.

NEW SECTION. **Sec. 20.** (1) A limited liability company may, whenever desired, integrate into a single instrument all of the provisions of its certificate of formation which are then in effect and operative as a result of there having been filed with the secretary of state one or more certificates or other instruments pursuant to any of the sections referred to in this chapter and it may at the same time also further amend its certificate of formation by filing a restated certificate of formation.

(2) A restated certificate of formation must state, either in its heading or in an introductory paragraph, the limited liability company's name and, if it is not to be effective upon filing, the future effective date or time, which is a date not later than the ninetieth day after the date it is filed. If a restated certificate only restates and integrates and does not further amend a limited liability company's certificate of formation as amended or supplemented, it must state that fact as well.

(3) Upon the filing of a restated certificate of formation with the secretary of state, or upon the future effective date or time of a restated certificate of formation as provided for, the initial certificate of formation, as amended or supplemented, is superseded; and the restated certificate of formation, including any further amendment or changes made thereby, is thereafter the certificate of formation of the limited liability company, but the original effective date of formation remains unchanged.

(4) Any amendment or change effected in connection with the restatement of the certificate of formation is subject to any other provision of this chapter, not inconsistent with this section, which would apply if a separate certificate of amendment were filed to effect such amendment or change.

NEW SECTION. **Sec. 21.** (1) Each record required by this chapter to be filed in the office of the secretary of state must be executed in the following manner, or in compliance with the rules established to facilitate electronic filing under section 2 of this act:

(a) Each original certificate of formation must be executed by the person or persons forming the limited liability company;

(b) A reservation of name may be executed by any person;

(c) A transfer of reservation of name must be executed by, or on behalf of, the applicant for the reserved name;

(d) A registration of name must be executed by any member or manager of the foreign limited liability company;

(e) A certificate of amendment or restatement must be executed by at least one manager, or by a member if management of the limited liability company is reserved to the members;

(f) A certificate of dissolution must be executed by the person or persons authorized to wind up the limited liability company's affairs pursuant to section 58(3) of this act;

(g) If a surviving domestic limited liability company is filing articles of merger, the articles of merger must be executed by at least one manager, or by a member if management of the limited liability company is reserved to the members, or if the articles of merger are being filed by a surviving foreign limited liability company, limited partnership, corporation, or other person, the articles of merger must be executed by a person authorized by such foreign limited liability company, limited partnership, corporation, or other person;

(h) A foreign limited liability company's application for registration as a foreign limited liability company doing business within the state must be executed by any member or manager of the foreign limited liability company; and

(i) If a converting limited liability company is filing articles of conversion, the articles of conversion must be executed by at least one manager, or by a member if management of the limited liability company is reserved to the members.

(2) Any person may execute a certificate, articles of merger, articles of conversion, limited liability company agreement, or other record by an attorney-in-fact or other person acting in a valid representative capacity, so long as each record executed in such manner identifies the capacity in which the person is executing the record.

(3) The person executing the record must indicate, adjacent to or underneath the signature or, if the record is electronically transmitted, identifying information of the person executing the record, as applicable, the capacity in which the person executes the record. The record must meet such legibility or other standards as may be prescribed by the secretary of state.

(4) The execution of a certificate, articles of merger, or articles of conversion by any person constitutes an affirmation under the penalties of perjury that the facts stated are true.

NEW SECTION. **Sec. 22.** (1) If a person required to execute a certificate required by this chapter fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior courts to direct the execution of the certificate. If the court finds that the execution of the certificate is proper and that any person so designated has failed or refused to execute the certificate, it must order the secretary of state to record an appropriate certificate.

(2) If a person required to execute a limited liability company agreement or amendment thereof fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the superior courts to direct the execution of the limited liability company agreement or amendment thereof. If the court finds that the limited liability company agreement or amendment thereof should be executed and that any person required to execute the limited liability company agreement or amendment thereof has failed or refused to do so, it shall enter an order granting appropriate relief.

NEW SECTION. **Sec. 23.** (1) The executed certificate of formation or any other record required to be filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the records conform to the filing provisions of this chapter, he or she shall, when all required filing fees have been paid:

(a) Endorse on each executed record the word "filed" and the date of its acceptance for filing;

(b) Retain the executed record in the secretary of state's files; and

(c) Return a copy to the person who filed it or the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) of this section at the time any records are delivered for filing, the records are deemed to have been filed at the time of delivery if the secretary of state subsequently determines that the records as delivered conform to the filing provisions of this chapter.

(3) If the filing and determination requirements of this chapter are not satisfied completely, the records must not be filed.

(4) Upon the filing of a certificate of amendment, judicial decree of amendment, or restated certificate in the office of the secretary of state, or upon the future effective date or time of a certificate of amendment, judicial decree thereof, or restated certificate, as provided for therein, the certificate of formation is amended or restated as set forth therein.

NEW SECTION. **Sec. 24.** (1) Each domestic limited liability company must deliver to the secretary of state for filing both initial and annual reports, and each foreign limited liability company authorized to transact business in this state must deliver to the secretary of state for filing annual reports, that set forth:

(a) The name of the limited liability company and the state, country, or other jurisdiction under whose law it is formed;

(b) The street address of its registered office and the name of its registered agent at that office in this state;

(c) The address of its principal office;

(d) The names and addresses of the limited liability company's members, or if the management of the limited liability company is vested in a manager or managers, then the name and address of its manager or managers; and

(e) A brief description of the nature of its business.

(2) Information in an initial report or an annual report must be current as of the date the report is executed on behalf of the limited liability company.

(3) A limited liability company's initial report must be delivered to the secretary of state within one hundred twenty days of the date on which a limited liability company's certificate of formation was filed. Subsequent annual reports must be delivered to the secretary of state on a date determined by the secretary of

state, and at such additional times as the limited liability company elects.

(4) The secretary of state may allow a limited liability company to file an initial or annual report through electronic means. If allowed, the secretary of state shall adopt rules detailing the circumstances under which the electronic filing of such reports is permitted and how such reports may be filed.

(5) Each domestic limited liability company and foreign limited liability company authorized to transact business in this state must pay its annual license fee and any applicable penalty fees to the secretary of state at the time such limited liability company is required to file its initial or annual report with the secretary of state.

ARTICLE III. MEMBERS

NEW SECTION. **Sec. 25.** (1) In connection with the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company upon the later to occur of:

(a) The formation of the limited liability company; or

(b) The time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, when the person's admission is reflected in the records of the limited liability company.

(2) After the admission of the initial member or members of a limited liability company, a person acquiring a limited liability company interest is admitted as a member of the limited liability company:

(a) In the case of a person acquiring a limited liability company interest directly from the limited liability company, at the time provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist, upon the consent of all members and when the person's admission is reflected in the records of the limited liability company;

(b) In the case of a transferee of a limited liability company interest, upon compliance with any procedure for admission provided in the limited liability company agreement or, if the limited liability company agreement does not so provide or does not exist,

upon the consent of all members and when the person's admission is reflected in the records of the limited liability company agreement; or

(c) In the case of a person being admitted as a member of a surviving or resulting limited liability company pursuant to a merger or conversion approved in accordance with this chapter, as provided in the limited liability company agreement of the surviving or resulting limited liability company or in the agreement of merger or plan of merger or conversion, and in the event of any inconsistency, the terms of the agreement of merger or plan of merger or conversion control; and in the case of a person being admitted as a member of a limited liability company pursuant to a merger or conversion in which such limited liability company is not the surviving or resulting limited liability company in the merger or conversion, as provided in the limited liability company agreement of such limited liability company.

NEW SECTION. **Sec. 26.** (1) Except as otherwise provided by this chapter, the affirmative vote, approval, or consent of a majority of the members is necessary for actions requiring member approval.

(2) The affirmative vote, approval, or consent of all members is required to:

(a) Amend the certificate of formation, except as provided in section 19(2) of this act;

(b) Amend the limited liability company agreement;

(c) Authorize a manager, member, or other person to do any act on behalf of the limited liability company that contravenes the limited liability company agreement, including any provision that expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof;

(d) Admit as a member of the limited liability company a person acquiring a limited liability company interest directly from the limited liability company as provided in section 25(2)(a) of this act;

(e) Admit as a member of the limited liability company a transferee of a limited liability company interest as provided in section 25(2)(b) of this act;

(f) Authorize a member's removal as a member of the limited liability company as provided in section 28(1)(e) of this act;

(g) Waive a member's dissociation as a member of the limited liability company as provided in section 28(1) (f), (g), or (h) of this act;

(h) Authorize the withdrawal of a member from the limited liability company as provided in section 28(2) of this act;

(i) Compromise any member's obligation to make a contribution or return cash or other property paid or distributed to the member in violation of this chapter as provided in section 40(2) of this act;

(j) Amend the certificate of formation and extend the date of dissolution, if a dissolution date is specified in the certificate of formation, as provided in section 51(1) of this act;

(k) Dissolve the limited liability company as provided in section 51(3) of this act;

(l) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, other than in the ordinary course of the limited liability company's activities or activities of the kind carried on by the limited liability company; or

(m) Undertake any other act outside the ordinary course of the limited liability company's activities.

(3) A limited liability company agreement may provide for classes or groups of members having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any member or class or group of members, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding. A limited liability company agreement may provide that any member or class or group of members do not have voting rights.

(4) A limited liability company agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of the members or managers, on any matter. If the limited

liability company agreement so provides, voting by members may be on a per capita, profit share, class, group, or any other basis.

(5) A limited liability company agreement may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any members, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

NEW SECTION. **Sec. 27.** (1) Except as otherwise provided by this chapter, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort or otherwise, are solely the debts, obligations, and liabilities of the limited liability company; and no member or manager of a limited liability company is obligated personally for any such debt, obligation, or liability of the limited liability company solely by reason of being or acting as a member or manager respectively of the limited liability company.

(2) Notwithstanding subsection (1) of this section, under a limited liability company agreement or under another agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of the limited liability company.

(3) A member or manager of a limited liability company is personally liable for such person's own torts.

NEW SECTION. **Sec. 28.** (1) A person is dissociated as a member of a limited liability company upon the occurrence of one or more of the following events:

(a) The member dies or withdraws by voluntary act from the limited liability company as provided in subsection (2) of this section;

(b) The transfer of all of the member's transferable interest in the limited liability company;

(c) The member is removed as a member in accordance with the limited liability company agreement;

(d) The occurrence of an event upon which the member ceases to be a member under the limited liability company agreement;

(e) The person is a corporation, limited liability company, general partnership, or limited partnership, and the person is removed as a member by the unanimous consent of the other members, which may be done under this subsection (1)(e) only if:

(i) The person has filed articles of dissolution, a certificate of dissolution or the equivalent, or the person has been administratively or judicially dissolved, or its right to conduct business has been suspended or revoked by the jurisdiction of its incorporation, or the person has otherwise been dissolved; and

(ii) The dissolution has not been revoked or the person or its right to conduct business has not been reinstated within ninety days after the limited liability company notifies the person that it will be removed as a member for any reason identified in (e)(i) of this subsection;

(f) Unless all other members otherwise agree at the time, the member (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary petition in bankruptcy; (iii) becomes the subject of an order for relief in bankruptcy proceedings; (iv) files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of the nature described in (f)(i) through (iv) of this subsection; or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties;

(g) Unless all other members otherwise agree at the time, if within one hundred twenty days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within ninety days after the appointment without his or her consent or acquiescence of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's properties, the appointment is not vacated or stayed, or within ninety days after the expiration of any stay, the appointment is not vacated; or

(h) Unless all other members otherwise agree at the time, in the case of a member who is an individual, the entry of an order by a

court of competent jurisdiction adjudicating the member incapacitated, as used and defined under chapter 11.88 RCW, as to his or her estate.

(2) A member may withdraw from a limited liability company at the time or upon the happening of events specified in and in accordance with the limited liability company agreement. If the limited liability company agreement does not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw from the limited liability company without the written consent of all other members.

(3) When a person is dissociated as a member of a limited liability company:

(a) The person's right to participate as a member in the management and conduct of the limited liability company's activities terminates;

(b) If the limited liability company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation; and

(c) Subject to subsection (5) of this section, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

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

(5) If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in section 49 of this act and, for the purposes of settling the estate, the rights of a current member under section 29 of this act.

NEW SECTION. **Sec. 29.** (1) A limited liability company must keep at its principal office the following:

(a) A copy of its certificate of formation and all amendments thereto;

(b) A copy of any limited liability company agreement made in a record and any amendments made in a record to a limited liability company agreement;

(c) Unless contained in its certificate of formation, a statement in a record of:

(i) The amount of cash and a description and statement of the agreed value of the other benefits contributed and agreed to be contributed by each member;

(ii) The times at which or events on the happening of which any additional contributions agreed to be made by each member are to be made;

(iii) Any right of any member to receive distributions which include a return of all or any part of the member's contribution; and

(iv) Any events upon the happening of which the limited liability company is to be dissolved and its activities wound up;

(d) A copy of the limited liability company's federal, state, and local tax returns and reports, if any, for the three most recent years;

(e) A copy of any financial statements of the limited liability company for the three most recent years;

(f) A copy of any record made by the limited liability company during the past three years of any consent given by or vote taken of any member pursuant to this chapter or the limited liability company agreement;

(g) A copy of the three most recent annual reports delivered by the limited liability company to the secretary of state pursuant to section 24 of this act;

(h) A copy of any filed articles of conversion or merger; and

(i) A copy of any certificate of dissolution or certificate of revocation of dissolution.

(2) On ten days' demand, made in a record received by the limited liability company, a member may inspect and copy, during regular business hours at the limited liability company's principal office, the records required by subsection (1) of this section to be kept by a limited liability company. The member need not have any particular purpose for seeking the records. However, if the records contain information specified in subsection (3)(a) of this section, the limited liability company may substitute copies of the records that are redacted to protect information specified in subsection (3)(a) of this section, unless the member meets the requirements of subsection (4) of this section.

(3) During regular business hours and at a reasonable location specified by the limited liability company, a member may inspect and

copy the following records of the limited liability company if the member meets the requirements of subsection (4) of this section:

(a) A current and a past list, setting forth the full name and last known mailing address of each member and manager, if any;

(b) Excerpts from any meeting of the managers or members, and records of limited liability company action approved by the members or manager without a meeting; and

(c) Accounting records of the limited liability company.

(4) A member may inspect and copy the records described in subsection (3) of this section if:

(a) The member seeks the records for a purpose reasonably related to the member's interest in the limited liability company;

(b) The member makes a demand in a record received by the limited liability company, describing with reasonable particularity the records sought and the purpose for seeking the records; and

(c) The records sought are directly connected to the member's purpose.

(5) Within ten days after receiving a demand pursuant to subsection (4) of this section, the limited liability company in a record must inform the member that made the demand:

(a) What records the limited liability company will provide in response to the demand;

(b) When and where the limited liability company will provide the records; and

(c) If the limited liability company declines to provide any demanded records, the limited liability company's reasons for declining.

(6) A person dissociated as a member may inspect and copy the records required by subsection (1) of this section during regular business hours in the limited liability company's principal office if:

(a) The records pertain to the period during which the person was a member or transferee;

(b) The person seeks the records in good faith; and

(c) The person meets the requirements of subsection (4) of this section.

(7) The limited liability company must respond to a demand made pursuant to subsection (6) of this section in the same manner as provided in subsection (5) of this section.

(8) The limited liability company may impose reasonable restrictions on the use of records and information obtained under this section.

(9) A limited liability company may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(10) A member, or a person dissociated as a member, may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (8) of this section or by the limited liability company agreement applies both to the attorney or other agent and to the member or person dissociated as a member.

(11) The rights stated in this section do not extend to a person as transferee, but the rights under subsections (2) and (3) of this section may be exercised by a deceased member's personal representative for purposes of settling the estate, or by the legal representative of an individual under legal disability who is dissociated as a member pursuant to section 28(1)(f) of this act.

(12) Each manager, or each member of the manager if the manager is a board, committee, or other group of persons, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(a) At the limited liability company's principal office, the records required by subsection (1) of this section; and

(b) At a reasonable location specified by the limited liability company, any other records maintained by the limited liability company regarding the limited liability company's activities and financial condition, or that otherwise relate to the management of the limited liability company.

(13) Any action to enforce any right arising under this section must be brought in the superior courts.

NEW SECTION. **Sec. 30.** A limited liability company agreement may provide that (1) a member who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement is subject to specified remedies or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a member is subject to specified remedies or specified consequences. Such specified remedies or specified consequences may include and take the

form of any remedy or consequence set forth in section 40(3) of this act.

ARTICLE IV. MANAGEMENT AND MANAGERS

NEW SECTION. **Sec. 31.** (1) If the limited liability company is member-managed:

(a) Management of the activities of the limited liability company is vested in the members; and

(b) A difference arising as to a matter in the ordinary course of the activities of the limited liability company may be decided by the vote, approval, or consent of a majority of the members, except as otherwise provided in section 26 of this act or otherwise in this chapter.

(2) If the limited liability company is member-managed, each member is an agent of the limited liability company and has the authority to bind the limited liability company with regard to matters in the ordinary course of its activities.

NEW SECTION. **Sec. 32.** (1) If the limited liability company is manager-managed:

(a) Management of the activities of the limited liability company is vested in one or more managers; and

(b) Each manager of the limited liability company:

(i) Is designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members;

(ii) Need not be a member of the limited liability company or a natural person; and

(iii) Unless the manager has been earlier removed or has earlier resigned, holds office until a successor has been elected.

(2) If the limited liability company is manager-managed:

(a) Each manager is an agent of the limited liability company and has the authority to bind the limited liability company with regard to matters in the ordinary course of its activities; and

(b) No member, acting solely in its capacity as a member, is an agent of the limited liability company.

(3) If the manager is a board, committee, or other group of persons:

(a) Subsection (1)(b) of this section applies to each person included in such board, committee, or other group of persons; and

(b) No person acting solely in such person's capacity as a participant in such board, committee, or other group of persons is an agent of the limited liability company.

NEW SECTION. **Sec. 33.** A member or manager of a limited liability company has the power and authority to delegate to one or more other persons the member's or manager's rights and powers to manage and control the business and affairs of the limited liability company, including to delegate to agents, officers, and employees of a member or manager or the limited liability company, and to delegate by a management agreement or another agreement with, or otherwise to, other persons. Such delegation by a member or manager of a limited liability company does not cause the member or manager to cease to be a member or manager of the limited liability company or cause the person to whom any such rights and powers have been delegated to be a member or manager of the limited liability company.

NEW SECTION. **Sec. 34.** A person who is both a manager and a member has the rights and powers, and is subject to the restrictions and liabilities, of a manager and also has the rights and powers, and is subject to the restrictions and liabilities, of a member to the extent of such person's participation in the limited liability company as a member.

NEW SECTION. **Sec. 35.** (1) In a manager-managed limited liability company:

(a) A difference arising as to a matter in the ordinary course of the activities of the limited liability company may be decided by the vote, approval, or consent of a majority of the managers; and

(b) No manager consent, approval, or recommendation is required for any act approved by the members as provided in section 26(2) of this act, for a conversion approved as provided in section 85 of this act, or for a merger approved as provided in section 81 of this act.

(2) A limited liability company agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the limited liability company agreement may provide, and may make provision for the future creation in the manner provided in the limited liability company agreement of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and

duties senior to existing classes and groups of managers. A limited liability company agreement may provide for the taking of an action, including the amendment of the limited liability company agreement, without the vote or approval of any manager or class or group of managers, including an action to create under the provisions of the limited liability company agreement a class or group of limited liability company interests that was not previously outstanding.

(3) A limited liability company agreement may grant to all or certain identified managers or a specified class or group of the managers the right to vote, separately or with all or any class or group of managers or members, on any matter. If the limited liability company agreement so provides, voting by managers may be on a financial interest, class, group, or any other basis.

(4) A limited liability company agreement which contains provisions related to voting rights of managers may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

NEW SECTION. **Sec. 36.** A limited liability company agreement may provide that (1) a manager who fails to perform in accordance with, or to comply with the terms and conditions of, the limited liability company agreement is subject to specified penalties or specified consequences, and (2) at the time or upon the happening of events specified in the limited liability company agreement, a manager is subject to specified penalties or specified consequences.

NEW SECTION. **Sec. 37.** A manager may resign as a manager of a limited liability company at the time or upon the happening of events specified in a limited liability company agreement and in accordance with the limited liability company agreement. A limited liability company agreement may provide that a manager does not have the right to resign as a manager of a limited liability company. Notwithstanding that a limited liability company agreement provides that a manager does not have the right to resign as a manager of a limited liability company, a manager may resign as a manager of a limited liability company at any time by giving written notice to the

members and other managers. If the resignation of a manager violates a limited liability company agreement, in addition to any remedies otherwise available under applicable law, a limited liability company may recover from the resigning manager damages for breach of the limited liability company agreement and offset the damages against any amount otherwise due to the resigning manager pursuant to the limited liability company agreement.

NEW SECTION. **Sec. 38.** In the event of the death, resignation, or removal of the sole remaining manager, or if one of the events described in section 28(1) (e) through (h) of this act occurs with regard to the sole remaining manager, the limited liability company shall become member-managed unless one or more managers are appointed by a majority of the members within ninety days after the occurrence of such an event.

ARTICLE V. CONTRIBUTIONS

NEW SECTION. **Sec. 39.** The contribution of a member to a limited liability company may consist of tangible or intangible property or other benefits to the limited liability company, including money, services performed, promissory notes, other agreements to contribute cash or property, or contracts for services to be performed.

NEW SECTION. **Sec. 40.** (1) A member is obligated to a limited liability company to perform any promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the required contribution of property or services, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the agreed value of the contribution that has not been made. This option is in addition to, and not in lieu of, any other rights, including the right to specific performance, that the limited liability company may have against such member under the limited liability company agreement or applicable law.

(2) The obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability

company who extends credit, after either the certificate of formation, limited liability company agreement or an amendment thereto, or records of the limited liability company reflect the obligation, and before the amendment of any thereof to reflect the compromise, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a member to make a contribution or return money or other property to the limited liability company. A conditional obligation of a member to make a contribution or return money or other property to a limited liability company may not be enforced unless the conditions of the obligation have been satisfied or waived as to or by such member. Conditional obligations include contributions payable upon a discretionary call of a limited liability company prior to the time the call occurs.

(3) A limited liability company agreement may provide that the interest of any member who fails to make any contribution that the member is obligated to make is subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in a limited liability company, subordinating the member's limited liability company interest to that of nondefaulting members, a forced sale of the member's limited liability company interest, forfeiture of the member's limited liability company interest, the lending by other members of the amount necessary to meet the member's commitment, a fixing of the value of the member's limited liability company interest by appraisal or by formula and redemption or sale of the member's limited liability company interest at such value, or other penalty or consequence.

ARTICLE VI. DISTRIBUTIONS

NEW SECTION. **Sec. 41.** Distributions of a limited liability company are made to the members, and to classes or groups of members, in the manner provided in a limited liability company agreement. If the limited liability company agreement does not so provide, distributions are made in proportion to the agreed value of the contributions made and any contributions required to be made, but not yet made, by each member.

NEW SECTION. **Sec. 42.** A member does not have a right to any distributions before the dissolution and winding up of the limited liability company unless the limited liability company decides to make an interim distribution.

NEW SECTION. **Sec. 43.** A member does not have a right to receive a distribution on account of dissociation.

NEW SECTION. **Sec. 44.** A member, regardless of the nature of the member's contribution, has no right to receive any distribution from a limited liability company in any form other than money. A limited liability company may distribute an asset in kind to the extent that each member receives a percentage of the asset equal to the member's percentage share of distributions.

NEW SECTION. **Sec. 45.** Subject to sections 46 and 60 of this act, at the time a member becomes entitled to receive a distribution, that member has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution. A limited liability company agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company. The limited liability company's obligation to make a distribution is subject to offset for any amount due and payable to the limited liability company by the person on whose account the distribution is made.

NEW SECTION. **Sec. 46.** (1) A limited liability company must not make a distribution in violation of the limited liability company agreement.

(2) A limited liability company must not make a distribution to the extent that at the time of the distribution, after giving effect to the distribution (a) the limited liability company would not be able to pay its debts as they became due in the usual course of its activities, or (b) all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a

liability for which the recourse of creditors is limited is included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability.

(3) A limited liability company may base a determination that a distribution is not prohibited under subsection (2) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7) of this section, the effect of a distribution under subsection (2) of this section is measured:

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

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(ii) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(5) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general, unsecured creditors.

(6) A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to members under this section.

(7) The effect of a distribution of indebtedness under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness described in subsection (6) of this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; and

(b) In the case of a distribution of any other indebtedness, the effect of the distribution is measured as of the date the indebtedness is distributed.

NEW SECTION. **Sec. 47.** (1) Except as otherwise provided in subsection (2) of this section, a member of a member-managed limited liability company or manager of a manager-managed limited liability company that consents to a distribution made in violation of section 46 of this act is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 46 of this act if it is established that in consenting to the distribution the members or managers failed to comply with the duty of care.

(2) To the extent the limited liability company agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability provided in subsection (1) of this section applies to the other members and not the member that the limited liability company agreement relieves of authority and responsibility.

(3) A member or transferee that received a distribution knowing that the distribution to that member or transferee was made in violation of section 46 of this act is personally liable to the limited liability company but only to the extent that the distribution received by the member or transferee exceeded the amount that could have been properly paid under section 46 of this act.

(4) A member or manager against which an action is commenced under subsection (1) of this section may:

(a) Implead in the action any other person that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that received a distribution in violation of subsection (3) of this section and compel contribution from the person in the amount the person received in violation of subsection (3) of this section.

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

ARTICLE VII. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS

NEW SECTION. **Sec. 48.** (1) The only interest of a member that is transferable is the member's transferable interest. A transferable interest is personal property. A member has no interest in specific limited liability company property.

(2) A limited liability company agreement may provide that a transferable interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the transfer of any transferable interest represented by such a certificate and make other provisions with respect to such certificate.

NEW SECTION. **Sec. 49.** (1) A transfer, in whole or in part, of a transferable interest:

(a) Is permissible; and

(b) Does not, as against the members or the limited liability company, entitle the transferee to participate in the management of the limited liability company's activities, to require access to information concerning the limited liability company's transactions except as provided in subsection (5) of this section or in section 29(11) of this act, or to obtain access to information to which a member is otherwise entitled pursuant to section 29 of this act or the limited liability company's other records.

(2) A transfer of a transferable interest entitles the transferee to receive distributions to which the transferor would otherwise be entitled, to the extent transferred.

(3) Upon transfer of less than the transferor's entire transferable interest in the limited liability company, the transferor retains the rights, duties, and obligations of the transferor immediately prior to the transfer other than the transferable interest transferred.

(4) Except as otherwise provided in (b) of this subsection, a transferee that becomes a member with respect to a transferable interest is liable for the transferor's obligations with respect to the transferable interest. Except to the extent such liabilities are assumed by agreement:

(a) Until a transferee of a transferable interest becomes a member with respect to the transferable interest, the transferee has no liability as a member solely as a result of the transfer; and

(b) A transferee is not obligated for liabilities associated with a transferable interest that are unknown to the transferee at the time the transferee becomes a member.

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

(6) For the purposes of this chapter:

(a) The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of a transferable interest is not a transfer of the transferable interest, but a foreclosure or execution sale or exercise of similar rights with respect to any or all of transferable interest is a transfer of the transferable interest to the transferee pursuant to such foreclosure or execution sale or exercise of similar rights.

(b) Where a transferable interest is held in a trust or estate, or is held by a trustee, personal representative, or other fiduciary, the transfer of the transferable interest, whether to a beneficiary of the trust or estate or otherwise, is a transfer of such transferable interest, but the mere substitution or replacement of the trustee, personal representative, or other fiduciary does not constitute a transfer of such transferable interest.

NEW SECTION. **Sec. 50.** (1) On application to a court of competent jurisdiction by any judgment creditor of a member or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment creditor in respect of the limited liability company and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the transferable interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, a transferable interest charged may be redeemed:

(a) By the judgment debtor;

(b) With property other than limited liability company property, by one or more of the other members; or

(c) With limited liability company property, by the limited liability company with the consent of all members whose interests are not so charged.

(4) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

ARTICLE VIII. DISSOLUTION

NEW SECTION. **Sec. 51.** A limited liability company is dissolved and its affairs must be wound up upon the first to occur of the following:

(1) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the date of dissolution of the limited liability company may be extended by vote of all the members;

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) Ninety days following an event of dissociation of the last remaining member, unless those having the rights of transferees in the limited liability company under section 28(1) of this act have, by the ninetieth day, voted to admit one or more members, voting as though they were members, and in the manner set forth in section 26(1) of this act;

(5) The entry of a decree of judicial dissolution under section 53 of this act; or

(6) The administrative dissolution of the limited liability company by the secretary of state under section 55(2) of this act, unless the limited liability company is reinstated by the secretary of state under section 56 of this act.

NEW SECTION. **Sec. 52.** (1) After dissolution occurs under section 51 of this act, the limited liability company may deliver to the secretary of state for filing a certificate of dissolution.

(2) A certificate of dissolution filed under subsection (1) of this section must set forth:

(a) The name of the limited liability company; and

(b) A statement that the limited liability company is dissolved under section 51 of this act.

NEW SECTION. **Sec. 53.** On application by a member or manager the superior courts may order dissolution of a limited liability company whenever: (1) It is not reasonably practicable to carry on the limited liability company's activities in conformity with the certificate of formation and the limited liability company agreement; or (2) other circumstances render dissolution equitable.

NEW SECTION. **Sec. 54.** The secretary of state may commence a proceeding under section 55 of this act to administratively dissolve a limited liability company if:

(1) The limited liability company does not pay any license fees or penalties imposed by this chapter when they become due;

(2) The limited liability company does not deliver its completed initial report or annual report to the secretary of state when it is due; or

(3) The limited liability company is without a registered agent or registered office in this state for sixty days or more.

NEW SECTION. **Sec. 55.** (1) If the secretary of state determines that one or more grounds exist under section 54 of this act for dissolving a limited liability company, the secretary of state must give the limited liability company written notice of the determination by first-class mail, reciting the grounds therefor. Notice must be sent to the registered agent at the address of the registered office of the limited liability company as it appears in the records of the secretary of state.

(2) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is sent, the limited liability company is then dissolved. The secretary of state must give the limited liability company written notice of the dissolution that recites the ground or grounds therefor and its effective date.

(3) A limited liability company administratively dissolved continues its existence but may not carry on any business except as necessary to wind up and liquidate its business and affairs.

(4) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent.

NEW SECTION. **Sec. 56.** (1) A limited liability company that has been administratively dissolved under section 55 of this act may apply to the secretary of state for reinstatement within five years after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state:

(a) The name of the limited liability company and the effective date of its administrative dissolution;

(b) That the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited liability company's name satisfies the requirements of section 3 of this act.

(2) A limited liability company seeking reinstatement must pay the full amount of all license fees that would have been due for the years of the period of administrative dissolution had the limited liability company not been dissolved, plus all penalties established by law or by the secretary of state by rule, and the license fee for the year of reinstatement.

(3) If the secretary of state determines that an application contains the information required by subsection (1) of this section and that the name is available, and that all fees and penalties required by subsection (2) of this section have been paid, the secretary of state shall reinstate the limited liability company and give the limited liability company written notice, as provided in section 55(1) of this act, of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(4) When reinstatement and revocation of any certificate of dissolution become effective, they relate back to and take effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its activities as if the administrative dissolution had never occurred.

NEW SECTION. **Sec. 57.** (1) A limited liability company dissolved under section 51 (2) or (3) of this act may revoke its dissolution in accordance with this section at any time, except that a limited

liability company that has filed a certificate of dissolution may not revoke its dissolution under this section more than one hundred twenty days after the filing of its certificate of dissolution.

(2)(a) Except as provided in (b) of this subsection, revocation of dissolution must be approved in the same manner as the dissolution was approved unless that approval permitted revocation in some other manner, in which event the dissolution may be revoked in the manner permitted.

(b) If dissolution occurred upon the happening of events specified in the limited liability company agreement, revocation of dissolution must be approved in the manner necessary to amend the provisions of the limited liability company agreement specifying the events of dissolution.

(3) A limited liability company that has filed a certificate of dissolution may, at any time after revocation of its dissolution has been approved but not more than one hundred twenty days after the filing of its certificate of dissolution, revoke the dissolution by delivering to the secretary of state for filing a certificate of revocation of dissolution that sets forth:

(a) The name of the limited liability company and a statement that the name satisfies the requirements of section 3 of this act; if the name is not available, the limited liability company must file a certificate of amendment changing its name with the certificate of revocation of dissolution;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was approved; and

(d) A statement that the revocation was approved in the manner required by subsection (2) of this section.

(4) If a limited liability company has not filed a certificate of dissolution, revocation of dissolution becomes effective upon approval of the revocation as provided in subsection (2) of this section. If a limited liability company has filed a certificate of dissolution, revocation of dissolution becomes effective upon the filing of a certificate of revocation of dissolution. The filing of a certificate of revocation of dissolution automatically revokes any certificate of dissolution previously filed with respect to the limited liability company.

(5) Revocation of dissolution relates back to and takes effect as of the effective date of the dissolution and the limited liability

company may resume carrying on its activities as if the dissolution had never occurred.

NEW SECTION. **Sec. 58.** (1) A limited liability company continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited liability company:

(a) May file a certificate of dissolution with the secretary of state to provide notice that the limited liability company is dissolved; preserve the limited liability company's business or property as a going concern for a reasonable time; prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited liability company's property; settle disputes; and perform other necessary acts; and

(b) Shall discharge the limited liability company's liabilities, settle and close the limited liability company's activities, and marshal and distribute the assets of the limited liability company.

(3) The persons responsible for managing the business and affairs of a limited liability company under section 31 or 32 of this act are responsible for winding up the activities of a dissolved limited liability company. If a dissolved limited liability company does not have any managers or members, the legal representative of the last person to have been a member may wind up the activities of the dissolved limited liability company, in which event the legal representative is a manager for the purposes of section 11 of this act.

(4) If the persons responsible for winding up the activities of a dissolved limited liability company under subsection (3) of this section decline or fail to wind up the limited liability company's activities, a person to wind up the dissolved limited liability company's activities may be appointed by the consent of a majority of the transferees. A person appointed under this subsection:

(a) Is a manager for the purposes of section 11 of this act; and

(b) Shall promptly amend the certificate of formation to state:

(i) The name of the person who has been appointed to wind up the limited liability company; and

(ii) The street and mailing address of the person.

(5) The superior court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited liability company's activities, if:

(a) On application of a member, the applicant establishes good cause; or

(b) On application of a transferee, a limited liability company does not have any managers or members and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) or (4) of this section.

NEW SECTION. **Sec. 59.** (1) A dissolved limited liability company that has filed a certificate of dissolution with the secretary of state may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited liability company may notify its known claimants of the dissolution in a record. The notice must:

(a) Specify the information required to be included in a known claim;

(b) Provide a mailing address to which the known claim must be sent;

(c) State the deadline for receipt of the known claim, which may not be fewer than one hundred twenty days after the date the notice is received by the claimant; and

(d) State that the known claim will be barred if not received by the deadline.

(3) A known claim against a dissolved limited liability company is barred if the requirements of subsection (2) of this section are met and:

(a) The known claim is not received by the specified deadline; or

(b) In the case of a known claim that is timely received but rejected by the dissolved limited liability company, the claimant does not commence an action to enforce the known claim against the limited liability company within ninety days after the receipt of the notice of rejection.

(4) For purposes of this section, "known claim" means any claim or liability that either:

(a)(i) Has matured sufficiently, before or after the effective date of the dissolution, to be legally capable of assertion against the dissolved limited liability company, whether or not the amount of the claim or liability is known or determinable; or (ii) is unmatured, conditional, or otherwise contingent but may subsequently arise under any executory contract to which the dissolved limited liability company is a party, other than under an implied or

statutory warranty as to any product manufactured, sold, distributed, or handled by the dissolved limited liability company; and

(b) As to which the dissolved limited liability company has knowledge of the identity and the mailing address of the holder of the claim or liability and, in the case of a matured and legally assertable claim or liability, actual knowledge of existing facts that either (i) could be asserted to give rise to, or (ii) indicate an intention by the holder to assert, such a matured claim or liability.

NEW SECTION. **Sec. 60.** (1) Upon the winding up of a limited liability company, the assets are distributed as follows:

(a) To creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment thereof, other than liabilities for which reasonable provision for payment has been made and liabilities for distributions to members under section 42 or 45 of this act;

(b) To members and former members in satisfaction of liabilities for distributions under section 42 or 45 of this act; and

(c) To members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions.

(2) A limited liability company that has dissolved must pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown. A limited liability company shall not be required to make provision to pay claims that are or later become barred under section 59 or 61 of this act or other applicable law. If there are sufficient assets, such claims and obligations must be paid in full and any such provision for payment made must be made in full. If there are insufficient assets, such claims and obligations must be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Any remaining assets must be distributed as provided in this chapter. Any person winding up a limited liability company's affairs who has

complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company.

NEW SECTION. **Sec. 61.** (1) A claim against a dissolved limited liability company is barred if the limited liability company has filed a certificate of dissolution under section 52 of this act that has not been revoked under section 57 of this act, and an action or other proceeding thereon is not commenced within three years after the filing of the certificate of dissolution.

(2) The dissolution of a limited liability company does not take away or impair any remedy available to or, except as provided in subsection (1) of this section or section 59 of this act, against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution. Such an action or proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its own name.

ARTICLE IX. FOREIGN LIMITED LIABILITY COMPANIES

NEW SECTION. **Sec. 62.** (1) Subject to the Constitution of the state of Washington:

(a) The laws of the state, territory, possession, or other jurisdiction or country under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members and managers; and

(b) A foreign limited liability company may not be denied registration by reason of any difference between those laws and the laws of this state.

(2) A foreign limited liability company and its members and managers doing business in this state submit to personal jurisdiction of the courts of this state.

NEW SECTION. **Sec. 63.** Before doing business in this state, a foreign limited liability company must register with the secretary of state. In order to register, a foreign limited liability company must submit to the secretary of state an application for registration as a foreign limited liability company executed by any member or manager of the foreign limited liability company, setting forth:

(1) The name of the foreign limited liability company and, if different, the name under which it proposes to register and do business in this state;

(2) The state, territory, possession, or other jurisdiction or country where formed, the date of its formation, and a duly authenticated statement from the secretary of state or other official having custody of limited liability company records in the jurisdiction under whose law it was formed, that as of the date of filing the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its formation;

(3) The nature of the business or purposes to be conducted or promoted in this state;

(4) The address of the registered office and the name and address of the registered agent for service of process required to be maintained by section 65(2) of this act;

(5) The address of the principal office of the foreign limited liability company;

(6) The names and addresses of the foreign limited liability company's members, or if the management of the foreign limited liability company is vested in a manager or managers, then the name and address of its manager or managers;

(7) A statement that the secretary of state is appointed the agent of the foreign limited liability company for service of process under the circumstances set forth in section 71(2) of this act; and

(8) The date on which the foreign limited liability company first did, or intends to do, business in this state.

NEW SECTION. **Sec. 64.** (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary must:

(a) Certify that the application has been filed in his or her office by endorsing upon the original application the word "Filed," and the date of the filing. This endorsement is conclusive of the date of its filing in the absence of actual fraud; and

(b) File the endorsed application.

(2) A conformed copy of the application must be returned to the person who filed the application or that person's representative.

NEW SECTION. **Sec. 65.** (1) A foreign limited liability company may register with the secretary of state under any name that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the office of the secretary of state from the names described in RCW 23B.04.010 and 25.10.061, and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of state must authorize use of the name applied for if the other corporation, limited liability company, limited liability partnership, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company must continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office must be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership, or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who must not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent must be filed with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name must be removed from the records of the secretary of state.

(3) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the foreign limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accordance with subsection (2)(a) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(4) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and executing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(5) A registered agent of any foreign limited liability company may resign as agent by executing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state must mail a copy of the statement to the foreign limited liability company at its principal office shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if

so provided, on the thirty-first day after the date on which the statement was filed.

NEW SECTION. **Sec. 66.** If any statement in the application for registration of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign limited liability company must promptly file in the office of the secretary of state a certificate, executed by any member or manager, correcting such statement.

NEW SECTION. **Sec. 67.** (1) A foreign limited liability company may cancel its registration by filing with the secretary of state a certificate of cancellation, executed by any member or manager. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited liability company with respect to causes of action arising out of the doing of business in this state.

(2) The certificate of cancellation must set forth:

(a) The name of the foreign limited liability company;

(b) The date of filing of its certificate of registration;

(c) The reason for filing the certificate of cancellation;

(d) The future effective date, not later than the ninetieth day after the date it is filed, of cancellation if it is not to be effective upon filing of the certificate;

(e) The address to which service of process may be forwarded; and

(f) Any other information the person filing the certificate of cancellation desires.

NEW SECTION. **Sec. 68.** (1) A foreign limited liability company doing business in this state may not maintain any action, suit, or proceeding in this state until it has registered in this state and has paid to this state all fees and penalties for the years or parts thereof, during which it did business in this state without having registered.

(2) Neither the failure of a foreign limited liability company to register in this state nor the issuance of a certificate of cancellation with respect to a foreign limited liability company's registration in this state impairs:

(a) The validity of any contract or act of the foreign limited liability company;

(b) The right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or

(c) The foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

(3) A member or a manager of a foreign limited liability company is not liable for the obligations of the foreign limited liability company solely by reason of the limited liability company's having done business in this state without registration.

NEW SECTION. **Sec. 69.** The superior courts have jurisdiction to enjoin any foreign limited liability company, or any agent thereof, from doing any business in this state if such foreign limited liability company has failed to register under this article or if such foreign limited liability company has secured a certificate of registration from the secretary of state under section 64 of this act on the basis of false or misleading representations. The secretary of state must, upon the secretary's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign limited liability company is doing or has done business.

NEW SECTION. **Sec. 70.** (1) The following activities, among others, do not constitute transacting business within the meaning of this article:

(a) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

(b) Holding meetings of the members, or managers if any, or carrying on other activities concerning internal limited liability company affairs;

(c) Maintaining bank accounts, share accounts in savings and loan associations, custodian or agency arrangements with a bank or trust company, or stock or bond brokerage accounts;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or interests or maintaining trustees or depositaries with respect to those securities or interests;

(e) Selling through independent contractors;

(f) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where the orders require acceptance outside this state before becoming binding contracts and where the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring evidences of debt, mortgages, or liens on real or personal property, or recording same;

(h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature;

(k) Transacting business in interstate commerce;

(l) Owning a controlling interest in a corporation or a foreign corporation that transacts business within this state;

(m) Participating as a limited partner of a domestic or foreign limited partnership that transacts business within this state; or

(n) Participating as a member or a manager of a domestic or foreign limited liability company that transacts business within this state.

(2) The list of activities in subsection (1) of this section is not exhaustive.

NEW SECTION. **Sec. 71.** (1) A foreign limited liability company's registered agent is its agent for service of process, notice, or demand required or permitted by law to be served on the foreign limited liability company.

(2) The secretary of state is an agent of a foreign limited liability company upon whom any such process, notice, or demand may be served if:

(a) The foreign limited liability company fails to appoint or maintain a registered agent in this state; or

(b) The registered agent cannot with reasonable diligence be found at the registered office.

(3) Service on the secretary of state of any such process, notice, or demand is made by delivering to and leaving with the secretary of state, or with any duly authorized clerk of the secretary of state's office, the process, notice, or demand. In the event any such process, notice, or demand is served on the secretary

of state, the secretary of state must immediately cause a copy thereof to be forwarded by certified mail, addressed to the foreign limited liability company at the address of its principal office as it appears on the records of the secretary of state. Any service so had on the secretary of state is returnable in not less than thirty days.

(4) The secretary of state must keep a record of all processes, notices, and demands served upon the secretary of state under this section, and must record the time of such service and the secretary of state's action with reference thereto.

(5) This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign limited liability company in any other manner now or hereafter permitted by law.

NEW SECTION. **Sec. 72.** (1) Any foreign limited liability company which does business in this state without having registered under section 63 of this act has thereby appointed and constituted the secretary of state its agent for the acceptance of legal process in any civil action, suit, or proceeding against it in any state or federal court in this state arising or growing out of any business done by it within this state. The doing of business in this state by such foreign limited liability company is a signification of the agreement of such foreign limited liability company that any such process when so served is of the same legal force and validity as if served upon a registered agent personally within this state.

(2) In the event of service upon the secretary of state in accordance with subsection (1) of this section, the secretary of state must notify the foreign limited liability company thereof by letter, certified mail, return receipt requested, directed to the foreign limited liability company at the address furnished to the secretary of state by the plaintiff in such action, suit, or proceeding. Such letter must enclose a copy of the process and any other papers served upon the secretary of state. It is the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate and to notify the secretary of state that service is being made pursuant to this subsection.

NEW SECTION. **Sec. 73.** The secretary of state may commence a proceeding under section 74 of this act to revoke registration of a

foreign limited liability company authorized to transact business in this state if:

(1) The foreign limited liability company does not pay any license fees or penalties imposed by this chapter when they become due;

(2) The foreign limited liability company does not deliver its completed annual report to the secretary of state when it is due;

(3) The foreign limited liability company is without a registered agent or registered office in this state for sixty days or more; or

(4) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of limited liability company records in the jurisdiction under which the foreign limited liability company was organized stating that the foreign limited liability company has been dissolved or its certificate or articles of formation canceled.

NEW SECTION. **Sec. 74.** (1) If the secretary of state determines that one or more grounds exist under section 73 of this act for revocation of a foreign limited liability company's registration, the secretary of state must give the foreign limited liability company written notice of the determination by first-class mail, postage prepaid, stating in the notice the ground or grounds for and effective date of the secretary of state's determination, which date must not be earlier than the date on which the notice is mailed.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after notice is effective, the secretary of state must revoke the foreign limited liability company's registration by executing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The secretary of state must file the original of the certificate and mail a copy to the foreign limited liability company.

(3) Documents to be mailed by the secretary of state to a foreign limited liability company for which provision is made in this section must be sent to the foreign limited liability company at the address of the agent for service of process contained in the application or certificate of this limited liability company which is most recently filed with the secretary of state.

(4) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its registration.

(5) The secretary of state's revocation of a foreign limited liability company's registration appoints the secretary of state the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this state.

(6) Revocation of a foreign limited liability company's registration does not terminate the authority of the registered agent of the foreign limited liability company.

ARTICLE X. DERIVATIVE ACTIONS

NEW SECTION. **Sec. 75.** A member may bring a derivative action to enforce a right of a limited liability company if:

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

(2) A demand would be futile.

NEW SECTION. **Sec. 76.** In a derivative action, the plaintiff must be a member at the time of bringing the action and:

(1) At the time of the transaction of which the plaintiff complains; or

(2) The plaintiff's status as a member had devolved upon the person by operation of law or pursuant to the terms of a limited liability company agreement from a person who was a member at the time of the transaction.

NEW SECTION. **Sec. 77.** In a derivative action, the complaint must set forth with particularity:

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

(2) Why a demand should be excused as futile.

NEW SECTION. **Sec. 78.** If a derivative action is successful, in whole or in part, as a result of a judgment, compromise, or settlement of any such action, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from the recovery of the limited liability company.

ARTICLE XI. MERGERS AND CONVERSIONS

NEW SECTION. **Sec. 79.** In this article:

(1) "Constituent limited liability company" means a limited liability company that is a party to a merger.

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

(3) "Converted organization" means the organization into which a converting organization converts under sections 84 through 87 of this act.

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

(5) "Converting organization" means an organization that converts into another organization pursuant to section 84 of this act.

(6) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(7) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not formed for profit.

(8) "Organizational documents" means:

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

(b) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) For a domestic or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable records as provided in its governing statute;

(d) For a business trust, its agreement of trust and declaration of trust;

(e) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its

shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

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

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

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

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

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

NEW SECTION. **Sec. 80.** (1) A limited liability company may merge with one or more other constituent organizations pursuant to this section and sections 81 through 83 of this act and a plan of merger, if:

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

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

(c) Each of the other organizations complies with its governing statute in effecting the merger.

(2) The plan of merger must be in a record and must set forth:

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

(b) The name and form of the surviving organization;

(c) The terms and conditions of the merger, including the manner and basis of converting the interests in each constituent organization into any combination of the interests, shares, obligations, or other securities of the surviving organization or any

other organization or into cash or other property in whole or part; and

(d) Any amendments to be made by the merger to the surviving organization's organizational documents.

(3) The plan of merger may set forth other provisions relating to the merger.

NEW SECTION. **Sec. 81.** (1) A plan of merger of a constituent limited liability company must be approved, and such approval shall occur when:

(a) The plan is approved by a majority of the members; and

(b) Any written consents required by section 88 of this act have been obtained.

(2) Subject to section 88 of this act and any contractual rights, after a merger is approved, and at any time before a filing is made under section 82 of this act, a constituent limited liability company may amend the plan or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same approval as was required to approve the plan.

(3) If a domestic limited partnership is a party to the merger, the plan of merger must be adopted and approved as provided in RCW 25.10.781.

(4) If a domestic corporation is a party to the merger, the plan of merger must be adopted and approved as provided in chapter 23B.11 RCW.

(5) If a domestic partnership is a party to the merger, the plan of merger must be approved as provided in RCW 25.05.375.

NEW SECTION. **Sec. 82.** (1) After each constituent organization has approved a merger, articles of merger must be executed on behalf of each constituent organization by an authorized representative.

(2) The articles of merger must include:

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

(b) The name and form of the surviving organization and the jurisdiction of its governing statute;

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

(d) Any amendments provided for in the plan of merger for the organizational document that created the surviving organization;

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

(f) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of section 83(3) of this act; and

(g) Any additional information required by the governing statute of any constituent organization.

(3) The surviving organization must deliver the articles of merger for filing in the office of the secretary of state.

(4) The effective time of a merger is:

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

(i) Filing of the articles of merger in the office of the secretary of state; or

(ii) Subject to subsection (5) of this section, as specified in the articles of merger; or

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

(5) If the articles of merger do not specify a delayed effective date, the articles of merger become effective upon filing. If the articles of merger specify a delayed effective time and date, the articles of merger become effective at the time and date specified. If the articles of merger specify a delayed effective date but no time is specified, the articles of merger are effective at the close of business on that date. A delayed effective date for articles of merger may not be later than the ninetieth day after the date they are filed.

NEW SECTION. **Sec. 83.** (1) When a merger becomes effective:

(a) The surviving organization continues;

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

(c) The title to all real estate and other property owned by each constituent organization is vested in the surviving organization without reversion or impairment;

(d) The surviving organization has all liabilities of each constituent organization;

(e) A proceeding pending by or against any constituent organization may be continued as if the merger did not occur or the surviving organization may be substituted in the proceeding for the constituent organization whose existence ceased;

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

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

(h) The organizational documents of the surviving organization are amended to the extent provided in the articles of merger; and

(i) The former holders of interests of every constituent limited liability company are entitled only to the rights provided in the plan of merger and to their rights under article XII of this chapter.

(2) A merger of a limited liability company, including a limited liability company which is not the surviving organization in the merger, does not require the limited liability company to wind up its affairs under section 58 of this act or pay its liabilities and distribute its assets under section 60 of this act.

(3) 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. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 7(3) of this act.

NEW SECTION. **Sec. 84.** (1) An organization other than a limited liability company may convert into a limited liability company, and a limited liability company may convert into an organization pursuant to this section and sections 85 through 87 of this act and a plan of conversion, if:

(a) The other organization's governing statute authorizes the conversion;

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

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

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

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

(b) The name and form of the organization after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of the interests, shares, obligations, or other securities of the converted organization or any other organization or into cash or other property in whole or part; and

(d) The organizational documents of the converted organization.

NEW SECTION. **Sec. 85.** (1) Subject to section 88 of this act, a plan of conversion must be consented to by all the members of a converting limited liability company.

(2) Subject to section 88 of this act and any contractual rights, after a conversion is approved, and at any time before a filing is made under section 86 of this act, a converting limited liability company may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same approval as was required to approve the plan.

NEW SECTION. **Sec. 86.** (1) After a plan of conversion is approved, the converting organization must make one of the following filings to complete the conversion:

(a) A converting limited liability company must deliver to the secretary of state for filing articles of conversion, which must include:

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

(ii) The name and form of the converted organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by this chapter;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of section 87(3) of this act; or

(b) A converting organization that is not a limited liability company must deliver to the secretary of state for filing a certificate of formation, together with articles of conversion, which must include:

(i) A statement that the limited liability company was converted from another organization;

(ii) The name and form of the converting organization and the jurisdiction of its governing statute; and

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

(2) The effective time of a conversion is either:

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

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

(3) If the certificate of formation filed pursuant to this section does not specify a delayed effective date, it becomes effective upon filing. If the certificate of formation specifies a delayed effective time and date, the certificate of formation becomes effective at the time and date specified. If the certificate of formation specifies a delayed effective date but no time is specified, the certificate of formation is effective at the close of business on that date. A delayed effective date for a certificate of formation may not be later than the ninetieth day after the date it is filed.

NEW SECTION. **Sec. 87.** (1) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) The title to all real estate and other property owned by the converting organization remains vested in the converted organization without reversion or impairment;

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

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

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

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of article VIII of this chapter.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before the conversion the converting limited liability company was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in section 7(3) of this act.

NEW SECTION. **Sec. 88.** If a member of a converting limited liability company or constituent limited liability company will have personal liability with respect to a converted organization or surviving organization, then, in addition to the applicable approval requirements in section 85(1) or 81(1)(a) of this act, approval of a plan of conversion or plan of merger must also require the execution, by each such member, of a separate written consent to become subject to such personal liability.

ARTICLE XII. DISSENTERS' RIGHTS

NEW SECTION. **Sec. 89.** In this article:

(1) "Dissenter" means a member who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(2) "Fair value," with respect to a dissenter's limited liability company interest, means the value of the member's limited liability company interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(3) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited liability company on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(4) "Limited liability company" means the limited liability company in which the dissenter holds or held a membership interest, or the surviving organization by merger, whether foreign or domestic, of that limited liability company.

NEW SECTION. **Sec. 90.** (1) Except as provided in section 92 or 94(2) of this act, or in a written limited liability company agreement, a member of a limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by section 80 of this act.

(2) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this chapter, Title 23B RCW, chapter 25.05 RCW, chapter 25.10 RCW, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

(3) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company terminates upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The member's demand for payment is withdrawn with the written consent of the limited liability company.

NEW SECTION. **Sec. 91.** (1) Not less than ten days prior to the approval of a plan of merger, the limited liability company must send a written notice to all members who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited liability company must notify in writing all members not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by section 93 of this act.

NEW SECTION. **Sec. 92.** A member of a limited liability company who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A member who does not satisfy the requirements of this section is not entitled to payment for the member's interest in the limited liability company under this article.

NEW SECTION. **Sec. 93.** (1) If the plan of merger is approved, the limited liability company shall deliver a written dissenters' notice to all members who satisfied the requirements of section 92 of this act.

(2) The dissenters' notice required by section 91(2) of this act or by subsection (1) of this section must be sent within ten days after the approval of the plan of merger, and must:

(a) State where the payment demand must be sent;

(b) Inform members as to the extent transfer of the member's interest in the limited liability company will be restricted as permitted by section 95 of this act after the payment demand is received;

(c) Supply a form for demanding payment;

(d) Set a date by which the limited liability company must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and

(e) Be accompanied by a copy of this article.

NEW SECTION. **Sec. 94.** (1) A member of a limited liability company who demands payment retains all other rights of a member of such limited liability company until the proposed merger becomes effective.

(2) A member of a limited liability company sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the member's interest in the limited liability company under this article.

NEW SECTION. **Sec. 95.** The limited liability company may restrict the transfer of members' interests in the limited liability company from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article.

NEW SECTION. **Sec. 96.** (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited liability company must pay each dissenter who complied with section 94 of this act the amount the limited liability company estimates to be the fair value of the dissenting member's interest in the limited liability company, plus accrued interest.

(2) The payment must be accompanied by:

(a) Copies of the financial statements for the limited liability company for its most recent fiscal year maintained as required by section 29 of this act;

(b) An explanation of how the limited liability company estimated the fair value of the member's interest in the limited liability company;

(c) An explanation of how the accrued interest was calculated;

(d) A statement of the dissenter's right to demand payment; and

(e) A copy of this article.

NEW SECTION. **Sec. 97.** (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited liability company must release any transfer restrictions imposed as permitted by section 95 of this act.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited liability company must send a

new dissenters' notice as provided in sections 91(2) and 93 of this act and repeat the payment demand procedure.

NEW SECTION. **Sec. 98.** (1) A dissenter may notify the limited liability company in writing of the dissenter's own estimate of the fair value of the dissenter's interest in the limited liability company, and amount of interest due, and demand payment of the dissenter's estimate, less any payment under section 96 of this act, if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's interest in the limited liability company, or that the interest due is incorrectly calculated;

(b) The limited liability company fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited liability company, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on members' interests as permitted by section 95 of this act within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited liability company of the dissenter's demand in writing under subsection (1) of this section within thirty days after the limited liability company made payment for the dissenter's interest in the limited liability company.

NEW SECTION. **Sec. 99.** (1) If a demand for payment under section 94 of this act remains unsettled, the limited liability company must commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the dissenting member's interest in the limited liability company, and accrued interest. If the limited liability company does not commence the proceeding within the sixty-day period, it must pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited liability company must commence the proceeding in the superior court of the county where the limited liability company's principal office or, if none in this state, its registered office is located.

(3) The limited liability company must make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their

membership interests in the limited liability company and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited liability company may join as a party to the proceeding any member who claims to be a dissenter but who has not, in the opinion of the limited liability company, complied with the provisions of this article. If the court determines that such member has not complied with the provisions of this article, the member must be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's membership interest in the limited liability company, plus interest, exceeds the amount paid by the limited liability company.

NEW SECTION. **Sec. 100.** (1) The court in a proceeding commenced under section 99 of this act must determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court must assess the costs against the limited liability company, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited liability company and in favor of any or all dissenters if the court finds the limited liability company did not substantially comply with the requirements of this article; or

(b) Against either the limited liability company or a dissenter, in favor of any other party, if the court finds that the party

against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited liability company, the court may award to these counsel reasonable fees to be paid out of the amounts awarded to the dissenters who were benefited.

ARTICLE XIII. MISCELLANEOUS

NEW SECTION. **Sec. 101.** (1) The rule that statutes in derogation of the common law are to be strictly construed has no application to this chapter.

(2) It is the policy of this chapter to give the maximum effect to the principle of freedom of contract and to the enforceability of limited liability company agreements.

(3) Unless the context otherwise requires, as used in this chapter, the singular includes the plural and the plural may refer to only the singular.

NEW SECTION. **Sec. 102.** (1) The secretary of state must adopt rules establishing fees which are charged and collected for:

(a) Filing of a certificate of formation, certificate of amendment, or restated certificate of formation for a domestic limited liability company;

(b) Filing of an application for registration, or a certificate correcting any statement in an application for registration, of a foreign limited liability company;

(c) Filing of articles of merger or articles of conversion for a domestic limited liability company;

(d) Filing of a certificate of dissolution for a domestic limited liability company;

(e) Filing of a certificate of revocation of dissolution for a domestic limited liability company;

(f) Filing of an application for reinstatement of a domestic limited liability company;

(g) Filing of a certificate of cancellation for a foreign limited liability company;

(h) Filing of an application to reserve, register, or transfer a foreign or domestic limited liability company name;

(i) Filing of any other certificate, statement, or report authorized or permitted to be filed;

(j) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services; and

(k) The initial and annual report for a limited liability company, or the annual report for a foreign limited liability company, and any related penalties.

(2) In the establishment of a fee schedule, the secretary of state must, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Title 23B RCW. Fees for copies, certified copies, certificates of record, and service of process filings must be as provided for in RCW 23B.01.220.

(3) All fees collected by the secretary of state must be deposited with the state treasurer pursuant to law.

NEW SECTION. **Sec. 103.** The secretary of state has the power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW.

NEW SECTION. **Sec. 104.** This act takes effect January 1, 2016.

NEW SECTION. **Sec. 105.** This chapter may be known and cited as the "Washington Limited Liability Company Act."

NEW SECTION. **Sec. 106.** This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2016.

NEW SECTION. **Sec. 107.** Sections 1 through 106 of this act are each added to chapter 25.15 RCW.

NEW SECTION. **Sec. 108.** The following acts or parts of acts are each repealed:

(1) RCW 25.15.005 (Definitions) and 2010 c 196 s 1, 2008 c 198 s 4, 2002 c 296 s 3, 2000 c 169 s 1, 1995 c 337 s 13, & 1994 c 211 s 101;

(2) RCW 25.15.007 (Standards for electronic filing—Rules) and 2002 c 74 s 15;

(3) RCW 25.15.010 (Name set forth in certificate of formation) and 2009 c 188 s 1410, 1998 c 102 s 9, 1996 c 231 s 5, & 1994 c 211 s 102;

(4) RCW 25.15.015 (Reserved name—Registered name) and 1998 c 102 s 11 & 1994 c 211 s 103;

(5) RCW 25.15.020 (Registered office—Registered agent) and 2009 c 202 s 5, 2002 c 74 s 16, 1996 c 231 s 6, & 1994 c 211 s 104;

(6) RCW 25.15.025 (Service of process on domestic limited liability companies) and 1994 c 211 s 105;

(7) RCW 25.15.030 (Nature of business permitted—Powers) and 2006 c 48 s 1 & 1994 c 211 s 106;

(8) RCW 25.15.035 (Business transactions of member or manager with the limited liability company) and 1994 c 211 s 107;

(9) RCW 25.15.040 (Limitation of liability and indemnification) and 1994 c 211 s 108;

(10) RCW 25.15.045 (Professional limited liability companies) and 2001 c 251 s 32, 1999 c 128 s 2, 1998 c 293 s 5, & 1997 c 390 s 4;

(11) RCW 25.15.050 (Member agreements) and 1994 c 211 s 110;

(12) RCW 25.15.055 (Membership residency) and 1994 c 211 s 111;

(13) RCW 25.15.060 (Piercing the veil) and 1995 c 337 s 15 & 1994 c 211 s 112;

(14) RCW 25.15.070 (Certificate of formation) and 2010 c 196 s 2 & 1994 c 211 s 201;

(15) RCW 25.15.075 (Amendment to certificate of formation) and 1994 c 211 s 202;

(16) RCW 25.15.085 (Execution) and 2014 c 83 s 7, 2010 c 196 s 3, 2002 c 74 s 17, 2001 c 307 s 3, 1995 c 337 s 16, & 1994 c 211 s 204;

(17) RCW 25.15.090 (Execution, amendment, or cancellation by judicial order) and 1994 c 211 s 205;

(18) RCW 25.15.095 (Filing) and 2010 c 196 s 4, 2002 c 74 s 18, 2001 c 307 s 4, & 1994 c 211 s 206;

(19) RCW 25.15.100 (Restated certificate) and 1994 c 211 s 207;

(20) RCW 25.15.105 (Initial and annual reports) and 2010 1st sp.s. c 29 s 8, 2001 c 307 s 2, & 1994 c 211 s 208;

(21) RCW 25.15.115 (Admission of members) and 1994 c 211 s 301;

(22) RCW 25.15.120 (Voting and classes of membership) and 1994 c 211 s 302;

(23) RCW 25.15.125 (Liability of members and managers to third parties) and 1994 c 211 s 303;

(24) RCW 25.15.130 (Events of dissociation) and 2000 c 169 s 2, 1995 c 337 s 17, & 1994 c 211 s 304;

(25) RCW 25.15.135 (Records and information) and 1994 c 211 s 305;

(26) RCW 25.15.140 (Remedies for breach of limited liability company agreement by member) and 1994 c 211 s 306;

(27) RCW 25.15.150 (Management) and 1996 c 231 s 8 & 1994 c 211 s 401;

(28) RCW 25.15.155 (Liability of managers and members) and 1994 c 211 s 402;

(29) RCW 25.15.160 (Manager—Members' rights and duties) and 1994 c 211 s 403;

(30) RCW 25.15.165 (Voting and classes of managers) and 1994 c 211 s 404;

(31) RCW 25.15.170 (Remedies for breach of limited liability company agreement by manager) and 1994 c 211 s 405;

(32) RCW 25.15.175 (Reliance on reports and information by member or manager) and 1994 c 211 s 406;

(33) RCW 25.15.180 (Resignation of manager) and 1994 c 211 s 407;

(34) RCW 25.15.185 (Loss of sole remaining manager) and 2000 c 169 s 3;

(35) RCW 25.15.190 (Form of contribution) and 1994 c 211 s 501;

(36) RCW 25.15.195 (Liability for contribution) and 1994 c 211 s 502;

(37) RCW 25.15.200 (Allocation of profits and losses) and 1994 c 211 s 503;

(38) RCW 25.15.205 (Allocation of distributions) and 1994 c 211 s 504;

(39) RCW 25.15.215 (Interim distributions) and 1994 c 211 s 601;

(40) RCW 25.15.220 (Distribution on event of dissociation) and 1995 c 337 s 18 & 1994 c 211 s 602;

(41) RCW 25.15.225 (Distribution in-kind) and 1994 c 211 s 603;

(42) RCW 25.15.230 (Right to distribution) and 1994 c 211 s 604;

(43) RCW 25.15.235 (Limitations on distribution) and 1994 c 211 s 605;

(44) RCW 25.15.245 (Nature of limited liability company interest—Certificate of interest) and 1994 c 211 s 701;

(45) RCW 25.15.250 (Assignment of limited liability company interest) and 1995 c 337 s 19 & 1994 c 211 s 702;

(46) RCW 25.15.255 (Rights of judgment creditor) and 1994 c 211 s 703;

(47) RCW 25.15.260 (Right of assignee to become member) and 1994 c 211 s 704;

(48) RCW 25.15.270 (Dissolution) and 2010 c 196 s 5, 2009 c 437 s 1, 2006 c 48 s 4, 2000 c 169 s 4, 1997 c 21 s 1, 1996 c 231 s 9, & 1994 c 211 s 801;

(49) RCW 25.15.273 (After dissolution under RCW 25.15.270) and 2010 c 196 s 6;

(50) RCW 25.15.275 (Judicial dissolution) and 1994 c 211 s 802;

(51) RCW 25.15.280 (Administrative dissolution—Commencement of proceeding) and 1995 c 337 s 20 & 1994 c 211 s 803;

(52) RCW 25.15.285 (Administrative dissolution—Notice—Opportunity to correct deficiencies) and 1994 c 211 s 804;

(53) RCW 25.15.290 (Administrative dissolution—Reinstatement—Application—When effective) and 2010 c 196 s 7, 2009 c 437 s 2, & 1994 c 211 s 805;

(54) RCW 25.15.293 (Dissolution under RCW 25.15.270—Revocation—Approval required—When effective) and 2010 c 196 s 8 & 2009 c 437 s 3;

(55) RCW 25.15.295 (Winding up) and 2010 c 196 s 9 & 1994 c 211 s 806;

(56) RCW 25.15.298 (Disposing of known claims—Definition) and 2010 c 196 s 10;

(57) RCW 25.15.300 (Distribution of assets) and 1994 c 211 s 807;

(58) RCW 25.15.303 (Remedies available after dissolution) and 2010 c 196 s 11 & 2006 c 325 s 1;

(59) RCW 25.15.310 (Law governing) and 1995 c 337 s 21 & 1994 c 211 s 901;

(60) RCW 25.15.315 (Registration required—Application) and 1994 c 211 s 902;

(61) RCW 25.15.320 (Issuance of registration) and 1994 c 211 s 903;

(62) RCW 25.15.325 (Name—Registered office—Registered agent) and 2009 c 188 s 1411, 2002 c 74 s 19, 1998 c 102 s 10, 1996 c 231 s 10, & 1994 c 211 s 904;

(63) RCW 25.15.330 (Amendments to application) and 1994 c 211 s 905;

(64) RCW 25.15.335 (Cancellation of registration) and 1994 c 211 s 906;

(65) RCW 25.15.340 (Doing business without registration) and 2010 c 196 s 12 & 1994 c 211 s 907;

(66) RCW 25.15.345 (Foreign limited liability companies doing business without having qualified—Injunctions) and 1994 c 211 s 908;

(67) RCW 25.15.350 (Transactions not constituting transacting business) and 1994 c 211 s 909;

(68) RCW 25.15.355 (Service of process on registered foreign limited liability companies) and 1994 c 211 s 910;

(69) RCW 25.15.360 (Service of process on unregistered foreign limited liability companies) and 1994 c 211 s 911;

(70) RCW 25.15.365 (Revocation of registration—Requirements for commencement) and 1996 c 231 s 11;

(71) RCW 25.15.366 (Revocation of registration—Procedure—Notice—Correction of grounds—Certificate of revocation—Authority of agent) and 1996 c 231 s 12;

(72) RCW 25.15.370 (Right to bring action) and 1994 c 211 s 1001;

(73) RCW 25.15.375 (Proper plaintiff) and 1994 c 211 s 1002;

(74) RCW 25.15.380 (Complaint) and 1994 c 211 s 1003;

(75) RCW 25.15.385 (Expenses) and 1994 c 211 s 1004;

(76) RCW 25.15.390 (Definitions) and 2014 c 83 s 1;

(77) RCW 25.15.395 (Merger—Plan—Effective date) and 1998 c 103 s 1319 & 1994 c 211 s 1101;

(78) RCW 25.15.400 (Merger—Plan—Approval) and 2009 c 188 s 1412, 1998 c 103 s 1320, & 1994 c 211 s 1102;

(79) RCW 25.15.405 (Articles of merger—Filing) and 2009 c 188 s 1413, 1998 c 103 s 1321, & 1994 c 211 s 1103;

(80) RCW 25.15.410 (Effect of merger) and 2009 c 188 s 1414, 1998 c 103 s 1322, & 1994 c 211 s 1104;

(81) RCW 25.15.415 (Merger—Foreign and domestic) and 2009 c 188 s 1415, 1998 c 103 s 1323, & 1994 c 211 s 1105;

(82) RCW 25.15.417 (Conversion) and 2014 c 83 s 2;

(83) RCW 25.15.419 (Action on plan of conversion by converting limited liability company) and 2014 c 83 s 3;

(84) RCW 25.15.420 (Filings required for conversion—Effective date) and 2014 c 83 s 4;

(85) RCW 25.15.422 (Effect of conversion) and 2014 c 83 s 5;

(86) RCW 25.15.423 (Restrictions on approval of conversions) and 2014 c 83 s 6;

(87) RCW 25.15.425 (Definitions) and 1994 c 211 s 1201;

(88) RCW 25.15.430 (Member—Dissent—Payment of fair value) and 2009 c 188 s 1416 & 1994 c 211 s 1202;

(89) RCW 25.15.435 (Dissenters' rights—Notice—Timing) and 1994 c 211 s 1203;

(90) RCW 25.15.440 (Member—Dissent—Voting restriction) and 1994 c 211 s 1204;

(91) RCW 25.15.445 (Members—Dissenters' notice—Requirements) and 1994 c 211 s 1205;

(92) RCW 25.15.450 (Member—Payment demand—Entitlement) and 1994 c 211 s 1206;

(93) RCW 25.15.455 (Member's interests—Transfer restriction) and 1994 c 211 s 1207;

(94) RCW 25.15.460 (Payment of fair value—Requirements for compliance) and 1994 c 211 s 1208;

(95) RCW 25.15.465 (Merger—Not effective within sixty days—Transfer restrictions) and 1994 c 211 s 1209;

(96) RCW 25.15.470 (Dissenter's estimate of fair value—Notice) and 1994 c 211 s 1210;

(97) RCW 25.15.475 (Unsettled demand for payment—Proceeding—Parties—Appraisers) and 1994 c 211 s 1211;

(98) RCW 25.15.480 (Unsettled demand for payment—Costs—Fees and expenses of counsel) and 1994 c 211 s 1212;

(99) RCW 25.15.800 (Construction and application of chapter and limited liability company agreement) and 1994 c 211 s 1301;

(100) RCW 25.15.805 (Establishment of filing fees and miscellaneous charges) and 2010 c 196 s 13 & 1994 c 211 s 1302;

(101) RCW 25.15.810 (Authority to adopt rules) and 1994 c 211 s 1303;

(102) RCW 25.15.900 (Effective date—1994 c 211) and 1994 c 211 s 1312;

(103) RCW 25.15.901 (Short title) and 1994 c 211 s 1313; and

(104) RCW 25.15.902 (Severability—1994 c 211) and 1994 c 211 s 1314.

NEW SECTION. **Sec. 109.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

ARTICLE XIV. CONFORMING AMENDMENTS

Sec. 110. RCW 23B.11.080 and 2009 c 188 s 1401 are each amended to read as follows:

(1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030;

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.781;

(c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by ((~~RCW 25.15.400~~))section 81 of this act.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations, or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests,

obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger.

Sec. 111. RCW 23B.11.090 and 2009 c 188 s 1402 are each amended to read as follows:

After a plan of merger for one or more corporations and one or more limited partnerships, one or more partnerships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by ((~~RCW 25.15.400~~))section 81 of this act, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The plan of merger;

(b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.781.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in ((~~RCW 25.15.405~~))section 82 of this act.

Sec. 112. RCW 23B.11.110 and 2009 c 188 s 1403 are each amended to read as follows:

(1) One or more foreign limited partnerships, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.786;

(d) Each domestic corporation complies with RCW 23B.11.080;

(e) Each domestic limited partnership complies with RCW 25.10.781;

(f) Each domestic limited liability company complies with ((~~RCW 25.15.400~~))section 81 of this act; and

(g) Each domestic partnership complies with RCW 25.05.375.

(2) Upon the merger taking effect, a surviving foreign corporation, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the case of dissenting partners.

Sec. 113. RCW 25.05.375 and 2009 c 188 s 1406 are each amended to read as follows:

(1) Unless otherwise provided in the partnership agreement, approval of a plan of merger by a domestic partnership party to the merger shall occur when the plan is approved by all of the partners.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.781.

(3) If a domestic limited liability company is a party to the merger, the plan of merger shall be adopted and approved as provided in ((~~RCW 25.15.400~~))section 81 of this act.

(4) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

Sec. 114. RCW 25.05.380 and 1998 c 103 s 907 are each amended to read as follows:

(1) Except as otherwise provided in subsection (2) of this section, after a plan of merger is approved or adopted, the surviving partnership, limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(a) The plan of merger;

(b) If the approval of any partners, members, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(c) If the approval of any partners, members, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders pursuant to ((~~RCW 25.15.400~~))section 81 of this act, RCW 25.05.375, or chapter 23B.11 RCW.

(2) If the merger involves only two or more partnerships and one or more of such partnerships has filed a statement of partnership authority with the secretary of state, the surviving partnership shall file articles of merger as provided in subsection (1) of this section.

Sec. 115. RCW 25.05.385 and 2009 c 188 s 1407 are each amended to read as follows:

(1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, the former holders of the partnership interests of every domestic partnership or limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, to their rights under RCW 25.10.831 through 25.10.886, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in

the merger, shall not require the domestic partnership to wind up its affairs under article 8 of this chapter.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.581 or pay its liabilities and distribute its assets under RCW 25.10.621.

(4) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under ((~~RCW 25.15.295~~))section 58 of this act or pay its liabilities and distribute its assets under ((~~RCW 25.15.300~~))section 60 of this act.

Sec. 116. RCW 25.05.390 and 2009 c 188 s 1408 are each amended to read as follows:

(1) One or more foreign partnerships, foreign limited liability companies, foreign limited partnerships, and foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign partnership was organized, each foreign limited liability company was formed, each foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign partnership, foreign limited liability company, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.05.380;

(c) Each domestic limited liability company complies with ((~~RCW 25.15.400~~))section 81 of this act;

(d) Each domestic limited partnership complies with RCW 25.10.781; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members, partners, or shareholders of each domestic limited liability

company, domestic limited partnership, or domestic corporation party to the merger.

Sec. 117. RCW 25.05.425 and 2009 c 188 s 1409 are each amended to read as follows:

(1) Except as provided in RCW 25.05.435 or 25.05.445(2), a partner in a domestic partnership is entitled to dissent from, and obtain payment of the fair value of the partner's interest in a partnership in the event of consummation of a plan of merger to which the partnership is a party as permitted by RCW 25.05.370 or 25.05.390.

(2) A partner entitled to dissent and obtain payment for the partner's interest in a partnership under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, RCW 25.10.776 through 25.10.796, or ((~~25.15.430~~))section 90 of this act, as applicable, or the partnership agreement, or is fraudulent with respect to the partner or the partnership.

(3) The right of a dissenting partner in a partnership to obtain payment of the fair value of the partner's interest in the partnership shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The partner's demand for payment is withdrawn with the written consent of the partnership.

Sec. 118. RCW 25.10.781 and 2009 c 188 s 1107 are each amended to read as follows:

(1) Subject to RCW 25.10.796, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to RCW 25.10.796 and any contractual rights, after a merger is approved, and at any time before a filing is made under RCW 25.10.786, a constituent limited partnership may amend the plan or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(4) If a domestic partnership is a party to the merger, the plan of merger shall be approved as provided in RCW 25.05.375.

(5) If a domestic limited liability company is a party to the merger, the plan of merger shall be approved as provided in ((~~RCW 25.15.400~~))section 81 of this act.

Sec. 119. RCW 30A.08.025 and 2014 c 37 s 152 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, if the conditions of this section are met, a bank or a holding company of a bank may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "bank" includes an applicant to become a bank or holding company of a bank and "holding company" means a holding company of a bank.

(2)(a) Before a bank or holding company may organize as, or convert to, a limited liability company, the bank or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the bank or holding company must file a request for approval with the director at least ninety days before the day on which the bank or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the bank or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The bank or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the bank, trust company, or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the bank, trust company, or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the bank, trust company, or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the bank's or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the bank or holding company is liable for the debts, liabilities, and obligations of the bank or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the bank's or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the bank or holding company in order for any owner to transfer an ownership interest in the bank or holding company, including voting rights;

(vi) The bank or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The bank or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A bank or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a bank or holding company, that is organized as a limited liability

company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a bank or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a bank or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in ((~~RCW 25.15.270(1)~~))section 51(1) of this act, pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in ((~~RCW 25.15.270(2)~~))section 51(2) of this act;

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in ((~~RCW 25.15.270(3)~~))section 51(3) of this act;

(D) Permitting dissociation of all the members of the limited liability company, as set forth in ((~~RCW 25.15.270(4)~~))section 51(4) of this act; and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the bank or holding company, a member's interest in the bank or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the bank or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the bank or holding company including all economic rights and all voting rights.

(c) A bank or holding company may not by agreement or otherwise change the application of (a) of this subsection to the bank or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a bank or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a bank or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the bank, holding company, or both, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 30A.44.270 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the bank or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a bank or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in ((~~RCW 25.15.005(1) and 25.15.070~~))sections 1 and 18 of this act, and a limited liability company agreement as that term is used in ((~~RCW 25.15.005(5)~~))section 1 of this act;

(b) "Board of directors" includes one or more persons who have, with respect to a bank or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in ((~~RCW 25.15.005(5)~~))section 1 of this act;

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

(ii) A director; or

(iii) Other person who has, with respect to the bank or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under ((~~RCW 25.15.215~~))section 42 of this act;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in ((~~RCW 25.15.085(1)~~))section 21 of this act;

(h) "Officer" includes any of the following of a bank or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the bank or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a bank or holding company, including a member as defined in ((~~RCW 25.15.005(8) and 25.15.115~~))sections 1 and 25 of this act.

Sec. 120. RCW 32.08.025 and 2006 c 48 s 3 are each amended to read as follows:

(1) Notwithstanding any other provision of this title, if the conditions of this section are met, a savings bank, or a holding company of a savings bank, may be organized as, or convert to, a limited liability company under the Washington limited liability company act, chapter 25.15 RCW. As used in this section, "savings bank" includes an applicant to become a savings bank or holding company of a savings bank, and "holding company" means a holding company of a savings bank.

(2)(a) Before a savings bank or holding company may organize as, or convert to, a limited liability company, the savings bank or holding company must obtain approval of the director.

(b)(i) To obtain approval under this section from the director, the savings bank or holding company must file a request for approval with the director at least ninety days before the day on which the savings bank or holding company becomes a limited liability company.

(ii) If the director does not disapprove the request for approval within ninety days from the day on which the director receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the director may:

(A) Approve the request;

(B) Approve the request subject to terms and conditions the director considers necessary; or

(C) Disapprove the request.

(3) To approve a request for approval, the director must find that the savings bank or holding company:

(a) Will operate in a safe and sound manner; and

(b) Has the following characteristics:

(i) The certificate of formation and limited liability company require or set forth that the duration of the limited liability company is perpetual;

(ii) The savings bank or holding company is not otherwise subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(iii) The exclusive authority to manage the savings bank or holding company is vested in a board of managers or directors that:

(A) Is elected or appointed by the owners;

(B) Is not required to have owners of the savings bank or holding company included on the board;

(C) Possesses adequate independence and authority to supervise the operation of the savings bank or holding company; and

(D) Operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(iv) Neither state law, nor the savings bank's or holding company's operating agreement, bylaws, or other organizational documents provide that an owner of the savings bank or holding company is liable for the debts, liabilities, and obligations of the savings bank or holding company in excess of the amount of the owner's investment;

(v) Neither state law, nor the savings bank's or holding company's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the savings bank or holding company in order for any owner to transfer an ownership interest in the savings bank or holding company, including voting rights;

(vi) The savings bank or holding company is able to obtain new investment funding if needed to maintain adequate capital;

(vii) The savings bank or holding company is able to comply with all legal and regulatory requirements for a federally insured depository bank, or holding company of a federally insured depository bank, under applicable federal and state law; and

(viii) A savings bank or holding company that is organized as a limited liability company shall maintain the characteristics listed in this subsection (3)(b) during such time as it is authorized to conduct business under this title as a limited liability company.

(4)(a) All rights, privileges, powers, duties, and obligations of a savings bank or holding company, that is organized as a limited liability company, and its members and managers are governed by the Washington limited liability company act, chapter 25.15 RCW, except:

(i) To the extent chapter 25.15 RCW is in conflict with federal law or regulation respecting the organization of a federally insured depository institution as a limited liability company, such federal law or regulation supersedes the conflicting provisions contained in chapter 25.15 RCW in relation to a savings bank or holding company organized as a limited liability company pursuant to this section; and

(ii) Without limitation, the following are inapplicable to a savings bank or holding company organized as a limited liability company:

(A) Permitting automatic dissolution or suspension of a limited liability company as set forth in ((~~RCW 25.15.270(1)~~))section 51(1) of this act, pursuant to a statement of limited duration which, though impermissible under subsection (3)(b)(i) of this section, has been provided for in a certificate of formation;

(B) Permitting automatic dissolution or suspension of a limited liability company, pursuant to the limited liability company agreement, as set forth in ((~~RCW 25.15.270(2)~~))section 51(2) of this act;

(C) Permitting dissolution of the limited liability company agreement based upon agreement of all the members, as set forth in ((~~RCW 25.l5.270(3)~~))section 51(3) of this act;

(D) Permitting dissociation of all the members of the limited liability company, as set forth in ((~~RCW 25.l5.270(4)~~))section 51(4) of this act; and

(E) Permitting automatic dissolution or suspension of a limited liability company, pursuant to operation of law, as otherwise set forth in chapter 25.15 RCW.

(b) Notwithstanding (a) of this subsection:

(i) For purposes of transferring a member's interests in the savings bank or holding company, a member's interest in the savings bank or holding company is treated like a share of stock in a corporation; and

(ii) If a member's interest in the savings bank or holding company is transferred voluntarily or involuntarily to another person, the person who receives the member's interest obtains the member's entire rights associated with the member's interest in the savings bank or holding company including((~~,~~)) all economic rights and all voting rights.

(c) A savings bank or holding company may not by agreement or otherwise change the application of (a) of this subsection to the savings bank or holding company.

(5)(a) Notwithstanding any provision of chapter 25.15 RCW or this section to the contrary, all voting members remain liable and responsible as fiduciaries of a savings bank or holding company organized as a limited liability company, regardless of resignation, dissociation, or disqualification, to the same extent that directors of a savings bank or holding company organized as a corporation would be or remain liable or responsible to the department and applicable federal banking regulators; and

(b) If death, incapacity, or disqualification of all members of the limited liability company would result in a complete dissociation of all members, then the savings bank or holding company, or both, as applicable is deemed nonetheless to remain in existence for purposes of the department or an applicable federal regulator, or both, having standing under RCW 32.24.090 or applicable federal law, or both, to exercise the powers and authorities of a receiver for the savings bank or holding company.

(6) For the purposes of this section, and unless the context clearly requires otherwise, for the purpose of applying chapter 25.15 RCW to a savings bank or holding company organized as a limited liability company:

(a) "Articles of incorporation" includes a limited liability company's certificate of formation, as that term is used in ((~~RCW 25.15.005(1) and 25.15.070~~))sections 1 and 18 of this act, and a limited liability company agreement as that term is used in ((~~RCW 25.15.005(5)~~))section 1 of this act;

(b) "Board of directors" includes one or more persons who have, with respect to a savings bank or holding company described in subsection (1) of this section, authority that is substantially similar to that of a board of directors of a corporation;

(c) "Bylaws" includes a limited liability company agreement as that term is defined in ((~~RCW 25.15.005(5)~~))section 1 of this act;

(d) "Corporation" includes a limited liability company organized under chapter 25.15 RCW;

(e) "Director" includes any of the following of a limited liability company:

(i) A manager;

(ii) A director; or

(iii) Other person who has, with respect to the savings bank or holding company described in subsection (1) of this section, authority substantially similar to that of a director of a corporation;

(f) "Dividend" includes distributions made by a limited liability company under ((~~RCW 25.15.215~~))section 42 of this act;

(g) "Incorporator" includes the person or persons executing the certificate of formation as provided in ((~~RCW 25.15.085(1)~~))section 21 of this act;

(h) "Officer" includes any of the following of a savings bank or holding company:

(i) An officer; or

(ii) Other person who has, with respect to the savings bank or holding company, authority substantially similar to that of an officer of a corporation;

(i) "Security," "shares," or "stock" of a corporation includes a membership interest in a limited liability company and any certificate or other evidence of an ownership interest in a limited liability company; and

(j) "Stockholder" or "shareholder" includes an owner of an equity interest in a savings bank or holding company, including a member as defined in ((~~RCW 25.15.005(8) and 25.15.115~~))sections 1 and 25 of this act.

Sec. 121. RCW 82.32.145 and 2012 c 39 s 8 are each amended to read as follows:

(1) Whenever the department has issued a warrant under RCW 82.32.210 for the collection of unpaid trust fund taxes from a

limited liability business entity and that business entity has been terminated, dissolved, or abandoned, or is insolvent, the department may pursue collection of the entity's unpaid trust fund taxes, including penalties and interest on those taxes, against any or all of the responsible individuals. For purposes of this subsection, "insolvent" means the condition that results when the sum of the entity's debts exceeds the fair market value of its assets. The department may presume that an entity is insolvent if the entity refuses to disclose to the department the nature of its assets and liabilities.

(2) Personal liability under this section may be imposed for state and local trust fund taxes.

(3)(a) For a responsible individual who is the current or a former chief executive or chief financial officer, liability under this section applies regardless of fault or whether the individual was or should have been aware of the unpaid trust fund tax liability of the limited liability business entity.

(b) For any other responsible individual, liability under this section applies only if he or she willfully fails to pay or to cause to be paid to the department the trust fund taxes due from the limited liability business entity.

(4)(a) Except as provided in this subsection (4)(a), a responsible individual who is the current or a former chief executive or chief financial officer is liable under this section only for trust fund tax liability accrued during the period that he or she was the chief executive or chief financial officer. However, if the responsible individual had the responsibility or duty to remit payment of the limited liability business entity's trust fund taxes to the department during any period of time that the person was not the chief executive or chief financial officer, that individual is also liable for trust fund tax liability that became due during the period that he or she had the duty to remit payment of the limited liability business entity's taxes to the department but was not the chief executive or chief financial officer.

(b) All other responsible individuals are liable under this section only for trust fund tax liability that became due during the period he or she had the responsibility or duty to remit payment of the limited liability business entity's taxes to the department.

(5) Persons described in subsection (3)(b) of this section are exempt from liability under this section in situations where

nonpayment of the limited liability business entity's trust fund taxes is due to reasons beyond their control as determined by the department by rule.

(6) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(7) This section does not relieve the limited liability business entity of its trust fund tax liability or otherwise impair other tax collection remedies afforded by law.

(8) Collection authority and procedures prescribed in this chapter apply to collections under this section.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Chief executive" means: The president of a corporation; or for other entities or organizations other than corporations or if the corporation does not have a president as one of its officers, the highest ranking executive manager or administrator in charge of the management of the company or organization.

(b) "Chief financial officer" means: The treasurer of a corporation; or for entities or organizations other than corporations or if a corporation does not have a treasurer as one of its officers, the highest senior manager who is responsible for overseeing the financial activities of the entire company or organization.

(c) "Limited liability business entity" means a type of business entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity, or a business entity that is managed or owned in whole or in part by an entity that generally shields its owners from personal liability for the debts, obligations, and liabilities of the entity. Limited liability business entities include corporations, limited liability companies, limited liability partnerships, trusts, general partnerships and joint ventures in which one or more of the partners or parties are also limited liability business entities, and limited partnerships in which one or more of the general partners are also limited liability business entities.

(d) "Manager" has the same meaning as in ((~~RCW 25.15.005~~))section 1 of this act.

(e) "Member" has the same meaning as in ((~~RCW 25.15.005~~))section 1 of this act, except that the term only includes members of member-managed limited liability companies.

(f) "Officer" means any officer or assistant officer of a corporation, including the president, vice president, secretary, and treasurer.

(g)(i) "Responsible individual" includes any current or former officer, manager, member, partner, or trustee of a limited liability business entity with an unpaid tax warrant issued by the department.

(ii) "Responsible individual" also includes any current or former employee or other individual, but only if the individual had the responsibility or duty to remit payment of the limited liability business entity's unpaid trust fund tax liability reflected in a tax warrant issued by the department.

(iii) Whenever any taxpayer has one or more limited liability business entities as a member, manager, or partner, "responsible individual" also includes any current and former officers, members, or managers of the limited liability business entity or entities or of any other limited liability business entity involved directly in the management of the taxpayer. For purposes of this subsection (9)(g)(iii), "taxpayer" means a limited liability business entity with an unpaid tax warrant issued against it by the department.

(h) "Trust fund taxes" means taxes collected from purchasers and held in trust under RCW 82.08.050, including taxes imposed under RCW 82.08.020 and 82.08.150.

(i) "Willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

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