

**UTAH REVISED LIMITED LIABILITY COMPANY ACT**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: John L. Valentine**

**This act modifies the Utah Limited Liability Company Act by repealing the current act and replacing it with the Utah Revised Limited Liability Company Act. The act provides for definitions and authorizes the formation of limited liability companies within the state. The act sets forth the structure, characteristics, and powers of limited liability companies. The act sets forth the filing requirements with the Division of Corporations and Commercial Code. The act provides for the service of process on limited liability companies. The act outlines the process for formation of a limited liability company. The act provides for operating agreements and sets forth the standards for the adoption of operating agreements. The act grants limited liability to members and managers of limited liability companies and defines the exceptions to limited liability. The act sets forth the standards required of members and managers of a limited liability company. The act provides for the management of limited liability companies. The act provides standards for the treatment of contributions, capital accounts, and profits and losses. The act sets standards for distributions. The act provides for the assignment of interests. The act sets forth the procedures and standards for dissolution. The act sets forth the procedures and standards for winding up a limited liability company. The act provides for conversions and mergers. The act allows for the provision of professional services through a limited liability company. The act provides for the treatment and domestication of foreign limited liability companies. The act provides for derivative actions. The act provides for indemnification. The act amends the Utah Revised Uniform Limited Partnership Act to allow for conversions. The act corrects cross references to the Limited Liability Company Act. The act provides an effective date.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**48-2a-101**, as last amended by Chapter 189, Laws of Utah 1991

**53B-5-114 (Effective 04/30/01)**, as last amended by Chapter 300, Laws of Utah 2000

**53C-1-201**, as last amended by Chapter 237, Laws of Utah 2000

ENACTS:

**48-2a-108**, Utah Code Annotated 1953

**48-2a-109**, Utah Code Annotated 1953

**48-2a-110**, Utah Code Annotated 1953

**48-2a-111**, Utah Code Annotated 1953

**48-2a-112**, Utah Code Annotated 1953

**48-2a-113**, Utah Code Annotated 1953

**48-2c-101**, Utah Code Annotated 1953

**48-2c-102**, Utah Code Annotated 1953

**48-2c-103**, Utah Code Annotated 1953

**48-2c-104**, Utah Code Annotated 1953

**48-2c-105**, Utah Code Annotated 1953

**48-2c-106**, Utah Code Annotated 1953

**48-2c-107**, Utah Code Annotated 1953

**48-2c-108**, Utah Code Annotated 1953

**48-2c-109**, Utah Code Annotated 1953

**48-2c-110**, Utah Code Annotated 1953

**48-2c-111**, Utah Code Annotated 1953

**48-2c-112**, Utah Code Annotated 1953

**48-2c-113**, Utah Code Annotated 1953

**48-2c-114**, Utah Code Annotated 1953

**48-2c-115**, Utah Code Annotated 1953

**48-2c-116**, Utah Code Annotated 1953

**48-2c-117**, Utah Code Annotated 1953

**48-2c-118**, Utah Code Annotated 1953

**48-2c-119**, Utah Code Annotated 1953

**48-2c-120**, Utah Code Annotated 1953

**48-2c-121**, Utah Code Annotated 1953  
**48-2c-122**, Utah Code Annotated 1953  
**48-2c-201**, Utah Code Annotated 1953  
**48-2c-202**, Utah Code Annotated 1953  
**48-2c-203**, Utah Code Annotated 1953  
**48-2c-204**, Utah Code Annotated 1953  
**48-2c-205**, Utah Code Annotated 1953  
**48-2c-206**, Utah Code Annotated 1953  
**48-2c-207**, Utah Code Annotated 1953  
**48-2c-208**, Utah Code Annotated 1953  
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**48-2c-211**, Utah Code Annotated 1953  
**48-2c-212**, Utah Code Annotated 1953  
**48-2c-213**, Utah Code Annotated 1953  
**48-2c-214**, Utah Code Annotated 1953  
**48-2c-301**, Utah Code Annotated 1953  
**48-2c-302**, Utah Code Annotated 1953  
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**48-2c-304**, Utah Code Annotated 1953  
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**48-2c-311**, Utah Code Annotated 1953  
**48-2c-401**, Utah Code Annotated 1953

48-2c-402, Utah Code Annotated 1953  
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48-2c-405, Utah Code Annotated 1953  
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**48-2c-1001, Utah Code Annotated 1953**  
**48-2c-1002, Utah Code Annotated 1953**  
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**48-2c-1008, Utah Code Annotated 1953**  
**48-2c-1101, Utah Code Annotated 1953**  
**48-2c-1102, Utah Code Annotated 1953**

**48-2c-1103**, Utah Code Annotated 1953  
**48-2c-1104**, Utah Code Annotated 1953  
**48-2c-1105**, Utah Code Annotated 1953  
**48-2c-1106**, Utah Code Annotated 1953  
**48-2c-1201**, Utah Code Annotated 1953  
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**48-2c-1214**, Utah Code Annotated 1953  
**48-2c-1301**, Utah Code Annotated 1953  
**48-2c-1302**, Utah Code Annotated 1953  
**48-2c-1303**, Utah Code Annotated 1953  
**48-2c-1304**, Utah Code Annotated 1953  
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**48-2c-1306**, Utah Code Annotated 1953  
**48-2c-1307**, Utah Code Annotated 1953  
**48-2c-1308**, Utah Code Annotated 1953  
**48-2c-1309**, Utah Code Annotated 1953  
**48-2c-1401**, Utah Code Annotated 1953

**48-2c-1402**, Utah Code Annotated 1953  
**48-2c-1403**, Utah Code Annotated 1953  
**48-2c-1404**, Utah Code Annotated 1953  
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**48-2c-1406**, Utah Code Annotated 1953  
**48-2c-1407**, Utah Code Annotated 1953  
**48-2c-1408**, Utah Code Annotated 1953  
**48-2c-1409**, Utah Code Annotated 1953  
**48-2c-1410**, Utah Code Annotated 1953  
**48-2c-1501**, Utah Code Annotated 1953  
**48-2c-1502**, Utah Code Annotated 1953  
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- 48-2c-1607**, Utah Code Annotated 1953
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- 48-2c-1613**, Utah Code Annotated 1953
- 48-2c-1614**, Utah Code Annotated 1953
- 48-2c-1615**, Utah Code Annotated 1953
- 48-2c-1701**, Utah Code Annotated 1953
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- 48-2c-1804**, Utah Code Annotated 1953
- 48-2c-1805**, Utah Code Annotated 1953
- 48-2c-1806**, Utah Code Annotated 1953
- 48-2c-1807**, Utah Code Annotated 1953
- 48-2c-1808**, Utah Code Annotated 1953
- 48-2c-1809**, Utah Code Annotated 1953
- 48-2c-1901**, Utah Code Annotated 1953
- 48-2c-1902**, Utah Code Annotated 1953

**REPEALS:**

- 48-2b-101**, as enacted by Chapter 258, Laws of Utah 1991



**48-2b-102**, as last amended by Chapter 21, Laws of Utah 1999  
**48-2b-103**, as last amended by Chapter 56, Laws of Utah 1998  
**48-2b-104**, as last amended by Chapter 56, Laws of Utah 1998  
**48-2b-105**, as last amended by Chapter 261, Laws of Utah 2000  
**48-2b-106 (Effective 04/30/01)**, as last amended by Chapters 131 and 300, Laws of Utah

2000

**48-2b-106 (Superseded 04/30/01)**, as last amended by Chapter 131, Laws of Utah 2000  
**48-2b-107**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-108**, as last amended by Chapter 61, Laws of Utah 1994  
**48-2b-109**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-110**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-111**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-112**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-113**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-114**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-115**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-116**, as last amended by Chapter 56, Laws of Utah 1998  
**48-2b-117**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-118**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-119**, as last amended by Chapter 168, Laws of Utah 1992  
**48-2b-120**, as last amended by Chapter 131, Laws of Utah 2000  
**48-2b-121**, as last amended by Chapter 131, Laws of Utah 2000  
**48-2b-122**, as last amended by Chapter 159, Laws of Utah 1997  
**48-2b-123**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-124**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-125**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-126**, as last amended by Chapter 56, Laws of Utah 1998  
**48-2b-127**, as enacted by Chapter 258, Laws of Utah 1991

**48-2b-128**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-129**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-130**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-131**, as last amended by Chapter 159, Laws of Utah 1997  
**48-2b-132**, as last amended by Chapter 56, Laws of Utah 1998  
**48-2b-133**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-134**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-135**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-136**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-137**, as last amended by Chapter 159, Laws of Utah 1997  
**48-2b-138**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-139**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-140**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-141**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-142**, as last amended by Chapter 131, Laws of Utah 2000  
**48-2b-143**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-144**, as last amended by Chapter 176, Laws of Utah 1996  
**48-2b-145**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-146**, as last amended by Chapter 30, Laws of Utah 1992  
**48-2b-147**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-148**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-149**, as last amended by Chapter 168, Laws of Utah 1992  
**48-2b-150**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-151**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-152**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-153**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-154**, as enacted by Chapter 258, Laws of Utah 1991  
**48-2b-155**, as enacted by Chapter 258, Laws of Utah 1991

**48-2b-156**, as enacted by Chapter 258, Laws of Utah 1991

**48-2b-157**, as enacted by Chapter 168, Laws of Utah 1992

**48-2b-158**, as enacted by Chapter 83, Laws of Utah 1994

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

Section 1. Section **48-2a-101** is amended to read:

**48-2a-101. Definitions.**

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

(1) "Certificate of limited partnership" means the certificate referred to in Section 48-2a-201, and the certificate as amended or restated.

(2) "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in Section 48-2a-402.

(5) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

(7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

(8) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(9) "Partner" means a limited or a general partner.

(10) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

(11) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

(12) "Person" means an individual, general partnership, limited partnership, limited association, domestic or foreign trust, estate, association, or corporation.

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

(14) "Subject entity" means a corporation, business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a limited liability company, a general partnership, a registered limited liability partnership, or a foreign limited partnership.

Section 2. Section **48-2a-108** is enacted to read:

**48-2a-108. Conversion of certain entities to a limited partnership.**

Any subject entity may convert to a limited partnership under this chapter by complying with Section 48-2a-111 and filing with the division:

(1) articles of conversion that satisfy the requirements of Section 48-2a-109; and

(2) a certificate of limited partnership that satisfies the requirements of Section 48-2a-201.

Section 3. Section **48-2a-109** is enacted to read:

**48-2a-109. Articles of conversion.**

The articles of conversion shall state:

(1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited partnership;

(2) the name of the subject entity immediately prior to the filing of the articles of conversion;

(3) the name of the domestic limited partnership as set forth in its certificate of limited partnership filed in accordance with Section 48-2a-201;

(4) the future effective date or time, which shall be a date or time certain, of the conversion

to a domestic limited partnership if it is not to be effective upon the filing of the articles of conversion and the certificate of limited partnership; and

(5) that the conversion has been duly approved by the owners of the subject entity.

Section 4. Section **48-2a-110** is enacted to read:

**48-2a-110. Effect of conversion.**

(1) Upon the filing with the division of the articles of conversion and the certificate of limited partnership or, if applicable, upon the future effective date or time of the articles of conversion and the certificate of limited partnership, the subject entity shall be converted into a domestic limited partnership and the limited partnership shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2a-201, the existence of the limited partnership shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.

(2) The conversion of any subject entity into a domestic limited partnership shall not affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic limited partnership or the personal liability of any person incurred prior to the conversion.

(3) When a conversion becomes effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject entity remain vested in the domestic limited partnership to which the subject entity has converted and shall be the property of the domestic limited partnership and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic limited partnership to which the subject entity has converted and may be enforced against it to the same extent as if those debts, liabilities, and duties had been incurred or contracted by it in its capacity as a domestic limited partnership.

(4) Unless otherwise agreed, or as required under applicable law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not constitute a dissolution of the subject entity but shall constitute a continuation of the existence of the converting subject entity in the form of a domestic limited partnership. When any subject entity has been converted to a domestic limited partnership pursuant to this part, the domestic limited partnership shall thereafter, for all purposes of the laws of this state, be considered to be the same entity as the converting subject entity.

Section 5. Section **48-2a-111** is enacted to read:

**48-2a-111. Approval of conversion.**

Prior to filing articles of conversion with the division, the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, as appropriate, and the new partnership agreement, if any, for the domestic limited partnership must be approved by the same authorization required to approve the conversion. If applicable law, or the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, does not provide for the manner of approving such conversion, then unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new partnership agreement.

Section 6. Section **48-2a-112** is enacted to read:

**48-2a-112. No limitation on other changes.**

The provisions of Sections 48-2a-108 and 48-2a-111 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other entity in this state by any other means provided for in a partnership agreement or other agreement or as otherwise permitted by law.

Section 7. Section **48-2a-113** is enacted to read:

**48-2a-113. Approval of limited partnership conversion to subject entity.**

(1) A domestic limited partnership may convert to any subject entity upon the authorization of the conversion in accordance with this section.

(a) If the partnership agreement specifies the manner of authorizing a conversion of the limited partnership, the conversion shall be authorized as specified in the partnership agreement.

(b) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership and does not prohibit a conversion of the limited partnership, the conversion shall be authorized in the same manner as specified in the partnership agreement for authorizing a merger that involves the partnership as a constituent party to the merger.

(c) If the partnership agreement does not specify the manner of authorizing a conversion of the limited partnership or a merger that involves the limited partnership as a constituent party and does not prohibit a conversion of the limited partnership, the conversion must be authorized by unanimous consent of all partners.

(2) A converted domestic limited partnership shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic limited partnership, as well as the debts, liabilities, and duties of the domestic limited partnership, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic limited partnership has converted.

(3) Unless otherwise agreed, the conversion of a domestic limited partnership to another entity, pursuant to this section, shall not require the domestic limited partnership to wind up its affairs or to pay its liabilities or distribute its assets under this chapter. In connection with conversion of a domestic limited partnership to a subject entity under this section, all interests in, or securities of or rights in the domestic limited partnership which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic limited partnership is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

Section 8. Section **48-2c-101** is enacted to read:

**CHAPTER 2c. UTAH REVISED LIMITED LIABILITY COMPANY ACT**

**Part 1. General Provisions**

**48-2c-101. Title.**

This chapter is known as the "Utah Revised Limited Liability Company Act."

Section 9. Section **48-2c-102** is enacted to read:

**48-2c-102. Definitions.**

As used in this chapter:

(1) "Bankruptcy" includes bankruptcy under federal bankruptcy law or under Utah insolvency law.

(2) "Business" includes any lawful trade, occupation, profession, business, investment, or other purpose or activity, whether or not that trade, occupation, profession, business, investment, purpose, or activity is carried on for profit.

(3) "Capital account," unless otherwise provided in the operating agreement, means the account, as adjusted from time to time, maintained by the company for each member to reflect the value of all contributions by that member, the amount of all distributions to that member or the member's assignee, the member's share of profits, gains, and losses of the company, and the member's share of the net assets of the company upon dissolution and winding up that are distributable to the member or the member's assignee.

(4) "Company," "limited liability company," or "domestic company" means a limited liability company organized under or subject to this chapter.

(5) "Designated office" means the street address in this state where the records required to be maintained by Section 48-2c-112 are kept.

(6) (a) "Distribution" means a direct or indirect transfer by a company of money or other property, except an interest in the company, or incurrence of indebtedness by a company, to or for the benefit of members in the company in respect of any interest in the company.

(b) "Distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

(7) "Division" means the Division of Corporations and Commercial Code of the Utah Department of Commerce.

(8) "Entity" includes:



- (a) a domestic or foreign corporation;
- (b) a domestic or foreign nonprofit corporation;
- (c) a company or foreign company;
- (d) a profit or nonprofit unincorporated association;
- (e) a business trust;
- (f) an estate;
- (g) a general partnership or a domestic or foreign limited partnership;
- (h) a trust;
- (i) a state;
- (j) the United States; or
- (k) a foreign government.

(9) "Filed with the division" means that a statement, document, or report complies with the requirements of Section 48-2c-207 and has been accepted for filing by the division and includes filing by electronic means approved by the division.

(10) "Foreign company" means a limited liability company organized under a law other than the laws of this state.

(11) "Interest in the company" means a member's economic rights in the company including the right to receive distributions from the company and the right to receive a portion of the net assets of the company upon dissolution and winding up of the company.

(12) "Manager" means a person elected or otherwise designated by the members to manage a manager-managed company pursuant to Part 8.

(13) "Manager-managed company" means a company whose management is vested in managers pursuant to Part 8.

(14) "Member" means a person with an ownership interest in a company and with the rights and obligations specified under this chapter.

(15) "Member-managed company" means a company whose management is vested in its members pursuant to Part 8.

(16) "Operating agreement" means any written agreement of the members concerning the

business or purpose of the company and the conduct of its affairs, and which complies with Part 5. An operating agreement includes any written amendments agreed to by all members or other writing adopted in any other manner as may be provided in the operating agreement.

(17) "Person" means an individual or entity.

(18) "Proceeding" means any administrative, judicial or other trial, hearing, or other action, whether civil, criminal, or investigative, the result of which may be that a court, arbitrator, or governmental agency may enter a judgment, order, decree, or other determination which, if not appealed or reversed, would be binding upon any person subject to the jurisdiction of that court, arbitrator, or governmental agency.

(19) "Professional services" is as defined in Part 15.

(20) "Signed," "signs," or "signature" means a manual signature or authorized facsimile thereof and any electronic or digital signature approved by the division.

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

Section 10. Section **48-2c-103** is enacted to read:

**48-2c-103. Application of partnership provisions.**

"Partnership" and "limited partnership," when used in any chapter or title other than this chapter or Title 48, Chapter 1, General and Limited Liability Partnership, and Title 48, Chapter 2a, Utah Revised Uniform Limited Partnership Act, are considered to include a company organized under this chapter, unless the context requires otherwise.

Section 11. Section **48-2c-104** is enacted to read:

**48-2c-104. Separate legal entity.**

A company formed under this chapter is a legal entity distinct from its members.

Section 12. Section **48-2c-105** is enacted to read:

**48-2c-105. Purpose.**

Except as provided in Subsection 48-2c-102(2) or in Part 15 of this chapter, each company formed under this chapter has the purpose of engaging in any business unless a more limited purpose is set forth in its articles of organization.

Section 13. Section **48-2c-106** is enacted to read:

**48-2c-106. Name -- Exclusive right.**

(1) The name of each company as set forth in the articles of organization:

(a) shall contain the terms:

(i) "limited company";

(ii) "limited liability company";

(iii) "L.C." or "LC"; or

(iv) "L.L.C." or "LLC";

(b) may not contain:

(i) the terms:

(A) "association";

(B) "corporation";

(C) "incorporated";

(D) "limited partnership";

(E) "limited";

(F) "L.P."; or

(G) "Ltd."; or

(ii) words or any abbreviation with a similar meaning in any other language;

(c) without the written consent of the United States Olympic Committee, may not contain

the words:

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the State Board of Regents in accordance with Section

53B-5-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute".

(2) (a) A person, other than a company formed under this chapter or a foreign company authorized to transact business in this state, may not use in its name in this state any of the terms:

(i) "limited liability company";

(ii) "limited company";

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

(iv) "L.C.";

(v) "LLC"; or

(vi) "LC".

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

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

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

(B) "incorporated" or "inc."; and

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

(A) "limited liability partnership";

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

(C) "LLP".

(3) Except as authorized by Subsection (4), the name of a company must be distinguishable as defined in Subsection (5) upon the records of the division from:

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

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

(4) (a) A company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve the name for which the company applies under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the

applicant desires to file:

(A) consents to the filing in writing; and

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

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

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

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P." or "LP";

(vii) "Ltd.";

(viii) "limited liability company";

(ix) "limited company";

(x) "L.C." or "LC"; or

(xi) "L.L.C." or "LLC";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization; or

(f) for a company that is formed in this state on or after May 4, 1998, or registered as a foreign company in this state on or after May 4, 1998, differences between singular and plural forms

of words.

(7) A name that implies that a company is an agency of this state or any of its political subdivisions, if it is not actually a legally established agency or political subdivision, may not be approved for filing by the division.

Section 14. Section **48-2c-107** is enacted to read:

**48-2c-107. Limited liability company name -- Limited rights.**

The authorization to file articles of organization under this chapter or to reserve or register a company name as granted by the division does not:

- (1) abrogate or limit the law governing unfair competition or unfair trade practices;
- (2) derogate from the common law, the principles of equity, or the statutes of this state or of the United States with respect to the right to acquire and protect names and trademarks; or
- (3) create an exclusive right in geographic or generic terms contained within a name.

Section 15. Section **48-2c-108** is enacted to read:

**48-2c-108. Reservation of name.**

(1) The exclusive right to register a name for use by a company may be reserved by any person.

(2) (a) The reservation described in Subsection (1)(a) shall be made by filing with the division an application signed under penalty of perjury.

(b) If the division finds that the name is available for use by a company, it shall reserve the name exclusively for the applicant for a period of 120 days. The name reservation may be renewed for any number of subsequent periods of 120 days.

(c) The reserved name may be transferred to any other person by filing with the division a notice of the transfer signed under penalty of perjury by the applicant for whom the name was reserved and specifying the name and address of the transferee.

Section 16. Section **48-2c-109** is enacted to read:

**48-2c-109. Transaction of business outside state.**

It is the intention of the Utah Legislature by the enactment of this chapter that the legal existence of companies formed under this chapter be recognized beyond the boundaries of this state

and that, subject to any reasonable registration or filing requirements, any such company transacting business outside this state be recognized as a limited liability company and be granted full faith and credit under Section 1 of Article IV of the Constitution of the United States.

Section 17. Section **48-2c-110** is enacted to read:

**48-2c-110. Powers.**

Each company organized and existing under this chapter may:

- (1) sue or be sued, institute or defend any action, or participate in any proceeding in its own name;
- (2) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in or with real or personal property or an interest in real or personal property, wherever situated;
- (3) sell, convey, assign, encumber, mortgage, pledge, create a security interest in, lease, exchange or transfer, or otherwise dispose of all or any part of its property or assets;
- (4) lend money to and otherwise assist its members, managers, and employees;
- (5) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, or otherwise use or deal in or with:
  - (a) shares or other interests in any entity or obligations of any person; or
  - (b) direct or indirect obligations of the United States or any other government, state, territory, governmental district, or municipality or of any instrumentality of any of them;
- (6) make contracts or guarantees or incur liabilities, borrow money at such rates of interest as the company may determine, issue its notes, bonds, or other obligations, or secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;
- (7) lend money for any lawful purpose, invest or reinvest its funds, or take and hold real or personal property as security for the payment of funds so loaned or invested;
- (8) conduct its business and maintain offices and exercise the powers granted by this chapter within this state, and in any state, territory, district, or possession of the United States, or in any foreign country;
- (9) elect or appoint managers and agents of the company, define their duties, and fix their compensation;

- (10) make and alter an operating agreement as allowed by Part 5 of this chapter;
- (11) make donations for the public welfare or for charitable, scientific, religious, or educational purposes;
- (12) indemnify or hold harmless any person;
- (13) cease its activities and cancel its certificate of organization;
- (14) transact any lawful business which the members or the managers find to be in aid of governmental policy;
- (15) pay pensions and establish pension plans, profit-sharing plans, and other incentive plans for any or all of its members, managers, and employees;
- (16) be a promoter, incorporator, organizer, general partner, limited partner, member, associate, or manager of any corporation, partnership, limited partnership, limited liability company, joint venture, trust, or other enterprise or entity;
- (17) render professional services, if each member of a company who renders professional services in Utah is licensed or registered to render those professional services pursuant to applicable Utah law; and
- (18) have and exercise the same powers as an individual, and all powers necessary or convenient to effect or carry out any or all of the purposes for which the company is organized.

Section 18. Section **48-2c-111** is enacted to read:

**48-2c-111. Designated office.**

Each domestic company shall continuously maintain in this state a designated office where the records required by Section 48-2c-112 shall be maintained. The designated office may, but need not be, a place of business in this state. The designated office shall be at a specific geographical location in this state and be identified by number, if any, and street or building address or rural route or other geographical address. The designated office shall not be identified only by post office box number or other nongeographic address. However, for purposes of communication by mail, the division may permit the use of a post office address in conjunction with the geographic address. In all cases where a domestic company fails to identify or designate its designated office, the designated office for that company shall be its registered office in this state.



Section 19. Section **48-2c-112** is enacted to read:

**48-2c-112. Records.**

Each company shall keep the following records at its designated office in this state:

- (1) a current list in alphabetical order of the full name and last-known business, residence, or mailing address of each member and each manager;
- (2) a copy of the stamped articles of organization and all certificates of amendment thereto, together with a copy of all signed powers of attorney pursuant to which the articles of organization or any amendment has been signed;
- (3) a copy of the writing required of an organizer under Subsection 48-2c-401(2);
- (4) a copy of the company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (5) a copy of any financial statements of the company, if any, for the three most recent years;
- (6) a copy of the company's operating agreement, if any, and all amendments thereto;
- (7) a copy of the minutes, if any, of each meeting of members and of any written consents obtained from members; and
- (8) unless otherwise set forth in the articles of organization or the operating agreement, a written statement setting forth:
  - (a) the amount of cash and a description and statement of the agreed value of the other property or services contributed and agreed to be contributed by each member;
  - (b) 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;
  - (c) any right of a member to receive distributions;
  - (d) any date or event upon the happening of which a member is entitled to payment in redemption of the member's interest in the company; and
  - (e) any date or event upon the happening of which the company is to be dissolved and its affairs wound up.

Section 20. Section **48-2c-113** is enacted to read:

**48-2c-113. Inspection of records by members and managers.**

(1) A current or former member or manager of a company is entitled to inspect and copy, during regular business hours at the company's designated office, any of the records described in Section 48-2c-112 after first giving the company written notice of the demand at least five business days before the inspection is to occur.

(2) This section does not affect:

(a) the right of a member or manager to inspect records if the member or manager is in litigation with the company, to the same extent as any other litigant; or

(b) the power of a court, independent of this chapter, to compel the production of records for examination.

(3) A current or former member or manager may not use any information obtained through the inspection or copying of records permitted by Subsection (1) for any improper purpose.

(4) The division may subpoena any of the records described in Section 48-2c-112 if a company denies any current or former member or manager access to the records.

Section 21. Section **48-2c-114** is enacted to read:

**48-2c-114. Scope of inspection right.**

(1) An agent or attorney of a current or former member or manager has the same inspection and copying rights as the person represented by the agent or attorney.

(2) The right to copy records under Section 48-2c-113 includes, if reasonable, the right to receive copies made by photographic, xerographic, electronic, or other means.

(3) The company may impose a reasonable charge, payable in advance, to cover the costs of labor and material, for copies of any documents to be provided. The charge may not exceed the estimated cost of production or reproduction of the records.

Section 22. Section **48-2c-115** is enacted to read:

**48-2c-115. Court-ordered inspection.**

(1) If a company does not allow a current or former member or manager or their agent or attorney who complies with Subsection 48-2c-113(1) to inspect or copy any records required by that subsection to be available for inspection, the district court of the county in this state in which the company's designated office is located may summarily order inspection and copying of the records

demanded at the company's expense, on application of the person denied access to the records. The court shall dispose of an application under this Subsection (1) on an expedited basis.

(2) If a court orders inspection or copying of records demanded, it shall also order the company to pay the costs incurred by the person requesting the order, including reasonable attorney's fees unless the company proves that it refused inspection in good faith because it had a reasonable basis for doubt about the right of the person to inspect the records demanded.

(3) If a court orders inspection or copying of records demanded, it may:

(a) impose reasonable restrictions on the use or distribution of the records by the person demanding inspection;

(b) order the company to pay the member or manager for reasonable attorney's fees and costs incurred and for any damages incurred as a result of the company's denial if the court determines that the company did not act in good faith in refusing to allow the inspection or copying; and

(c) grant the person demanding inspection or copying any other available legal remedy.

Section 23. Section **48-2c-116** is enacted to read:

**48-2c-116. Member or manager as a party to proceedings.**

A member or manager of a company is not a proper party to proceedings by or against a company, except when the object is to enforce a member's or manager's right against, or liability to, the company.

Section 24. Section **48-2c-117** is enacted to read:

**48-2c-117. Taxation of limited liability companies.**

A company established under this chapter or a foreign company transacting business in this state shall be taxed as provided in Section 59-10-801.

Section 25. Section **48-2c-118** is enacted to read:

**48-2c-118. Waiver of notice.**

If, under the provisions of this chapter, the articles of organization, or the operating agreement of a company, notice is required to be given to a member or manager of a company, a waiver in writing signed by the person entitled to the notice, whether made before or after the time for notice to be given, is equivalent to the giving of notice.

Section 26. Section **48-2c-119** is enacted to read:

**48-2c-119. Transaction of members or managers with company.**

Except as provided in the articles of organization or operating agreement of the company, a member or manager may transact business with the company including, sell or lease property to, buy or lease property from, lend money to, and borrow money from the company, and act as a surety, guarantor or endorser for, or guarantee or assume one or more specific obligations of, or provide collateral for, the company, and transact any other business with the company and, subject to applicable law, shall have the same rights and obligations with respect to any such matter as a person who is not a member or manager, except that this section shall not be construed to relieve a member or manager of the duties specified in Section 48-2c-807.

Section 27. Section **48-2c-120** is enacted to read:

**48-2c-120. Articles of organization and operating agreement.**

(1) A company's articles of organization or operating agreement may not:

(a) restrict a right to inspect and copy records under Section 48-2c-113;

(b) reduce the duties of members or managers under Section 48-2c-807;

(c) eliminate the obligation of good faith and fair dealing, except that the members by written agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(d) vary any filing requirement under this chapter;

(e) vary any requirement under this chapter that a particular action or provision be reflected in a writing;

(f) vary the right to expel a member based on any event specified in Subsection 48-2c-710(3);

(g) vary the remedies under Section 48-2c-1210 for judicial dissolution of a company;

(h) except as allowed by Section 48-2c-1103 or any other provision of law, restrict rights of, or impose duties on, persons other than the members, their assignees and transferees, the managers, and the company, without the consent of those persons; or

(i) eliminate or limit the personal liability of a manager to the company or its members for

damages for any breach of duty in the capacity where a judgment or other final adjudication adverse to the manager establishes that the manager's acts or omissions were in bad faith or involved gross negligence or willful misconduct or that the manager personally gained a financial profit or other advantage to which the manager was not legally entitled.

(2) The articles of organization and operating agreement may:

(a) vary the requirement under Section 48-2c-1104 that, if all of the other members of the company other than the member proposing to dispose of the member's interest do not approve of the proposed transfer or assignment by unanimous written consent, the transferee of the member's interest shall have no right to participate in the management of the business or affairs of the company or to become a member; and

(b) vary the requirement under Section 48-2c-703 that, after the filing of the original articles of organization, a person may be admitted as an additional member only upon the written consent of all members.

Section 28. Section **48-2c-121** is enacted to read:

**48-2c-121. Scope of notice.**

(1) Articles of organization that have been filed with the division constitute notice to third persons, as well as to members and managers of the company:

(a) that the company is a limited liability company formed under the laws of this state; and

(b) of all statements set forth in the articles of organization which are:

(i) required by Subsection 48-2c-403(1) to be set forth in articles of organization; and

(ii) expressly permitted to be set forth in the articles of organization by Subsection 48-2c-403(4).

(2) The filing with the division of any annual report required by Section 48-2c-203 constitutes notice to third persons, as well as to members and managers of the company, of the information set forth in the annual report which is required by Section 48-2c-203 to be set forth in an annual report.

(3) The filing with the division of any statement allowed by Section 48-2c-122 is notice to third persons, as well as to members and managers of the company, of the information set forth in

that statement which is expressly permitted to be set forth in that statement by Section 48-2c-122.

Section 29. Section **48-2c-122** is enacted to read:

**48-2c-122. Statement of person named as manager or member.**

(1) Any person named as a manager or member of a domestic company or foreign company in an annual report or other document on file with the division may, if that person does not hold the position of manager or member, deliver to the division for filing a written statement setting forth:

(a) the person's name;

(b) the name of the company;

(c) information sufficient to identify the report or other document in which that person is named as a manager or member; and

(d) the date on which he ceased to be a manager or member of the company, or a statement that the person did not hold the position for which that person was named in the report or other document.

Section 30. Section **48-2c-201** is enacted to read:

**Part 2. Filing Requirements**

**48-2c-201. Place for filings.**

Filings required by this chapter to be made with the division shall be made at the division's offices in Salt Lake City, Utah, or at any other place within the state as the division director may designate.

Section 31. Section **48-2c-202** is enacted to read:

**48-2c-202. Record of filings.**

The division shall maintain a record of all filings required by this chapter to be made with the division and shall make those records available for inspection and copying by any person upon request and payment of a reasonable fee determined by the division.

Section 32. Section **48-2c-203** is enacted to read:

**48-2c-203. Annual report.**

(1) (a) Each company and each foreign company authorized to transact business in this state shall file an annual report with the division:

(i) during the month of its anniversary date of formation, in the case of domestic companies;

or

(ii) during the month of the anniversary date of being granted authority to transact business in this state, in the case of foreign companies authorized to transact business in this state.

(b) The annual report required by Subsection (1)(a) shall set forth the name of the company and the state or country under the laws of which it is formed and shall set forth any change in:

(i) for a domestic company only, the street address of its designated office;

(ii) for a foreign company only, the street address of its principal office;

(iii) the street address of its registered office in this state;

(iv) the name of the agent for service of process at the address listed in Subsection (1)(b)(iii);

(v) if the street address or legal name of any manager in a manager-managed company or any member in a member-managed company or any person with management authority of a foreign company, has changed, the new street address or legal name of the manager, member, or other person; and

(vi) the identity of the persons constituting the managers in a manager-managed company or members in a member-managed company or other person with management authority of a foreign company.

(2) (a) The annual report required by Subsection (1) shall:

(i) be made on forms prescribed and furnished by the division; and

(ii) contain information that is given as of the date of signing the annual report.

(b) The annual report forms shall include a statement notifying the company that failure to file the annual report will result in:

(i) the dissolution of the organization, in the case of a domestic company; or

(ii) the revocation of authority to transact business in this state in the case of a foreign company.

(3) The annual report shall be signed by:

(a) any manager in a manager-managed company or members in a member-managed company or other person with management authority; and

(b) if the registered agent has changed since the filing of the articles of organization or last annual report, by the new registered agent.

(4) (a) If the annual report conforms to the requirements of this chapter, the division shall file the report.

(b) If the annual report does not conform to the requirements of this chapter, the division shall mail the report, first class postage prepaid, to the registered agent of the company for any necessary corrections at the street address for the registered agent most recently furnished to the division by notice, annual report, or other document.

(c) If the division returns an annual report in accordance with Subsection (4)(b), the penalties for failure to file the report within the time prescribed in this section do not apply, as long as the annual report is corrected and returned to the division within 30 days from the date the nonconforming report was mailed to the registered agent of the company.

Section 33. Section **48-2c-204** is enacted to read:

**48-2c-204. Signing of documents filed with division.**

(1) Unless otherwise specified in this chapter, each document or report required by this chapter to be filed with the division shall be signed in the following manner:

(a) articles of organization for a domestic company shall be signed by at least one organizer or one manager or, if the company is member-managed, by at least one member; and

(b) each other document or report shall be signed by at least one manager for a manager-managed company or one member for a member-managed company or a person with management authority for a foreign company, subject in the case of a domestic company, to any restriction or requirement in the articles of organization or operating agreement.

(2) Any person may sign any document or report by an attorney-in-fact, but a power of attorney to sign a certificate of amendment relating to the admission of a member shall specify the member to be admitted. Powers of attorney need not be filed with the division but shall be retained with the records of the company required under Section 48-2c-112.

(3) Each document or report required to be filed with the division shall state beneath or opposite the signature of the person signing the document or report, in printed or hand-printed letters,



the signer's name and the capacity in which the document or report was signed.

(4) The signature of each person signing any document or report required to be filed with the division constitutes an oath or affirmation by the person signing, under penalties of perjury, that the facts stated therein are true and that any power of attorney used in connection with such signing is proper in form and substance.

Section 34. Section **48-2c-205** is enacted to read:

**48-2c-205. Penalty for signing false documents.**

A person who signs a document or report knowing it to be false in any material respect, with the intent that the document or report be delivered to the division for filing, is guilty of a class A misdemeanor.

Section 35. Section **48-2c-206** is enacted to read:

**48-2c-206. Powers of the division.**

The division and the division director shall have the powers and authority reasonably necessary to interpret and administer the provisions of this chapter applicable to them and to perform the duties required of the division and the division director under this chapter.

Section 36. Section **48-2c-207** is enacted to read:

**48-2c-207. Filing requirements.**

(1) A document must satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to be filed with the division.

(2) This chapter must require or permit filing the document with the division.

(3) The document must contain the information required by this chapter. It may contain other information as well.

(4) The document must be typewritten or machine printed.

(5) The document must be in the English language. A company name need not be in English if written in English letters, Arabic or Roman numerals, and the certificate of existence required of foreign companies need not be in English if accompanied by a reasonably authenticated English translation.

(6) The document must be signed, or must be a true copy made by a photographic,

xerographic, electronic, or other process that provides similar copy accuracy of a document that has been signed:

(a) as required by Section 48-2c-204;

(b) if the company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary; or

(c) if the document is that of a registered agent, by the registered agent, if the person is an individual, or by a person authorized by the registered agent to execute the document, if the registered agent is an entity.

(7) If the division has prescribed a mandatory form or cover sheet for the document, the document must be in or on the prescribed form or must have the required cover sheet.

(8) The document must be delivered to the division for filing and must be accompanied by the correct filing fee and any franchise tax, license fee, or penalty required by this chapter or other law.

(9) If the person filing a document with the division desires to receive back a copy of the filed document, that person must submit with the filed document an exact copy of the filed document along with a return-addressed envelope with adequate first-class postage thereon.

Section 37. Section **48-2c-208** is enacted to read:

**48-2c-208. Effective time and date of filed documents.**

(1) Except as provided in Subsection (2) and in Subsection 48-2c-209(4), a document submitted to the division for filing under this chapter shall be considered effective at the time of filing on the date it is filed with the division, as evidenced by the division's stamp or endorsement on the document as described in Subsection 48-2c-210(2).

(2) Unless otherwise provided in this chapter, a document, other than an application to reserve the right to register a name, may specify conspicuously on its face a delayed effective time or date, or both an effective time and date, and if it does so, the document becomes effective as specified.

(a) If a delayed effective time but no date is specified, the document is effective on the date it is filed with the division, as that date is specified in the division's time and date stamp or

endorsement on the document, at the later of the time specified on the document as its effective time or the time specified in the time and date stamp or endorsement.

(b) If a delayed effective date but no time is specified, the document is effective at the close of business on that date.

(c) A delayed effective date for a document may not be later than the 90th day after the date it is filed with the division. If a document specifies a delayed effective date that is later than the 90th day after the document is filed with the division, the document is effective on the 90th day after it is filed with the division.

(3) If a document specified a delayed effective date pursuant to Subsection (2), the document may be prevented from becoming effective by delivering to the division, prior to the specified effective date of the document, a certificate of withdrawal, signed in the same manner as the document being withdrawn, stating that the document has been revoked by appropriate action and is void.

Section 38. Section **48-2c-209** is enacted to read:

**48-2c-209. Correcting filed documents.**

(1) A domestic or foreign company may correct a document filed with the division if the document:

(a) contains an incorrect statement, misspelling, or other technical error or defect; or

(b) was defectively signed, attested, sealed, verified, or acknowledged.

(2) A document is corrected by delivering to the division for filing articles of correction that:

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

(b) specify the incorrect statement and the reason it is incorrect or the manner in which the signing, attestation, sealing, verification, or acknowledgment was defective; and

(c) correct the incorrect statement, misspelling, or other technical error or defect, or defective signing, attestation, sealing, verification, or acknowledgment.

(3) Articles of correction may be signed by any person designated in Section 48-2c-204, or by any person who signed the document that is corrected.

(4) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed with the division.

Section 39. Section **48-2c-210** is enacted to read:

**48-2c-210. Filing duty of division.**

(1) If a document delivered to the division for filing satisfies the requirements of Section 48-2c-207, the division shall file it.

(2) The division files a document by stamping or otherwise endorsing "Filed" together with the name of the division and the date and time of acceptance for filing on the document. The division shall evidence on the document any filing fees paid.

(3) If the division refuses to accept a document for filing, it shall return the document to the person requesting the filing within ten days after the document was delivered to the division, together with a written notice providing a brief explanation of the reason for the refusal.

(4) The division's duty to file documents under this section is ministerial. Except as otherwise specifically provided in this chapter, the division's filing or refusal to file a document does not:

- (a) affect the validity or invalidity of the document in whole or part;
- (b) relate to the correctness or incorrectness of information contained in the document; or
- (c) create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

Section 40. Section **48-2c-211** is enacted to read:

**48-2c-211. Appeal from division's refusal to file document.**

(1) If the division refuses to accept a document delivered to it for filing, the domestic or foreign company for which the filing was requested, or its representative, within 30 days after the effective date of the notice of refusal given by the division pursuant to Subsection 48-2c-210(3), may appeal the refusal to the district court of the county where the company's designated office is or will be located, or if there is none in this state, the county where its registered office is or will be located. The appeal is commenced by petitioning the court to compel the filing of the document and by

attaching to the petition a copy of the document and the division's notice of refusal.

(2) The court may summarily order the division to file the document or take other action the court considers appropriate.

(3) The court's final decision may be appealed as in any other civil proceedings.

Section 41. Section **48-2c-212** is enacted to read:

**48-2c-212. Evidentiary effect of copy of filed document.**

A certificate attached to a copy of a document filed by the division, or an endorsement, seal, or stamp placed on the copy, which certificate, endorsement, seal, or stamp bears the signature of the director of the division, or a facsimile of the director's signature, and the seal of the division, is conclusive evidence that the original document has been filed with the division.

Section 42. Section **48-2c-213** is enacted to read:

**48-2c-213. Certificates issued by the division.**

(1) Anyone may apply to the division for a certificate of existence for a domestic company, a certificate of authorization for a foreign company, or a certificate that sets forth any facts of record in the office of the division.

(2) A certificate of existence or authorization shall state:

(a) the domestic company's name or the foreign company's name as registered in this state;

(b) (i) that the domestic company is duly formed under the law of this state and the date of its formation; or

(ii) that the foreign company is authorized to transact business in this state;

(c) that all fees, taxes, and penalties owed to this state have been paid, if:

(i) payment is reflected in the records of the division; and

(ii) nonpayment affects the existence or authorization of the domestic or foreign company;

(d) that its most recent annual report required by Section 48-2c-203 has been filed with the division;

(e) that articles of dissolution have not been filed with the division; and

(f) other facts of record in the office of the division that may be requested by the applicant.

(3) Subject to any qualification stated in the certificate, a certificate issued by the division

may be relied upon as conclusive evidence of the facts set forth in the certificate.

Section 43. Section **48-2c-214** is enacted to read:

**48-2c-214. Fees.**

Unless otherwise provided by statute, the division shall collect fees for its services in amounts determined by the department in accordance with the provisions of Section 63-38-3.2.

Section 44. Section **48-2c-301** is enacted to read:

**Part 3. Service of Process**

**48-2c-301. Registered office.**

(1) Each domestic company and each foreign company authorized to do business in this state shall continuously maintain a registered office in this state.

(2) Failure to maintain a registered office in this state shall be grounds for administrative dissolution of a domestic company under Section 48-2c-1206 and for revocation of authority to transact business in this state in the case of a foreign company.

Section 45. Section **48-2c-302** is enacted to read:

**48-2c-302. Registered agent.**

(1) (a) Each domestic company and each foreign company authorized to do business in this state shall continuously maintain an agent in this state for service of process on that company.

(b) The street address of the registered agent shall be the same as the registered office of the company in this state.

(2) The registered agent must be:

(a) an individual who resides in this state and whose business office is identical with the registered office;

(b) a domestic company or domestic corporation or domestic nonprofit corporation whose business office is identical with the registered office; or

(c) a foreign company or foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.

(3) A company or foreign company may not serve as its own registered agent.

(4) Failure to maintain a registered agent in this state shall be grounds for administrative

dissolution of a domestic company under Section 48-2c-1206 and for revocation of authority to transact business in this state in the case of a foreign company.

(5) The registered agent of a domestic company or foreign company may resign by delivery to the division for filing an original and one copy of a signed written notice of resignation together with a declaration that notice of the resignation has been given to the company or foreign company. The division shall then mail a copy of the notice of resignation:

(a) in the case of a domestic company, to the managers of the company, or if the articles of organization provide that the company is member-managed, to the members of the company; or

(b) in the case of a foreign company, to the principal office of the foreign company.

(6) The addresses for the mailing required by Subsection (5) shall be the street addresses set forth in the notice, annual report, or document most recently filed with the division. The appointment of the registered agent ends on the 31st day after the division receives notice of the resignation.

Section 46. Section **48-2c-303** is enacted to read:

**48-2c-303. Change of registered office or registered agent.**

(1) A domestic company or a foreign company may change its registered office or its registered agent in this state by delivery to the division for filing a statement of change that sets forth:

(a) its name;

(b) the street address of its current registered office;

(c) the street address of the new registered office if the registered office is to be changed;

(d) the name of its current registered agent;

(e) the name of the new registered agent if the registered agent is to be changed and the new registered agent's written consent to the appointment, either on the statement of change or in an accompanying document; and

(f) a statement that the street addresses of its registered office and the business office of its registered agent will be identical after the change or changes reflected in the statement are made.

(2) If the street address of a registered agent's business office is changed, the registered agent may change the street address of the registered office of any domestic company or foreign company

for which that person is the registered agent by giving written notice to the domestic company or foreign company of the change and by signing, either manually or in facsimile, and delivering to the division for filing a statement of change that complies with the requirements of Subsection (1), and that recites that the domestic company or foreign company has been given notice of the change.

(3) Within 30 days after any change described in Subsection (1), the domestic company or the foreign company, or for a change described in Subsection (2), the registered agent shall cause the statement of change to be delivered to the division for filing.

Section 47. Section **48-2c-304** is enacted to read:

**48-2c-304. Change of designated office.**

(1) A company may change its designated office by delivery to the division for filing a statement of change that sets forth:

(a) its name;

(b) the street address of its current designated office; and

(c) the street address of its new designated office.

(2) Within 30 days after a change of its designated office, the company shall cause the statement of change to be delivered to the division for filing.

Section 48. Section **48-2c-305** is enacted to read:

**48-2c-305. Director of division as agent for service of process -- Records of process served.**

The director of the division shall keep a record of each process served upon the director under this chapter, including the date process was served on the director and the action of the director with reference thereto.

Section 49. Section **48-2c-306** is enacted to read:

**48-2c-306. Service on domestic company.**

(1) Service of process on a domestic company may be made:

(a) by delivery to:

(i) the registered agent of the company;

(ii) a manager of the company if the company is manager-managed; or



(iii) any member of the company if the company is member-managed; or

(b) by a writing, which shall be mailed by registered or certified mail to the registered office of the company in this state or, if the company has no registered office, then to the designated office listed in the notice, annual report, or document most recently filed with the division.

(2) Service of process is perfected under Subsection (1)(b) on the earliest of:

(a) the date the company receives the process;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) five days after mailing.

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

Section 50. Section **48-2c-307** is enacted to read:

**48-2c-307. Service on foreign company.**

(1) Except as provided in Subsection (3), the division may serve a foreign company that is authorized to transact business in this state by first-class, postage prepaid, United States mail.

(2) The registered agent of a foreign company authorized to transact business in this state is the foreign company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign company.

(3) (a) If a foreign company authorized to transact business in this state has no registered agent or if the registered agent cannot with reasonable diligence be served, the foreign company may be served by mail that is:

(i) registered or certified;

(ii) return receipt requested; and

(iii) addressed to the foreign company at its principal office as listed in the notice, annual report, or document most recently filed with the division.

(b) Service of process is perfected under this Subsection (3) at the earliest of:

(i) the date the foreign company receives the process, notice, or demand;

(ii) the date shown on the return receipt, if signed on behalf of the foreign company; or

(iii) five days after mailing.

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

Section 51. Section **48-2c-308** is enacted to read:

**48-2c-308. Service on dissolved company.**

(1) A dissolved company shall either:

(a) maintain a registered agent and registered office in this state to accept service of process on its behalf; or

(b) be considered to have authorized service of process on it by registered or certified mail, return receipt requested:

(i) to the address of its designated office, if any, as set forth in the notice, annual report, or document most recently filed with the division;

(ii) to the address for service of process that is listed in its articles of dissolution or as listed in the notice, annual report, or document most recently filed with the division;

(iii) to the address for any manager of a company that is manager-managed, with such address being the address listed in the notice, annual report, or document most recently filed with the division; or

(iv) to the address for any member of a company that is member-managed, with such address being the address listed in the notice, annual report, or document most recently filed with the division.

(2) Service of process effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the dissolved company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the dissolved company; or

(c) five days after mailing.

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

Section 52. Section **48-2c-309** is enacted to read:

**48-2c-309. Service on withdrawn foreign company.**

(1) A foreign company that has withdrawn from this state pursuant to Section 48-2c-1611 shall either:

(a) maintain a registered agent in this state to accept service of process on its behalf in any proceeding based on a cause of action arising during the time it was transacting business in this state, in which case the continued authority of the registered agent shall be specified in the application for withdrawal and any change shall be governed by the procedure set forth in Section 48-2c-303 which applies to foreign companies authorized to transact business in this state; or

(b) be considered to have authorized service of process on it, in connection with any cause of action arising during the time it was transacting business in this state, by registered or certified mail, return receipt requested, to:

(i) the address of its principal office, if any, set forth in its application for withdrawal or as listed in the notice, annual report, or document most recently filed with the division; or

(ii) the address for service of process that is stated in its application for withdrawal or as listed in the notice, annual report, or document most recently filed with the division.

(2) Service effected pursuant to Subsection (1)(b) is perfected at the earliest of:

(a) the date the withdrawn foreign company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the withdrawn foreign company; or

(c) five days after mailing.

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

Section 53. Section **48-2c-310** is enacted to read:

**48-2c-310. Service on foreign companies not authorized to do business.**

(1) Any foreign company which does business in this state without authority shall be considered to have thereby appointed and constituted the director of the division its agent for service of process in any proceeding against it in any state or federal court in this state arising or growing

out of any business transacted by it within this state. Transacting business in this state by such foreign company shall be a signification of the agreement of that foreign company that any such process when so served shall be of the same legal force and validity as if served upon an authorized person or agent personally within this state.

(2) Whenever the words "transacting business", "the doing of business", or "business done in this state", by any such foreign company are used in this section, they shall mean the course or practice of carrying on any business activities in this state, including, without limiting the generality of the foregoing, the solicitation of business or orders in this state.

(3) In the event of service upon the director of the division in accordance with Subsection (1), the director of the division shall forthwith notify the foreign company thereof by letter, certified mail, return receipt requested, directed to the foreign company at the address furnished to the director of the division by the plaintiff in such action, suit, or proceeding. The letter must enclose a copy of the process and any other papers served upon the director of the division. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the director of the division that service is being made pursuant to this Subsection (3), and to pay to the director of the division the sum of \$100 for the use of this state, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The director of the division shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number, and nature of the proceeding in which process has been served upon the director, the return date thereof, and the day and hour when the service was made. The director of the division shall not be required to retain such information for a period longer than five years from receipt of the service of process by the director of the division.

Section 54. Section **48-2c-311** is enacted to read:

**48-2c-311. Venue for action against foreign company.**

Any person who has a cause of action against any foreign company, whether or not the company is authorized to transact business in this state, may file suit against the company in the district court of any county in which there is proper venue if the cause of action arose in Utah out of the company's transacting business in Utah or while the company was transacting business in

Utah.

Section 55. Section **48-2c-401** is enacted to read:

**Part 4. Formation**

**48-2c-401. Organizer.**

(1) One or more individuals 18 years of age or older may form a company under this chapter by signing and filing with the division articles of organization that meet the requirements of Section 48-2c-403. The individuals acting as organizer may, but need not, be members or managers of the company at the time of formation or after formation has occurred.

(2) The signing of the articles of organization constitutes an affirmation by the organizers, under penalty of perjury, that the company has one or more members and, if the company is manager-managed, the person or persons named as managers in the articles of organization have consented to serve as managers of the company. At or prior to filing articles of organization for a company, the organizer or organizers shall prepare a writing to be held with the records of the company which sets forth:

- (a) the name and street address of each initial member of the company; and
- (b) if the articles of organization provide that the company is manager-managed, the name and street address of each initial manager.

Section 56. Section **48-2c-402** is enacted to read:

**48-2c-402. Formation of company.**

(1) A company may be formed by delivering to the division for filing articles of organization for the company meeting the requirements of Sections 48-2c-207 and 48-2c-403.

(2) (a) A company shall have at least one member:

- (i) at the time of formation; and
- (ii) at all times after its formation.

(b) Any person may be a member of a company.

(c) Failure to maintain at least one member shall be an event of dissolution subject to Section 48-2c-1201.

(3) The company shall be considered formed as of the time, day, month, and year indicated

by the division's stamp or seal on the articles of organization.

(4) Except as against this state in a proceeding for administrative dissolution or in a proceeding for judicial dissolution of the company, the filed articles shall be conclusive evidence that all conditions precedent required to be performed by the members and managers have been complied with and that the company has been legally formed under this chapter.

Section 57. Section **48-2c-403** is enacted to read:

**48-2c-403. Articles of organization.**

(1) The articles of organization of a company shall set forth:

(a) the name of the company;

(b) the business purpose for which the company is organized;

(c) the name and street address of its initial registered agent as required by Section 48-2c-302;

(d) the signature of its initial registered agent;

(e) a statement that the director of the division is appointed the agent of the company for service of process if the agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence;

(f) the street address of the company's designated office or a statement that the company's registered office shall be its designated office;

(g) the name and street address of each organizer who is not a member or manager;

(h) if the company is to be manager-managed:

(i) a statement that the company is to be managed by a manager or managers; and

(ii) the names and street addresses of the initial managers; and

(i) if the company is to be member-managed:

(i) a statement that the company is to be managed by its members; and

(ii) the names and street addresses of the initial members.

(2) If the company is to be manager-managed, the articles of organization do not need to state the name or address of any member, except as required by Part 15.

(3) It is not necessary to include in the articles of organization any of the powers enumerated

in this chapter.

(4) The articles of organization may contain any other provision not inconsistent with law, including, but not limited to:

(a) a provision limiting or restricting the business in which the company may engage or the powers that the company may exercise, or both;

(b) a statement of whether there are limitations on the authority of managers or members to bind the company and, if so, what the limitations are, set out in detail and not with reference to any other document; or

(c) a statement of the period of duration of the company, which may be as long as 99 years from the date the articles of organization were filed with the division.

(5) If the articles of organization of a company do not specify a period of duration, the period of duration for that company is 99 years from the date the articles of organization were filed with the division.

Section 58. Section **48-2c-404** is enacted to read:

**48-2c-404. Prefiling activities.**

A company may not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until its articles of organization have been filed with the division. Nevertheless, this section may not be interpreted to invalidate any debts, contracts, or liabilities of the company incurred on behalf of the company prior to the filing of its articles of organization with the division.

Section 59. Section **48-2c-405** is enacted to read:

**48-2c-405. When amendment to articles of organization required.**

The articles of organization of a company shall be amended when:

(1) there is a change in the name of the company;

(2) there is a change in the character of the business of the company specified in the articles of organization;

(3) there is a false or erroneous statement in the articles of organization;

(4) there is a change in the period of duration of the company that is:

(a) stated in the articles of organization; or

(b) provided for in Section 48-2c-403;

(5) there is a change in:

(a) the management structure of the company from a manager-managed company to a member-managed company or from a member-managed company to a manager-managed company;

(b) if the company is manager-managed, who is a manager of the company; or

(c) if the company is member-managed, who is a member of the company; or

(6) the members desire to make a change in any other statement in the articles of organization in order for the articles to accurately represent the agreement among the members.

Section 60. Section **48-2c-406** is enacted to read:

**48-2c-406. Actions not requiring amendment.**

A company is not required to amend its articles of organization to report a change in:

(1) the street or mailing address of a manager in a manager-managed company or member in a member-managed company;

(2) the legal name of a manager in a manager-managed company or a member in a member-managed company;

(3) the addresses of its registered office or designated office; or

(4) the name of its registered agent.

Section 61. Section **48-2c-407** is enacted to read:

**48-2c-407. Authority to amend articles of organization.**

(1) (a) A company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization.

(b) Whether a provision is required or permitted in the articles of organization is determined as of the effective date of the amendment.

(2) Except as may otherwise be expressly provided in the articles of organization or operating agreement, a member has no vested property right resulting from any provision in the articles of organization, including any provision relating to management, control, capital structure,



purpose, duration of the company, or entitlement to distributions.

Section 62. Section **48-2c-408** is enacted to read:

**48-2c-408. Certificate of amendment to articles of organization.**

(1) A company amending its articles of organization shall deliver to the division for filing a certificate of amendment which includes:

(a) the name of the company;

(b) the text of each amendment adopted;

(c) if the amendment provides for restructuring the ownership of the company or an exchange or reclassification of the members' interests in the company, provisions for implementing the amendment if not contained in the text of the amendment itself;

(d) the date each amendment was adopted by the members;

(e) a statement that each amendment was adopted by the members as required by Section 48-2c-802 or as otherwise required by the articles of organization or operating agreement; and

(f) the signature required by Section 48-2c-204.

(2) Unless otherwise provided in the articles of organization or operating agreement, each amendment to the articles of organization of a company must be approved by all of the members and, if there are classes of members, by all of the members of each class.

(3) Each company shall deliver a certificate of amendment to the division for filing within 60 days after adoption of the amendment.

(4) Upon filing with the division a certificate of amendment, the articles of organization shall be amended as set forth in the certificate of amendment.

Section 63. Section **48-2c-409** is enacted to read:

**48-2c-409. Restated articles of organization.**

(1) A company may integrate into a single document all of the provisions of its articles of organization and amendments thereto, and it may at the same time also further amend its articles of organization, by adopting restated or amended and restated articles of organization.

(2) If the restated articles of organization merely restate and integrate but do not further amend the initial articles of organization, as previously amended or supplemented by any certificate

or document that was signed and filed pursuant to this chapter, they shall be specifically designated in their heading as "Restated Articles of Organization", together with other words that the company considers appropriate, and shall be filed with the division.

(3) If the restated articles restate and integrate and also further amend in any respect the articles of organization, as previously amended or supplemented, they shall be specifically designated in their heading as "Amended and Restated Articles of Organization", together with other words that the company considers appropriate, and shall be filed with the division.

(4) (a) Restated articles of organization shall state, either in their heading or in an introductory paragraph, the company's present name, and, if it has been changed, the name under which it was originally filed and the date of filing of its original articles of organization with the division. Restated articles shall also state that they were duly signed and filed in accordance with this section.

(b) If the restated articles only restate and integrate and do not further amend the provisions of the articles of organization as previously amended or supplemented and there is no discrepancy between those provisions and the provisions of the restated articles, they shall so state.

(5) Upon the filing of restated articles of organization with the division, the initial articles, as previously amended or supplemented, shall be superseded. Thereafter, the restated articles of organization, including any further amendment or changes made by the restated articles, shall be the articles of organization, but the original effective date of formation shall remain unchanged.

(6) Any amendment or change made in connection with the restatement and integration of the articles of organization shall be subject to any other provision of this chapter not inconsistent with this section, that would apply if a separate certificate of amendment were filed to make the amendment or change.

Section 64. Section **48-2c-410** is enacted to read:

**48-2c-410. Transfer to other jurisdiction.**

(1) Any domestic company may transfer to or domesticate in any jurisdiction besides this state that permits the transfer to or domestication in such jurisdiction of a limited liability company by delivering to the division for filing articles of transfer meeting the requirements of Subsection (2)

if such transfer is approved by the members as provided in the company's operating agreement or, if the operating agreement does not so provide, by all of the members.

(2) The articles of transfer shall state:

(a) the name of the company;

(b) the date of filing of the company's original articles of organization with the division;

(c) the jurisdiction to which the company shall be transferred or in which it shall be domesticated;

(d) the future effective date, which shall be a date certain, of the transfer or domestication if it is not to be effective upon the filing of the articles of transfer;

(e) that the transfer or domestication has been approved by the members;

(f) that the existence of the company as a domestic company of this state shall cease when the articles of transfer become effective;

(g) the agreement of the company that it may be served with process in this state in any proceeding for enforcement of any obligation of the company arising while it was a company under the laws of this state;

(h) that it irrevocably appoints the director of the division as its agent to accept service for process in any proceeding; and

(i) if the company does not apply for authority to transact business in this state as a foreign company pursuant to Section 48-2c-1604, then the address to which a copy of service of process referred to in Subsection (2)(h) shall be mailed to it by the division in the event of service upon the director of the division and the agreement of the company to give the division written notice of any change in the address.

(3) When the articles of transfer are filed with the division, or upon the future, delayed effective date of the articles of transfer, and payment to the division of all fees prescribed under this chapter, the company shall cease to exist as a domestic company of this state. Thereafter, any certificate of the division as to the transfer shall be prima facie evidence of the transfer or domestication by the company out of this state.

(4) Transfer or domestication of a company out of this state in accordance with this section

and the resulting cessation of its existence as a domestic company of this state shall not be considered to affect any obligations or liabilities of the company incurred prior to the transfer or domestication or the personal liability of any person incurred prior to the transfer or domestication, including, but not limited to, any taxes owing to this state, nor shall it be considered to affect the choice of law applicable to the company with respect to matters arising prior to such transfer or domestication.

Section 65. Section **48-2c-411** is enacted to read:

**48-2c-411. Domestication of foreign company.**

(1) Where the laws of another state, country, or jurisdiction allow a foreign company subject to those laws to transfer or domesticate to this state, the foreign company may become a domestic company by delivering to the division for filing articles of domestication meeting the requirements of Subsection (2) if its members approve the domestication.

(2) (a) The articles of domestication shall meet the requirements applicable to articles of organization set forth in Section 48-2c-403, except that:

(i) the articles of domestication need not name, or be signed by, the organizers of the foreign company;

(ii) any reference to the company's registered office, registered agent, or managers shall be to the registered office and agent in this state, and the managers then in office at the time of filing the articles of domestication; and

(iii) any reference to the company's members shall be to the members at the time of filing the articles of domestication.

(b) The articles of domestication shall set forth:

(i) the date on which and jurisdiction where the foreign company was first formed, organized, or otherwise came into being;

(ii) the name of the foreign company immediately prior to the filing of the articles of domestication;

(iii) any jurisdiction that constituted the seat, location of formation, principal place of business, or central administration of the foreign company immediately prior to the filing of the

articles of domestication; and

(iv) a statement that the articles of domestication were approved by its members.

(3) Upon the filing of articles of domestication with the division:

(a) the foreign company shall be domesticated in this state, shall thereafter be subject to all of the provisions of this chapter as a domestic company, and shall continue as if it had been organized under this chapter; and

(b) notwithstanding any other provisions of this chapter, the existence of the domesticated company shall be considered to have commenced on the date the foreign company commenced its existence in the jurisdiction in which the foreign company was first formed, organized, or otherwise came into being.

(4) The articles of domestication, upon filing with the division, shall become the articles of organization of the company, and shall be subject to amendments or restatement the same as any other articles of organization under this chapter.

(5) The domestication of any foreign company in this state shall not be considered to affect any obligation or liability of the foreign company incurred prior to its domestication.

Section 66. Section **48-2c-501** is enacted to read:

#### **Part 5. Operating Agreements**

##### **48-2c-501. Initial agreement.**

The initial operating agreement of a company shall be adopted by unanimous consent of the members.

Section 67. Section **48-2c-502** is enacted to read:

##### **48-2c-502. General rules for operating agreements.**

(1) Except as provided in Subsection 48-2c-120(1), or in the articles of organization, an operating agreement may modify the rules of any provision of this chapter that relates to:

(a) the management of the company;

(b) the business or purpose of the company;

(c) the conduct of the company's affairs; or

(d) the rights, duties, powers, and qualifications of, and relations between and among, the

members, the managers, the members' assignees and transferees, and the company.

(2) Where the provisions of an operating agreement conflict with the provisions of this chapter, the provisions of this chapter shall control. Where the provisions of an operating agreement conflict with the articles of organization, the articles of organization shall control except to the extent the articles of organization conflict with the provisions of this chapter.

Section 68. Section **48-2c-503** is enacted to read:

**48-2c-503. Timing.**

An operating agreement may be entered into before, at the time of, or after the filing of the articles of organization. Regardless of the timing, the agreement may, by its own terms, be effective upon formation of the company or at a later designated time or date, provided, however, that the operating agreement may not become effective prior to formation of the company.

Section 69. Section **48-2c-504** is enacted to read:

**48-2c-504. Operating agreement for a one-member company.**

(1) A written declaration or written guidelines signed by the sole member of a company constitutes an operating agreement for purposes of this chapter if the member designates in the declaration or guidelines that the written declaration or guidelines constitutes the operating agreement.

(2) The operating agreement of a company having only one member shall not be unenforceable by reason of there being only one person who is a party to the agreement.

Section 70. Section **48-2c-505** is enacted to read:

**48-2c-505. Interpretation and enforcement.**

Any action to interpret, apply, or enforce the provisions of a company's articles of organization or operating agreement, or the duties, obligations, or liabilities between and among a company, its members and managers, or the rights or powers of, or restrictions on, the company, the members or managers, may be brought in the district court where the designated office of the company is located or, if the company fails to maintain a designated office, then in the district court of Salt Lake County.

Section 71. Section **48-2c-506** is enacted to read:

**48-2c-506. Amendment.**

An operating agreement may be altered, amended, or repealed as provided in the operating agreement. If an operating agreement does not provide for a procedure for altering, amending, or repealing the operating agreement, the operating agreement may be altered, amended, or repealed only by the written consent of all members.

Section 72. Section **48-2c-601** is enacted to read:

**Part 6. Limited Liability**

**48-2c-601. General rule.**

Except as provided in Section 48-2c-602, no organizer, member, manager, or employee of a company is personally liable under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the company or for the acts or omissions of the company or of any other organizer, member, manager, or employee of the company.

Section 73. Section **48-2c-602** is enacted to read:

**48-2c-602. Exceptions to limited liability.**

The following exceptions to limited liability under Section 48-2c-601 shall apply:

(1) All persons who assume to act as a company without complying with this chapter are jointly and severally liable for all debts and liabilities so incurred, except for debts incurred in the course of prefiling activities authorized under Section 48-2c-404.

(2) A member of a company is liable to the company:

(a) for the difference between the amount of the member's contributions to the company which have been actually made and the amount which is stated in the operating agreement or other contract as having been made; and

(b) for any unpaid contribution to the company which the member, in the operating agreement or other contract, agreed to make in the future at the time and on the conditions stated in the operating agreement or other contract.

(3) A member holds as trustee for the company:

(a) specific property which is stated in the operating agreement or other contract as having been contributed by the member, if the property was not contributed or it has been wrongfully or

erroneously returned; and

(b) money or other property wrongfully or erroneously paid or conveyed to the member.

(4) Persons engaged in pre-filing activities other than those authorized by Section 48-2c-404 shall be jointly and severally liable for any debts or liabilities incurred in the course of those activities.

(5) (a) This chapter does not alter any law applicable to the relationship between a person rendering professional services and a person receiving those services, including liability arising out of those professional services.

(b) All persons rendering professional services shall remain personally liable for any results of that person's acts or omissions.

(6) When a member has rightfully received a distribution, in whole or in part, of the member's capital account, the member remains liable to the company for any sum, not in excess of the amount of distribution, with interest, necessary to discharge the company's obligations to all creditors of the company who extended credit in reliance on any representation as to the financial condition of the company that included the amount so distributed or whose claims arose prior to the distribution.

Section 74. Section **48-2c-603** is enacted to read:

**48-2c-603. Waiver of exceptions to limited liability.**

The liabilities of a member described in Subsection 48-2c-602(2), (3), or (6) may be waived or compromised upon the consent of all other members. Any such waiver or compromise does not affect the rights of a creditor of the company:

(1) who extended credit in reliance on any representation as to the financial condition of the company prior to a distribution described in Subsection 48-2c-602(6) and without notice of such waiver or compromise; or

(2) whose claim arose prior to, and without notice of, such waiver or compromise.

Section 75. Section **48-2c-604** is enacted to read:

**48-2c-604. Waiver of protection of limited liability.**

(1) A member of a company may waive the protection against personal liability of Section



48-2c-601 for any debt, obligation, or liability of a company by signing a waiver in the articles of organization or certificate of amendment to the articles of organization.

(2) The extent or scope of the waiver is determined by the signed waiver in the articles of organization or certificate of amendment.

Section 76. Section **48-2c-605** is enacted to read:

**48-2c-605. No formalities required to maintain limited liability.**

The failure of a company to maintain records, to hold meetings, or to observe any formalities or requirements imposed by this chapter or by the articles of organization or the operating agreement is not a ground for imposing personal liability on any member, manager, or employee for any debt, obligation, or liability of the company.

Section 77. Section **48-2c-701** is enacted to read:

**Part 7. Members**

**48-2c-701. Nature of member interest.**

(1) A member's interest in a company is personal property regardless of the nature of the property owned by the company.

(2) A member has no interest in specific property of a company.

Section 78. Section **48-2c-702** is enacted to read:

**48-2c-702. Initial members.**

(1) In connection with the formation of a company, a person becomes a member of the company upon the earliest to occur of the following:

(a) when the person signs the articles of organization;

(b) when the person signs the operating agreement; or

(c) when:

(i) the person evidences the intent to become a member, either orally, in writing, or by other action such as transferring property or paying money to the company for an interest in the company; and

(ii) the person's admission as a member is reflected in the records of the company or is otherwise acknowledged by the company.

(2) Notwithstanding the provisions of Subsection (1), a person shall not become a member of a company prior to formation of the company.

Section 79. Section **48-2c-703** is enacted to read:

**48-2c-703. Additional members.**

After the formation of a company, a person is admitted as an additional member of the company as provided in the operating agreement or, if the operating agreement does not provide for additional members, then:

(1) in the case of a person who is not an assignee of an interest in the company, including a person acquiring an interest directly from the company, upon the person's signing the operating agreement or other writing by which the person agrees to be bound by the operating agreement, and upon consent of all members;

(2) in the case of a person who is an assignee of an interest in the company, upon the person's signing the operating agreement or other writing by which the person agrees to be bound by the operating agreement, and upon consent of all members and upon the effective date of the person's admission as reflected in the records of the company;

(3) unless otherwise provided in a plan of merger, in the case of a person acquiring an interest in a surviving company pursuant to a merger approved under Section 48-2c-1407, at the time provided in and upon compliance with the operating agreement of the surviving company; or

(4) unless otherwise provided in articles of conversion, in the case of a person acquiring an interest in a company pursuant to a conversion approved under Section 48-2c-1404, at the time provided in and upon compliance with the operating agreement of the company resulting from the conversion.

Section 80. Section **48-2c-704** is enacted to read:

**48-2c-704. Meetings of members.**

Unless otherwise provided in the articles of organization or operating agreement, no meetings need be held for actions taken by members. If meetings of members are allowed or required under the articles of organization or operating agreement, then, unless otherwise provided in the articles of organization or operating agreement:

(1) a meeting of members may be called by any manager in a manager-managed company or by members in any company holding at least 25% interest in profits of the company;

(2) any business may be transacted at any meeting of members which is properly called;

(3) notice of a meeting of members must be given to each member at least five days prior to the meeting and shall give the date, place, and time of the meeting;

(4) notice of a meeting of members may be given orally or in writing or by electronic means;

(5) the person calling the meeting may designate any place within or without the state as the place for the meeting. If no place is designated, the place of the meeting shall be the designated office of the company or, if there is no designated office in this state, at the registered office of the company in this state;

(6) only persons who are members of record at the time notice of a meeting is given shall be entitled to notice or to vote at the meeting, except that a fiduciary, such as a trustee, personal representative, or guardian, shall be entitled to act in such capacity on behalf of a member of record if evidence of such status is presented to the company and except that a surviving joint tenant shall be entitled to receive notice and act where evidence of the other joint tenant's death is presented to the company;

(7) a quorum must be present in person or by proxy at a meeting of members for any business to be transacted and a quorum shall consist of members holding at least 51% interest in profits of the company;

(8) the members present at any meeting at which a quorum is present may continue to transact business notwithstanding the withdrawal of members from the meeting in such numbers that less than a quorum remains;

(9) a member may participate in and be considered present at a meeting by, or the meeting may be conducted through the use of, any means of communication by which all persons participating in the meeting may hear each other, or otherwise communicate with each other during the meeting;

(10) voting at a meeting shall be determined by percentage interests in the profits of the company; and

(11) a proxy, to be effective, must be in writing and signed by the member and must be filed with the secretary of the meeting before or at the time of the meeting and shall be valid for no more than 11 months after it was signed unless otherwise provided in the proxy.

Section 81. Section **48-2c-705** is enacted to read:

**48-2c-705. Voting.**

(1) Subject to the provisions of Section 48-2c-803, the articles of organization or operating agreement may grant to all or a specified class or group of members the right to consent, vote, or agree, on a percentage interest basis or a per capita basis or other basis, upon any matter.

(2) Any member may vote in person or by proxy.

Section 82. Section **48-2c-706** is enacted to read:

**48-2c-706. Action by members without a meeting.**

(1) Unless otherwise provided in the articles of organization or operating agreement, and subject to the limitations of Subsection (5), any action which may be taken by the members may be taken without any meeting and without prior notice, if one or more consents in writing, setting forth the action so taken, shall be signed by the members holding interests in the company not less than the minimum percentage that would be necessary to authorize or take that action.

(2) (a) Unless the written consents of all members entitled to vote have been obtained, notice of any member approval without a meeting shall be given at least five days before the consummation of the transaction, action, or event authorized by the member action to those entitled to vote who have not consented in writing.

(b) The notice must contain or be accompanied by a description of the transaction, action, or event.

(3) Provided the notice described in Subsection (2) is given, action taken by the members pursuant to this section is effective as of the date the last written consent necessary to authorize or take the action is received by the company, unless all of the written consents specify a later date as the effective date of the action, in which case the later date shall be the effective date of the action. If the company has received written consents as contemplated by Subsection (1), signed by all members entitled to vote with respect to the action, the effective date of the action may be any date

that is specified in all of the written consents.

(4) Unless otherwise provided in the operating agreement, any consent or writing may be received by the company by any electronically transmitted or other form of communication that provides the company with a complete copy thereof, including the signature thereto.

(5) Any member or an authorized representative of that member may revoke a consent by a signed writing describing the action and stating that the member's prior consent is revoked, if the writing is received by the company prior to the effective date and time of the action.

(6) A member action taken pursuant to this section is not effective unless all written consents on which the company relies for taking an action pursuant to Subsection (1) are received by the company within a 60-day period and not revoked pursuant to Subsection (5).

(7) Written consent of the members entitled to vote constitutes approval of the members and may be described as such in any document.

Section 83. Section **48-2c-707** is enacted to read:

**48-2c-707. Classes of members.**

The articles of organization or operating agreement of a company may provide for classes or groups of members having such relative rights, powers, and duties as prescribed therein, and may make provision for the future creation of any such classes or groups. The articles of organization or operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members and may provide that any particular class or group shall have no voting rights.

Section 84. Section **48-2c-708** is enacted to read:

**48-2c-708. Cessation of membership.**

(1) A person who is a member of a company ceases to be a member of the company and the person or the person's successor in interest attains the status of an assignee as set forth in Section 48-2c-1102, upon the occurrence of one or more of the following events:

(a) the death of the member, except that the member's personal representative, executor, or administrator may exercise all of the member's rights for the purpose of settling the member's estate, including any power of an assignee and any power the member had under the articles of organization

or operating agreement;

(b) the incapacity of the member, as defined in Subsection 75-1-201(22), except that the member's guardian or conservator or other legal representative may exercise all of the member's rights for the purpose of administering the member's property, including any power of an assignee and any power the member had under the articles of organization or operating agreement;

(c) the member withdraws by voluntary act from the company as provided in Section 48-2c-709;

(d) upon the assignment of the member's entire interest in the company;

(e) the member is expelled as a member pursuant to Section 48-2c-710; or

(f) unless otherwise provided in the operating agreement, or with the written consent of all other members:

(i) at the time the member:

(A) makes a general assignment for the benefit of creditors;

(B) files a voluntary petition in bankruptcy;

(C) becomes the subject of an order for relief in bankruptcy proceedings;

(D) 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;

(E) 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 Subsections

(1)(f)(i)(A) through (D); or

(F) 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;

(ii) 120 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 90 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 90 days after the expiration of any stay, the appointment is not vacated;

(iii) in the case of a member that is another limited liability company, the filing of articles of dissolution or the equivalent for that company or the judicial dissolution of that company or the administrative dissolution of that company and the lapse of any period allowed for reinstatement;

(iv) in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the administrative dissolution of the corporation and the lapse of any period allowed for reinstatement; or

(v) in the case of a member that is a limited partnership, the dissolution and commencement of winding up of the limited partnership.

(2) The articles of organization or operating agreement may provide for other events the occurrence of which result in a person's ceasing to be a member of the company.

Section 85. Section **48-2c-709** is enacted to read:

**48-2c-709. Withdrawal of a member.**

A member may withdraw from a company at the time or upon the happening of events specified in and in accordance with the articles of organization or operating agreement. If the articles of organization or operating agreement do not specify the time or the events upon the happening of which a member may withdraw, a member may not withdraw prior to the dissolution and completion of winding up of the company, without the written consent of all other members at the time.

Section 86. Section **48-2c-710** is enacted to read:

**48-2c-710. Expulsion of a member.**

A member of a company may be expelled:

(1) as provided in the company's operating agreement;

(2) by unanimous vote of the other members if it is unlawful to carry on the company's business with the member; or

(3) on application by the company or another member, by judicial determination that the member:

(a) has engaged in wrongful conduct that adversely and materially affected the company's business;

(b) has willfully or persistently committed a material breach of the articles of organization or operating agreement or of a duty owed to the company or to the other members under Section 48-2c-807; or

(c) has engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member.

Section 87. Section **48-2c-801** is enacted to read:

### **Part 8. Management**

#### **48-2c-801. Management structure.**

A company may be managed either by one or more managers, in which case it shall be considered to be a "manager-managed company," or it may be managed by all of its members, in which case it shall be considered to be a "member-managed company."

(1) The choice of management structure shall be designated in the articles of organization for the company. If the articles of organization fail to designate the management structure or do not clearly designate the management structure, management of the company shall be vested in its members.

(2) Unless the operating agreement provides otherwise, a manager-managed company shall become a member-managed company upon the death, withdrawal, or removal of the sole remaining manager, or if one of the events described in Subsection 48-2c-708(4), (5), or (6) occurs with regard to the sole remaining manager, unless another manager is appointed by the members within 90 days after the occurrence of any such event.

(3) The dissolution of a company does not alter the authority of the managers or members, as the case may be, to wind up the business and affairs of the company.

Section 88. Section **48-2c-802** is enacted to read:

#### **48-2c-802. Agency authority of members and managers.**

(1) Except as provided in Subsection (3), in a member-managed company:

(a) each member is an agent of the company for the purpose of its business;

(b) an act of a member, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind



carried on by the company, binds the company, unless the member had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the member was dealing knew or otherwise had notice that the member lacked authority; and

(c) an act of a member which is not apparently for carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company only if the act was authorized by the other members in accordance with Section 48-2c-803.

(2) Except as provided in Subsection (3), in a manager-managed company:

(a) each manager is an agent of the company for the purpose of its business;

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

(c) an act of a manager, including the signing of a document in the company name, for apparently carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company unless the manager had no authority to act for the company in the particular matter and the lack of authority was expressly described in the articles of organization or the person with whom the manager was dealing knew or otherwise had notice that the manager lacked authority; and

(d) an act of a manager which is not apparently for carrying on in the ordinary course of the company business, or business of the kind carried on by the company, binds the company only if the act was authorized by the members in accordance with Subsection 48-2c-803(2) or (3).

(3) Notwithstanding the provisions of Subsections (1) and (2), unless the articles of organization expressly limit their authority, any member in a member-managed company, or any manager in a manager-managed company, may sign, acknowledge, and deliver any document transferring or affecting the company's interest in real or personal property, and if the authority is not so limited, the document shall be conclusive in favor of a person who gives value without knowledge of the lack of authority of the person who signs and delivers the document.

Section 89. Section **48-2c-803** is enacted to read:

**48-2c-803. Management by members.**

In a member-managed company, each member shall be subject to the duties described in Section 48-2c-807 and, unless otherwise provided in this chapter or in the articles of organization or an operating agreement:

(1) the affirmative vote, approval, or consent of members holding a majority of profits interests in the company shall be required to decide any matter connected with the business of the company;

(2) the affirmative vote, approval, or consent of all members shall be required to:

(a) amend the articles of organization, except to make ministerial amendments or to change an address;

(b) amend the operating agreement, except to make ministerial amendments or to change an address; or

(c) authorize a member or any other person to do any act on behalf of the company that contravenes the articles of organization or operating agreement and thereafter to terminate the authority so granted; and

(3) the affirmative vote, approval, or consent of members holding 2/3 of the profits interests in the company shall be required to bind the company to any of the following actions:

(a) authorizing a member or any other person to do any act on behalf of the company that is not in the ordinary course of the company's business, or business of the kind carried on by the company, and thereafter to terminate the authority so granted;

(b) making a current distribution to members;

(c) resolving any dispute connected with carrying on in the usual way the business of the company;

(d) making a substantial change in the business purpose of the company;

(e) a conversion of the company to another entity;

(f) a merger in which the company is a party to the merger;

(g) any sale, lease, exchange, or other disposition of all or substantially all of the company's property other than in the usual and regular course of the company's business;

(h) any mortgage, pledge, dedication to the repayment of indebtedness, whether with or

without recourse, or other encumbering of all or substantially all of the company's property whether or not in the usual and regular course of the company's business; or

(i) any waiver of a liability of a member under Section 48-2c-603.

Section 90. Section **48-2c-804** is enacted to read:

**48-2c-804. Management by managers.**

In a manager-managed company, each manager and each member shall be subject to the provisions of Section 48-2c-807 and:

(1) the initial managers shall be designated in the articles of organization; thereafter, the managers shall be those persons identified in documents filed with the division including amendments to the articles of organization as well as the annual reports required under Section 48-2c-203 and the statements required or permitted under Section 48-2c-122;

(2) when there is a change in the management structure from a member-managed company to a manager-managed company, the managers shall be those persons identified in the certificate of amendment to the articles of organization that makes the change;

(3) each manager who is a natural person must have attained the age of majority under the laws of this state;

(4) no manager shall have authority to do any act in contravention of the articles of organization or the operating agreement, except as provided in Subsection (6)(g);

(5) a manager who is also a member shall have all of the rights of a member;

(6) unless otherwise provided in the articles of organization or operating agreement of the company:

(a) except for the initial managers, each manager shall be elected at any time by the members holding at least a majority of the profits interests in the company, and any vacancy occurring in the position of manager shall be filled in the same manner;

(b) the number of managers shall be fixed by the members in the operating agreement or if the operating agreement fails to designate the number of managers, the number of managers shall be the number designated by members holding at least a majority of the profits interests in the company;

(c) each manager shall serve until the earliest to occur of the manager's death, withdrawal, or removal or an event described in Subsection 48-2c-708(6) or, if membership in the company is a condition to being a manager, an event described in Subsection 48-2c-708(4) or (5);

(d) a manager need not be a member of the company or a resident of this state;

(e) any manager may be removed with or without cause by the members, at any time, by the decision of members owning a majority of the profits interests in the company;

(f) there shall be only one class of managers; and

(g) approval by the requisite number of members, as well as all of the managers, shall be required as to all matters described in Subsections 48-2c-803(2) and (3).

Section 91. Section **48-2c-805** is enacted to read:

**48-2c-805. Delegation of authority and power to manage.**

Unless otherwise provided in the articles of organization or operating agreement, a member or manager of a company may not delegate to one or more other persons the member's or manager's, as the case may be, authority and power to manage the business and affairs of the company, except that an entity may designate an authorized representative to act for it. However, if a delegation is permitted in the articles of organization or operating agreement, then the delegation must comply with the following:

(1) any such delegation must be in writing including, but not limited to, a management agreement or another agreement;

(2) the scope and duration of the authority delegated shall be specified in the writing;

(3) the power to revoke the delegation at any time for any or no reason shall be retained by the member or manager;

(4) any such delegation shall not include any power of substitution without the written consent of the member or manager; and

(5) any such delegation by a member or manager shall not cause the member or manager to cease to be a member or manager, as the case may be.

Section 92. Section **48-2c-806** is enacted to read:

**48-2c-806. Reliance by member or manager on reports and information.**

Unless a member or manager has knowledge concerning the matter in question that makes reliance unwarranted, the member or manager shall be fully protected in relying in good faith upon:

(1) the records of the company; and

(2) the information, opinions, reports, or statements presented to the company by any of its other managers, members, employees or committees, or by any other person, as to matters the member or manager reasonably believes are within the other person's professional or expert competence, including, but not limited to, information, opinions, reports, or statements as to the value and amount of assets, liabilities, profits or losses of the company, or any other facts pertinent to the existence and amount of assets from which distributions to members might properly be paid.

Section 93. Section **48-2c-807** is enacted to read:

**48-2c-807. Duties of managers and members.**

(1) Unless otherwise provided in the articles of organization or an operating agreement, a member or manager shall not be liable or accountable in damages or otherwise to the company or the members for any action taken or failure to act on behalf of the company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Unless otherwise provided in an operating agreement, each member and manager must account to the company and hold as trustee for it any profit or benefit derived by that person without the consent of members holding a majority interest in profits in the company, from:

(a) any transaction connected with the conduct of the company's business or winding up of the company; or

(b) any use by the member or manager of company property, including, but not limited to, confidential or proprietary information of the company or other matters entrusted to the person in the capacity of a member or manager.

(3) A member of a manager-managed company who is not also a manager owes no fiduciary duties to the company or to the other members solely by reason of acting in the capacity of a member.

Section 94. Section **48-2c-808** is enacted to read:

**48-2c-808. Actions by multiple managers.**

Unless otherwise provided in the articles of organization or operating agreement, where there are multiple managers, on any matter that is to be voted on by the managers:

(1) the managers may take action without a meeting, without prior notice, and without a vote, if a consent in writing, setting forth the action so taken, is signed by all of the managers; and

(2) the managers may not vote by proxy.

Section 95. Section **48-2c-809** is enacted to read:

**48-2c-809. Removal by judicial proceeding.**

(1) The district court of the county in this state where a company's designated office is located, or if it has no designated office in this state, its registered office is located, may remove a manager of a manager-managed company in a proceeding commenced either by the company or by its members holding at least 25% of the interests in profits of the company if the court finds that:

(a) the manager engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion with respect to the company; and

(b) removal is in the best interests of the company.

(2) The court that removes a manager may bar the manager from reelection for a period prescribed by the court.

(3) If members commence a proceeding under Subsection (1) above, they shall make the company a party defendant.

(4) Subsections (1), (2), and (3) shall also apply to enable the removal of a member in a member-managed company from having any management authority or powers on behalf of the company.

(5) If the court orders removal of a manager or member under this section, the clerk of the court shall deliver a certified copy of the order to the division for filing.

Section 96. Section **48-2c-901** is enacted to read:

**Part 9. Contributions – Profits and Losses**

**48-2c-901. Form of contribution.**

The contribution of a member to the company may consist of cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to

perform services, or any combination of the foregoing.

Section 97. Section **48-2c-902** is enacted to read:

**48-2c-902. Assessments for additional contributions.**

Except as otherwise provided in the articles of organization, operating agreement, or other writing binding on the members, no additional contributions shall be required of any member and no member shall be subject to assessment for additional contributions to the company. Nevertheless, where an assessment obligation is provided for, the obligation shall not be construed as conferring any rights upon any creditor or upon any person not a party to the operating agreement.

Section 98. Section **48-2c-903** is enacted to read:

**48-2c-903. Capital accounts.**

(1) A capital account shall be maintained for each member. The capital account of each member represents that member's share of the net assets of the company. Except as otherwise provided in the articles of organization or operating agreement, the capital accounts of all members shall be adjusted, either increased or decreased, to reflect the revaluation of company assets, including intangible assets such as goodwill, on the company's books in connection with any of the following events:

(a) a capital contribution, other than a de minimis contribution, made by or on behalf of a new member or an additional capital contribution, other than a de minimis contribution, made by or on behalf of an existing member;

(b) a distribution, other than a de minimis amount, made in partial or complete redemption of a member's interest in the company; or

(c) the dissolution and winding up of the company.

(2) Upon any such revaluation event, the book value of company assets shall be adjusted to fair market value and unrealized income, gain, loss, or deduction inherent in such company assets that have not been previously reflected in the members' capital accounts shall be allocated to the members' capital accounts.

Section 99. Section **48-2c-904** is enacted to read:

**48-2c-904. Valuation of member's interest in the company.**

Except as otherwise provided in the operating agreement, the fair market value of a member's interest in the company at any given time shall be the value at which the interest would change hands in an arms-length transaction between an informed and willing buyer and an informed and willing seller, neither being under any compulsion to buy or to sell, taking into consideration all relevant facts and circumstances, including the provisions of the articles of organization and operating agreement and all relevant discounts or premiums.

Section 100. Section **48-2c-905** is enacted to read:

**48-2c-905. Redemption of interest.**

(1) Subject to Section 48-2c-1005, a member may rightfully demand payment from the company of the fair market value of the member's interest in the company only:

- (a) upon the dissolution and completion of winding up of the company; or
- (b) upon the date or occurrence of an event specified in the articles of organization or operating agreement for redemption of the member's interest.

(2) Except as otherwise provided in the articles of organization or operating agreement or with consent of all members, a member, regardless of the nature of the member's contribution, has only the right to receive cash in redemption of the member's interest in the company.

Section 101. Section **48-2c-906** is enacted to read:

**48-2c-906. Allocation of profits and losses.**

The profits and losses of a company shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not otherwise provide, profits and losses shall be allocated in proportion to the members' capital account balances as of the beginning of the company's current fiscal year.

Section 102. Section **48-2c-1001** is enacted to read:

**Part 10. Distributions**

**48-2c-1001. Allocation of current distributions.**

Except as otherwise provided in the operating agreement, current distributions of profits and gains of a company shall be in the form of cash. Current distributions shall be allocated among the members in the manner provided in the operating agreement. If the operating agreement does not



otherwise provide, current distributions shall be allocated among the members in proportion to the members' capital account balances as of the beginning of the company's current fiscal year.

Section 103. Section **48-2c-1002** is enacted to read:

**48-2c-1002. Timing of distributions.**

Distributions to members shall be made at the times or upon the happening of the events specified in the operating agreement. If the operating agreement does not otherwise provide, each current distribution shall be made to all members concurrently, or at other times determined by the members in a member-managed company, or by the managers in a manager-managed company.

Section 104. Section **48-2c-1003** is enacted to read:

**48-2c-1003. Liquidating distributions.**

Distributions to the members in connection with the dissolution and winding up of a company shall be made in accordance with Section 48-2c-1308.

Section 105. Section **48-2c-1004** is enacted to read:

**48-2c-1004. Right to distributions.**

At the time a member becomes entitled to receive a distribution from the company, the member has the status of, and is entitled to all remedies available to, a creditor of the company with respect to the distribution.

Section 106. Section **48-2c-1005** is enacted to read:

**48-2c-1005. Limitations on distributions.**

(1) No distribution may be made by a company if, after giving effect to the distribution:

(a) the company would not be able to pay its debts as they become due in the usual and regular course of its business; or

(b) the value of the company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement permits otherwise, the amount that would be needed, if the company were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of members whose preferential rights are superior to the rights of members receiving the distribution.

(2) The company may base a determination that a distribution is not prohibited under

Subsection (1) either on:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) The effect of a distribution under Subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 30 days after the date of authorization; or

(b) the date the payment is made if it occurs more than 30 days after the date of authorization.

Section 107. Section **48-2c-1006** is enacted to read:

**48-2c-1006. Duty to return wrongful distributions.**

If a member receives a distribution by mistake or in violation of the articles of organization, the operating agreement, or Section 48-2c-1005, that member is obligated to return the wrongful distribution to the company and shall remain liable to the company for a period of five years thereafter for the amount of the distribution wrongfully made provided a proceeding to recover the distribution from the member is commenced prior to the expiration of the five-year period.

Section 108. Section **48-2c-1007** is enacted to read:

**48-2c-1007. Distribution in kind.**

(1) Except as otherwise provided in the articles of organization or operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from the company in any form other than cash.

(2) Except for an asset contributed by the member or as otherwise provided in the articles or organization or operating agreement, a member may not be compelled to accept a distribution of any asset in kind from a company to the extent that the percentage of the asset distributed to the member exceeds a percentage of that asset which is equal to the percentage in which the member shares in distributions from the company.

Section 109. Section **48-2c-1008** is enacted to read:

**48-2c-1008. Unclaimed distributions.**

If a company has mailed three successive distributions to a member addressed to the member's address shown on the company's current record of members and the distributions have been returned as undeliverable, no further attempt to deliver distributions to that member need be made until another address for the member is made known to the company, at which time all distributions accumulated by reason of this section shall, except as otherwise provided by law, be mailed to the member at the other address.

Section 110. Section **48-2c-1101** is enacted to read:

### **Part 11. Assignment of Interests**

#### **48-2c-1101. Assignment of interests.**

Unless otherwise provided in the articles of organization or operating agreement, a member's interest in a company is assignable in whole or in part. An assignment of an interest in a company does not of itself dissolve the company.

Section 111. Section **48-2c-1102** is enacted to read:

#### **48-2c-1102. Rights of assignee.**

An assignment of an interest in a company does not entitle the assignee to participate in the management and affairs of the company or to vote or to become a member or to exercise any rights of a member or manager. An assignment only entitles the assignee to receive, to the extent assigned, any share of profits and losses and distributions to which the assignor would be entitled.

Section 112. Section **48-2c-1103** is enacted to read:

#### **48-2c-1103. Rights of creditor of member.**

(1) On application to a court of competent jurisdiction by any judgment creditor of a member or of a member's assignee, the court may charge the interest in the company of the member or assignee with payment of the unsatisfied amount of the judgment plus interest. The court may then or later appoint a receiver of the share of distributions due or to become due to the judgment debtor in respect of the interest in the company. The judgment creditor and receiver shall have only the rights of an assignee. The court may make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's interest in the company. The

court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has only the rights of an assignee.

(3) Unless otherwise provided in the articles or organization or operating agreement for the company, at any time before foreclosure an interest charged may be redeemed:

(a) by the judgment debtor;

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

(c) by the company with the consent of all of the members whose interests are not so charged.

(4) This section does not deprive a member of a right under exemption laws with respect to the member's interest in a company.

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

(6) No creditor of a member shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the company.

Section 113. Section **48-2c-1104** is enacted to read:

**48-2c-1104. Right of assignee to become member.**

(1) Except as otherwise provided in the articles of organization or operating agreement, an assignee of an interest in a company may become a member only upon the consent of all members and upon signing the operating agreement or other writing by which the assignee agrees to be bound by the operating agreement.

(2) An assignee who has become a member has, with respect to the interest assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, the operating agreement, and this chapter.

(3) An assignee who becomes a member is liable for any obligations of his assignor to make contributions and to return distributions as provided in this chapter. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to the assignee at the time the assignee became a member but has constructive notice of any obligations described in the articles of organization or operating agreement of the company.

Section 114. Section **48-2c-1105** is enacted to read:

**48-2c-1105. Liability of assignor continues.**

An assignor of an interest in a company is not released from liability to the company by reason of the assignment or by reason of the assignee's becoming a member.

Section 115. Section **48-2c-1106** is enacted to read:

**48-2c-1106. Invalid transfers.**

Any transfer or assignment of a member's interest in a company in violation of this part is void.

Section 116. Section **48-2c-1201** is enacted to read:

**Part 12. Dissolution**

**48-2c-1201. Events of dissolution.**

A company organized under this chapter shall be dissolved upon the occurrence of any of the following events:

(1) when the period fixed for the duration of the company, pursuant to Subsection 48-2c-403(4)(c), expires;

(2) at such times as the company fails to have at least one member;

(3) by written agreement signed by all members;

(4) upon the occurrence of a dissolution event specified in the articles of organization or operating agreement;

(5) when the company is not the successor company in the merger or consolidation of two or more companies;

(6) upon administrative dissolution under Section 48-2c-1207, subject to right of reinstatement under Section 48-2c-1208; or

(7) upon entry of a decree of judicial dissolution under Section 48-2c-1213.

Section 117. Section **48-2c-1202** is enacted to read:

**48-2c-1202. Voluntary cancellation of certificate.**

Articles of organization may be canceled voluntarily at any time by consent of all members or their successors in interest by submitting to the division for filing a certificate of cancellation that

sets forth:

(1) the name of the company;

(2) the date of filing of its articles of organization;

(3) the effective date of cancellation, which shall be a date certain, if the cancellation is not to be effective upon the filing of the certificate; and

(4) any other information the person filing the certificate determines to be appropriate.

Section 118. Section **48-2c-1203** is enacted to read:

**48-2c-1203. Effect of dissolution.**

(1) A dissolved company continues its existence but may not carry on any business or activities except as appropriate to wind up and liquidate its business and affairs, as provided in Part 13 of this chapter.

(2) Dissolution of a company does not:

(a) transfer title to the company's property;

(b) prevent transfer of an interest in the company;

(c) subject its members or managers to standards of conduct different from those prescribed in Part 8;

(d) change:

(i) limited liability provided under Part 6 of this chapter;

(ii) voting requirements for its members or managers;

(iii) provisions for selection, resignation, or removal of its managers; or

(iv) provisions for amending its articles of organization or operating agreement;

(e) prevent commencement of a proceeding by or against the company in its company name;

(f) abate or suspend a proceeding pending by or against the company on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the company.

Section 119. Section **48-2c-1204** is enacted to read:

**48-2c-1204. Articles of dissolution.**

(1) After any event of dissolution, other than the events described in Subsection

48-2c-1201(6) or (7), the company, or a person acting for the company, shall deliver to the division for filing articles of dissolution setting forth:

(a) the name of the company;

(b) the address of the company's designated office or, if none is to be maintained, a statement that the company will not maintain a designated office, and, if different from the address of the designated office or if no designated office is to be maintained, the address to which service of process may be mailed pursuant to Section 48-2c-308;

(c) the effective date of the dissolution;

(d) the event causing the dissolution;

(e) if dissolution occurred by written agreement of the members, a statement to that effect;

and

(f) any additional information the division determines is necessary or appropriate.

(2) A company is dissolved upon the effective date of dissolution set forth in its articles of dissolution.

Section 120. Section **48-2c-1205** is enacted to read:

**48-2c-1205. Revocation of voluntary dissolution.**

(1) Where the event of dissolution is the written agreement of the members, a company may revoke its dissolution within 120 days after the effective date of the dissolution.

(2) Revocation of the voluntary dissolution must be approved by all of the members.

(3) After the revocation of voluntary dissolution is approved by all of the members, the company may revoke the dissolution by delivering to the division for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the company;

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

(c) the date that the revocation of dissolution was authorized by the members.

(4) Revocation of the voluntary dissolution is effective when the articles of revocation of dissolution are filed with the division. A provision may not be made for a delayed effective date for revocation of voluntary dissolution.

(5) When the revocation of voluntary dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the company may carry on its business as if the dissolution had never occurred.

Section 121. Section **48-2c-1206** is enacted to read:

**48-2c-1206. Grounds for administrative dissolution.**

The division may dissolve a company under Section 48-2c-1207 if:

(1) the company does not pay when due, any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(2) the company does not file its annual report with the division when it is due;

(3) the company is without a registered agent or registered office in this state; or

(4) the company fails to give notice to the division that:

(a) its registered agent or registered office has been changed;

(b) its registered agent has resigned;

(c) its registered office has been discontinued; or

(d) the company's period of duration has expired.

Section 122. Section **48-2c-1207** is enacted to read:

**48-2c-1207. Procedure for and effect of administrative dissolution.**

(1) If the division determines that one or more grounds exist under Section 48-2c-1206 for dissolving a company, it shall mail to the company written notice of:

(a) the division's determination that one or more grounds exist for dissolving the company;

and

(b) the grounds for dissolving the company.

(2) (a) If the company does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided in Subsection (1), the division shall administratively dissolve the company.

(b) If a company is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved company at its designated office, stating the date of dissolution specified in Subsection (2)(d).



(c) The division shall mail a copy of the notice of administrative dissolution including a statement of the grounds therefor, to:

(i) the registered agent of the dissolved company; or

(ii) if there is no registered agent of record, or if the mailing to the registered agent is returned as undeliverable, at least one member if the company is member-managed or one manager of the company if the company is manager-managed, at their addresses as reflected on the notice, annual report, or document most recently filed with the division.

(d) A company's effective date of administrative dissolution is five days after the date the division mails the written notice of dissolution under Subsection (2)(b).

(e) On the effective date of dissolution, any assumed names filed on behalf of the dissolved company under Title 42, Chapter 2, Conducting Business Under Assumed Name, are canceled.

(f) Notwithstanding Subsection (2)(e), the name of the company that is dissolved and any assumed names filed on its behalf are not available for two years from the effective date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(g) Notwithstanding Subsection (2)(e), if the company that is dissolved is reinstated in accordance with Section 48-2c-1208, the registration of the name of the company and any assumed names filed on its behalf are reinstated back to the effective date of dissolution.

(3) (a) Except as provided in Subsection (3)(b), a company administratively dissolved under this section continues its existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Part 13 of this chapter; and

(ii) to give notice to claimants in the manner provided in Sections 48-2c-1305 and 48-2c-1306.

(b) If the company is reinstated in accordance with Section 48-2c-1208, business conducted by the company during a period of administrative dissolution is unaffected by the dissolution.

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

(5) (a) Upon the administrative dissolution of a company, the division shall be an additional agent of the dissolved company for purposes of service of process.

(b) Service of process on the division under this Subsection (5) is service on the dissolved company.

(c) Upon receipt of process under this Subsection (5), the division shall send a copy of the process to the dissolved company at its designated office and a copy of the process to the registered agent of the dissolved company.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the designated office of the company, if the notice is required to be mailed to the company;

(ii) the registered agent of the company, if the notice is required to be mailed to the registered agent; or

(iii) any member if the company is member-managed, or to any manager of the company if the company is manager-managed, if the notice is required to be mailed to a member or manager of the company.

Section 123. Section **48-2c-1208** is enacted to read:

**48-2c-1208. Reinstatement following administrative dissolution.**

(1) A company dissolved under Section 48-2c-1207 may apply to the division for reinstatement within two years after the effective date of dissolution by delivering to the division for filing an application for reinstatement that states:

(a) the effective date of the company's dissolution;

(b) the company name as of the effective date of dissolution;

(c) that the ground for dissolution either did not exist or has been eliminated;

(d) the name under which the company is being reinstated, if different than the name stated in Subsection (1)(b);

(e) that the name stated in Subsection (1)(d) satisfies the requirements of Section 48-2c-106;

(f) that all fees or penalties imposed pursuant to this chapter or otherwise owed by the company to the state have been paid;

(g) the address of the designated office of the company;

(h) the address of its registered office in this state; and

(i) the name of its registered agent at the office stated in Subsection (1)(h) and any additional information the division determines to be necessary or appropriate.

(2) The company shall include in or with the application for reinstatement the written consent to appointment by the designated registered agent.

(3) If the division determines that the application for reinstatement contains the information required by Subsections (1) and (2) and that the information is correct, the division shall revoke the administrative dissolution. The division shall mail to the company in the manner provided in Subsection 48-2c-1207(6) written notice of:

(a) the revocation; and

(b) the effective date of the revocation.

(4) When the reinstatement is effective, it relates back to the effective date of the administrative dissolution. Upon reinstatement:

(a) an act of the company during the period of dissolution is effective and enforceable as if the administrative dissolution had never occurred; and

(b) the company may carry on its business, under the name stated pursuant to Subsection (1)(b) or (1)(d), as if the administrative dissolution had never occurred.

Section 124. Section **48-2c-1209** is enacted to read:

**48-2c-1209. Appeal from denial of reinstatement.**

If the division denies a company's application for reinstatement under Section 48-2c-1208 following administrative dissolution, the division shall mail to the company in the manner provided in Subsection 48-2c-1207(6) written notice:

(1) setting forth the reasons for denying the application; and  
(2) stating that the company has the right to appeal the division's determination to the executive director of the Department of Commerce in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

Section 125. Section **48-2c-1210** is enacted to read:

**48-2c-1210. Grounds for judicial dissolution.**

(1) A company may be dissolved in a proceeding filed by the attorney general or the director of the division if it is established that the company:

(a) obtained the filing of its articles of organization through fraud;  
(b) continually exceeded or abused the authority conferred upon it by law;  
(c) committed a violation of any provision of law whereby it has forfeited its charter;  
(d) carried on, conducted, or transacted its business in a persistently fraudulent or illegal manner;

(e) abused its powers contrary to the public policy of this state; or

(f) failed to amend its articles of organization as required by Section 48-2c-405.

(2) A company may be dissolved in a proceeding filed by any member if it is established that:

(a) the managers are deadlocked in management of company affairs and the members are unable to break the deadlock, irreparable injury to the company is threatened or being suffered, or the business and affairs of the company can no longer be conducted to the advantage of the members generally, because of the deadlock;

(b) the managers or those in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the members are deadlocked in voting power and the deadlock has continued for a period of at least six months;

(d) the company assets are being misapplied or wasted; or

(e) it is not reasonably practical to carry on the business of the company in conformity with its articles of organization and operating agreement.

(3) A company may be dissolved in a proceeding filed by a creditor of the company if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the company is insolvent; or

(b) the company is insolvent and the company has admitted in writing that the creditor's claim is due and owing.

(4) A company may commence a proceeding under this section when the company seeks to have its voluntary dissolution continued under court supervision.

Section 126. Section **48-2c-1211** is enacted to read:

**48-2c-1211. Procedure for judicial dissolution.**

(1) A proceeding by the attorney general or director of the division to dissolve a company shall be brought in either the district court of the county in this state in which the designated office or, if it has no designated office in this state, its registered office is or was last located, or the district court of Salt Lake County. A proceeding brought by any other party named in Section 48-2c-1210 shall be brought in the district court of the county in this state where the company's designated office or, if it has no designated office in this state, its registered office is or was last located.

(2) It is not necessary to make any member or manager a party to a proceeding to dissolve a company unless relief is sought against them individually.

(3) A court in a proceeding brought to dissolve a company may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the company's assets wherever located, and carry on the business of the company until a full hearing can be held.

Section 127. Section **48-2c-1212** is enacted to read:

**48-2c-1212. Receivership or custodianship.**

(1) A court in a judicial proceeding brought to dissolve a company may, at any time before entering a decree of dissolution, appoint one or more custodians to manage the business and affairs of the company until further order of the court and may, upon or after entering a decree dissolving the company, appoint one or more receivers to wind up and liquidate the business and affairs of the

company. The court shall hold a hearing, after giving notice to all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or a custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the company and all of its property wherever located.

(2) The court may appoint any person or the court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(3) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(a) the receiver:

(i) may dispose of all or any part of the assets of the company wherever located, at a public or private sale, if authorized by the court; and

(ii) may sue and defend in its own name as receiver of the company in all courts of this state;

or

(b) the custodian may exercise all of the powers of the company, through or in place of its members or managers, to the extent necessary to manage the affairs of the company in the best interests of its members and creditors.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the company, its members, and its creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the custodian's or receiver's counsel from the assets of the company or proceeds from the sale of the assets.

Section 128. Section **48-2c-1213** is enacted to read:

**48-2c-1213. Decree of dissolution.**

(1) If after a hearing the court determines that one or more grounds for judicial dissolution described in Section 48-2c-1210 exist, it may enter a decree dissolving the company and specifying the effective date of the dissolution. The clerk of the court shall deliver a certified copy of the decree

to the division for filing and shall mail a copy of the decree to the registered agent of the company or to the division if it has no registered agent of record.

(2) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the company's business and affairs in accordance with Part 13.

(3) The court's order may be appealed as in other civil proceedings.

Section 129. Section **48-2c-1214** is enacted to read:

**48-2c-1214. Election to purchase in lieu of dissolution.**

(1) In a proceeding under Subsection 48-2c-1210(2) to dissolve a company, the company may elect, or if it fails to elect, one of more members may elect to purchase the interest in the company owned by the petitioning member at the fair market value of the interest, determined as provided in this section. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) (a) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition in a proceeding under Subsection 48-2c-1210(2) or at any later time as the court in its discretion may allow. If the company files an election with the court within the 90-day period, or at any later time allowed by the court, to purchase the interest in the company owned by the petitioning member, the company shall purchase the interest in the manner provided in this section.

(b) If the company does not file an election with the court within the time period, but an election to purchase the interest in the company owned by the petitioning member is filed by one or more members within the time period, the company shall, within ten days after the later of the end of the time period allowed for the filing of elections to purchase under this section or notification from the court of an election by members to purchase the interest in the company owned by the petitioning member as provided in this section, give written notice of the election to purchase to all members of the company, other than the petitioning member. The notice shall state the name and the percentage interest in the company owned by the petitioning member and the name and the percentage interest in the company owned by each electing member. The notice shall advise any recipients who have not participated in the election of their right to join in the election to purchase

the interest in the company in accordance with this section, and of the date by which any notice of intent to participate must be filed with the court.

(c) Members who wish to participate in the purchase of the interest in the company of the petitioning member must file notice of their intention to join in the purchase by electing members, no later than 30 days after the effective date of the company's notice of their right to join in the election to purchase.

(d) All members who have filed with the court an election or notice of their intention to participate in the election to purchase the interest in the company of the petitioning member thereby become irrevocably obligated to participate in the purchase of the interest from the petitioning member upon the terms and conditions of this section, unless the court otherwise directs.

(e) After an election has been filed by the company or one or more members, the proceedings under Subsection 48-2c-1210(2) may not be discontinued or settled, nor may the petitioning member sell or otherwise dispose of his interest in the company, unless the court determines that it would be equitable to the company and the members, other than the petitioning member, to permit any discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the earlier of the company filing of an election to purchase the interest in the company of the petitioning member or the company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the company of the petitioning member, the petitioning member and electing company or members reach agreement as to the fair market value and terms of the purchase of the petitioning member's interest, the court shall enter an order directing the purchase of the petitioning member's interest, upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in Subsection (3), upon application of any party, the court shall stay the proceedings under Subsection 48-2c-1210(2) and determine the fair market value of the petitioning member's interest in the company as of the day before the date on which the petition under Subsection 48-2c-1210(2) was filed or as of any other date the court determines to be appropriate under the circumstances and based on the factors the court determines to be appropriate.



(5) (a) Upon determining the fair market value of the interest in the company of the petitioning member, the court shall enter an order directing the purchase of the interest in the company upon terms and conditions the court determines to be appropriate. The terms and conditions may include payment of the purchase price in installments, where necessary in the interest of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses awarded by the court, and an allocation of the interest in the company among members if the interest in the company is to be purchased by members.

(b) In allocating the petitioning member's interest in the company among holders of different classes of members, the court shall attempt to preserve the existing distribution of voting rights among member classes to the extent practicable. The court may direct that holders of a specific class or classes shall not participate in the purchase. The court may not require any electing member to purchase more of the interest in the company owned by the petitioning member than the percentage interest that the purchasing member may have set forth in his election or notice of intent to participate filed with the court.

(c) Interest may be allowed at the rate and from the date determined by the court to be equitable. However, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, interest may not be allowed.

(d) If the court finds that the petitioning member had probable ground for relief under Subsection 48-2c-1210(2)(b) or (2)(d), it may award to the petitioning member reasonable fees and expenses of counsel and experts employed by the petitioning member.

(6) Upon entry of an order under Subsection (3) or (5), the court shall dismiss the petition to dissolve the company under Subsection 48-2c-1210(2) and the petitioning member shall no longer have any rights or status as a member of the company, except the right to receive the amounts awarded to him by the court. The award is enforceable in the same manner as any other judgment.

(7) (a) The purchase ordered pursuant to Subsection (5) shall be made within ten days after the date the order becomes final, unless before that time the company files with the court a notice of its intention to adopt articles of dissolution pursuant to Section 48-2c-1204. The articles of dissolution must then be adopted and filed within 60 days after notice.

(b) Upon filing of articles of dissolution, the company is dissolved and shall be wound up pursuant to Part 13 of this chapter, and the order entered pursuant to Subsection (5) is no longer of any force or effect. However, the court may award the petitioning member reasonable fees and expenses in accordance with the provisions of Subsection (5)(d). The petitioning member may continue to pursue any claims previously asserted on behalf of the company.

(8) Any payment by the company pursuant to an order under Subsection (3) or (5), other than an award of fees and expenses pursuant to Subsection (5)(d), is subject to the provisions of Sections 48-2c-1005 and 48-2c-1006.

Section 130. Section **48-2c-1301** is enacted to read:

### **Part 13. Winding Up**

#### **48-2c-1301. Winding up defined.**

The winding up of a dissolved company is the process consisting of collecting all amounts owed to the company, selling or otherwise disposing of the company's assets and property, paying or discharging the taxes, debts and liabilities of the company or making provision for the payment or discharge, and distributing all remaining company assets and property among the members of the company according to their interests. There is no fixed time period for completion of winding up a dissolved company except that the winding up should be completed within a reasonable time under the circumstances.

Section 131. Section **48-2c-1302** is enacted to read:

#### **48-2c-1302. Powers of company in winding up.**

A dissolved company in winding up has all powers of a company that is not dissolved but those powers may be used only for the purpose of winding up and not for the carrying on of any business or activity other than that necessary for winding up. Those powers include, but are not limited to, the power to:

(1) continue the business of the company for the time reasonably necessary to obtain appropriate financial results for the members and creditors of the company;

(2) hire and fire employees, agents, and service providers;

(3) settle or compromise claims or debts owed to the company or claims brought against, or

debts owed by, the company;

(4) sell, exchange, or otherwise dispose of property of the company whether for cash or on terms;

(5) convey and transfer property of the company;

(6) sue to collect amounts owed to the company and to recover property or rights belonging to the company;

(7) initiate and defend claims in any proceeding;

(8) settle disputes by mediation, arbitration, or court action; and

(9) perform every other act necessary to wind up and liquidate the business and affairs of the company.

Section 132. Section **48-2c-1303** is enacted to read:

**48-2c-1303. Persons authorized to wind up.**

(1) Unless otherwise provided in the operating agreement and except for persons appointed by the court in a judicial dissolution under Sections 48-2c-1211 through 48-2c-1213, the following persons, in the order of priority indicated, shall have the right to wind up the business of a dissolved company:

(a) if the company is manager-managed, first, the existing managers or, second, an agent designated by the existing managers or, third, the existing members, or fourth, an agent designated by the existing members;

(b) if the company is member-managed, first, the existing members or, second, an agent designated by the existing members;

(c) if there are no existing managers or members, first, an agent designated by the last surviving member or, second, an agent designated by the successors in interest of the last surviving member; or

(d) in any situation not covered by Subsection (1)(a), (b), or (c), a person appointed by a court of competent jurisdiction upon application of any interested person.

(2) The person who winds up the business and affairs of a dissolved company in conformity with this part:

(a) shall, unless otherwise directed by a court of competent jurisdiction, become a trustee for the members and creditors of the company and, in that capacity, may sell or distribute any company property discovered after dissolution, convey real estate, and take any other necessary action on behalf of and in the name of the company; and

(b) shall not be personally liable to anyone by reason of that person's actions in winding up the company except for damages resulting from the person's gross negligence or willful misconduct.

Section 133. Section **48-2c-1304** is enacted to read:

**48-2c-1304. Payment of claims and obligations.**

(1) A dissolved company in winding up shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the company and all claims and obligations which are known to the company but for which the identity of the claimant is unknown. If there are sufficient assets, the claims and obligations shall be paid in full and any such provision for payment shall be made in full. If there are insufficient assets, the claims and obligations shall be paid or provided for according to their priority under law and, among claims and obligations of equal priority, ratably to the extent of assets available therefor.

(2) Unless otherwise provided in the articles of organization or operating agreement of the dissolved company, any remaining assets shall be distributed as provided in Section 48-2c-1308.

Section 134. Section **48-2c-1305** is enacted to read:

**48-2c-1305. Disposition of known claims by notification.**

(1) A dissolved company in winding up may dispose of the known claims against it by following the procedures described in this section.

(2) A company in winding up electing to dispose of known claims pursuant to this section may give written notice of the company's dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:

- (a) describe the information that must be included in a claim;
- (b) provide an address to which written notice of any claim must be given to the company;
- (c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved company must receive the claim; and

(d) state that, unless sooner barred by another state statute limiting actions, the claim will be barred if not received by the deadline.

(3) Unless sooner barred by another statute limiting actions, a claim against the dissolved company is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved company by the deadline; or

(b) the dissolved company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved company in writing within 90 days after receipt of the claim by the dissolved company shall be considered approved.

(5) The failure of the dissolved company to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

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

Section 135. Section **48-2c-1306** is enacted to read:

**48-2c-1306. Disposition of claims by publication.**

(1) A dissolved company in winding up may publish notice of its dissolution and request that persons with claims against the company present them in accordance with the notice.

(2) The notice contemplated in Subsection (1) must:

(a) be published once a week for three successive weeks in a newspaper of general circulation in the county where the dissolved company's designated office or, if it has no designated office in this state, its registered office, is or was last located;

(b) describe the information that must be included in a claim and provide an address to which written notice of any claim must be given to the company;

(c) state the deadline, which may not be fewer than 120 days after the first date of

publication of the notice, by which the dissolved company must receive the claim; and

(d) state that, unless sooner barred by another statute limiting actions, the claim will be barred if not received by the deadline.

(3) If the dissolved company publishes a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section 48-2c-1305 or under another statute limiting actions, the claim of any claimant against the dissolved company is barred if:

(a) the claim is not received by the dissolved company by the deadline; or

(b) the dissolved company delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved company does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved company in writing within 90 days after receipt of the claim by the dissolved company shall be considered approved.

(5) (a) For purposes of this section, "claim" means any claim, including claims of this state whether known or unknown, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section and Section 48-2c-1305, a proceeding to enforce a claim means a civil action or an arbitration under an agreement for binding arbitration between the dissolved company and the claimant.

Section 136. Section **48-2c-1307** is enacted to read:

**48-2c-1307. Enforcement of claims against dissolved company in winding up.**

(1) A claim may be enforced:

(a) under Section 48-2c-1305 or 48-2c-1306 against a dissolved company in winding up to the extent of its undistributed assets; or

(b) against one or more members of the dissolved company to the extent the assets have been distributed to the members in winding up.

(2) The total liability for all claims under this section may not exceed the total value of assets distributed to the members during winding up as that value is determined at the time of distribution.

(3) Any member required to return any portion of the value of assets received by that member during winding up shall be entitled to contribution from all other members. The contributions shall be in accordance with the respective rights and interests of the members and may not exceed the value of the assets received in winding up.

Section 137. Section **48-2c-1308** is enacted to read:

**48-2c-1308. Distribution of assets on winding up.**

(1) After dissolution, and during winding up, the assets of the company shall be applied to pay or satisfy:

(a) first, the liabilities to creditors other than members, in the order of priority as provided by law;

(b) second, the liabilities to members in their capacities as creditors, in the order of priority as provided by law; and

(c) third, the expenses and cost of winding up.

(2) Company assets remaining after application under Subsection (1) shall be allocated and distributed to the members as provided in the articles of organization or operating agreement, or if not so provided, in accordance with the members' final capital account balances after allocation of all profits and losses including profits and losses accrued or incurred during winding up.

Section 138. Section **48-2c-1309** is enacted to read:

**48-2c-1309. Deposit with state treasurer.**

Assets of a dissolved company that should be transferred to a creditor, claimant, or member of the company who cannot be found shall be reduced to cash and deposited with the state treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

Section 139. Section **48-2c-1401** is enacted to read:

**Part 14. Conversions and Mergers**

**48-2c-1401. Conversion of certain entities to a domestic company.**

(1) As used in this part, the term "subject entity" means and includes a corporation, business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a general partnership, a registered limited liability partnership, a limited

partnership, or a foreign company.

(2) Any subject entity may convert to a domestic company by complying with Section 48-2c-1404 and filing with the division:

(a) articles of conversion that satisfy the requirements of Section 48-2c-1402; and

(b) articles of organization that satisfy the requirements of Part 4.

Section 140. Section **48-2c-1402** is enacted to read:

**48-2c-1402. Articles of conversion.**

The articles of conversion shall state:

(1) the date on which and jurisdiction where the subject entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic company;

(2) the name of the subject entity immediately prior to the filing of the articles of conversion;

(3) the name of the company as set forth in its articles of organization filed in accordance with Subsection 48-2c-1401(2)(b);

(4) the future effective date or time, which shall be a date or time certain, of the conversion to a domestic company if it is not to be effective upon the filing of the articles of conversion and the articles of organization; and

(5) that the conversion has been duly approved by the owners of the subject entity.

Section 141. Section **48-2c-1403** is enacted to read:

**48-2c-1403. Effect of conversion.**

(1) Upon filing with the division of the articles of conversion and the articles of organization or, if applicable, upon the future effective date or time of the articles of conversion and the articles of organization, the subject entity shall be converted into a domestic company and the company shall thereafter be subject to all of the provisions of this chapter, except that, notwithstanding Section 48-2c-402, the existence of the company shall be considered to have commenced on the date the subject entity commenced its existence in the jurisdiction in which the subject entity was first created, formed, incorporated, or otherwise came into being.

(2) The conversion of any subject entity into a domestic company shall not be considered



to affect any obligations or liabilities of the subject entity incurred prior to its conversion to a domestic company or the personal liability of any person incurred prior to the conversion.

(3) When any conversion shall have become effective under this section, for all purposes of the laws of this state, all of the rights, privileges, and powers of the subject entity that has converted, and all property, real, personal, and mixed, and all debts due to the subject entity, as well as all other things and causes of action belonging to the subject entity, shall remain vested in the domestic company to which the subject entity has converted and shall be the property of the domestic company, and the title to any real property vested by deed or otherwise in the subject entity shall not revert or be in any way impaired by reason of this chapter or of the conversion, but all rights of creditors and all liens upon any property of the subject entity shall be preserved unimpaired, and all debts, liabilities, and duties of the subject entity that has converted shall remain attached to the domestic company to which the subject entity has converted and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by it in its capacity as a domestic company.

(4) A converted subject entity shall, upon conversion to a domestic company pursuant to this part, be considered the same entity as the domestic company and the rights, privileges, powers, and interests in property of the subject entity, as well as the debts, liabilities, and duties of the subject entity, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the domestic company to which the subject entity has converted.

(5) In connection with conversion of a subject entity to a domestic company under this part, all interests in, or securities of or rights in the subject entity which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the domestic company to which it is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

(6) Unless otherwise agreed, or as required under applicable non-Utah law of another jurisdiction, the converting subject entity shall not be required to wind up its affairs or pay its liabilities or distribute its assets, and the conversion shall not be considered to constitute a

dissolution of the other entity but shall constitute a continuation of the existence of the converting other entity in the form of a domestic company.

Section 142. Section **48-2c-1404** is enacted to read:

**48-2c-1404. Approval of conversion.**

Prior to filing articles of conversion with the division, the conversion must first be approved in the manner provided for by applicable law or by the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, as appropriate, and the new operating agreement, if any, for the domestic company must be approved by the same authorization required to approve the conversion. If applicable law, or the document, instrument, agreement, or other writing, as the case may be, that governs the internal affairs of the subject entity, does not provide for the manner of approving the conversion, then unanimous consent of the owners of the subject entity shall be required to approve the conversion and the new operating agreement.

Section 143. Section **48-2c-1405** is enacted to read:

**48-2c-1405. No limitation on other changes.**

The provisions of Sections 48-2c-1401 and 48-2c-1404 shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any entity to this state by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

Section 144. Section **48-2c-1406** is enacted to read:

**48-2c-1406. Approval of company conversion to other entity.**

(1) A domestic company may convert to any subject entity upon the authorization of the conversion in accordance with this section. If the operating agreement specifies the manner of authorizing a conversion of the company, the conversion shall be authorized as specified in the operating agreement. If the operating agreement does not specify the manner of authorizing a conversion of the company and does not prohibit a conversion of the company, the conversion shall be authorized in the same manner as specified in the operating agreement for authorizing a merger that involves the company as a constituent party to the merger. If the operating agreement does not specify the manner of authorizing a conversion of the company or a merger that involves the

company as a constituent party and does not prohibit a conversion of the company, the conversion must be authorized by unanimous consent of all members.

(2) A converted domestic company shall, upon conversion to a subject entity, be considered the same entity as the subject entity and the rights, privileges, powers, and interests in property of the domestic company, as well as the debts, liabilities, and duties of the domestic company, shall not, for any purpose of the laws of this state, be considered, as a consequence of the conversion, to have been transferred to the subject entity to which the domestic company has converted.

(3) Unless otherwise agreed, the conversion of a domestic company to another entity, pursuant to this section, shall not require the domestic company to wind up its affairs or to pay its liabilities or distribute its assets under this chapter. In connection with conversion of a domestic company to another entity under this section, all interests in, or securities of or rights in the domestic company which is to be converted may be exchanged for or converted into cash, property, interests in, or securities of or rights in the entity into which the domestic company is converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, interests in, or securities of or rights in another entity.

Section 145. Section **48-2c-1407** is enacted to read:

**48-2c-1407. Merger.**

(1) One or more limited liability companies may merge with one or more other entities, pursuant to this section, if each company and entity that is a party to the merger approves a plan of merger and if the merger is permitted by the statutes governing each entity. The entity that survives may be a limited liability company or other entity.

(2) The plan of merger shall set forth:

(a) the name and type of each entity planning to merge;

(b) the name and type of the entity that will survive;

(c) the terms and conditions of the merger;

(d) the manner and basis of converting the ownership interests of each owner into ownership interests or obligations of the surviving entity, or any other entity, or into cash or other property in whole or in part; and

(e) if any party to the merger is an entity other than a limited liability company, any additional information required for a merger by the statutes governing that entity.

(3) The plan of merger may set forth:

(a) amendments to the articles of organization of a limited liability company, if that company is the surviving entity; and

(b) other provisions relating to the merger.

Section 146. Section **48-2c-1408** is enacted to read:

**48-2c-1408. Approval of merger.**

(1) A plan of merger shall be approved by each entity that is a party to the merger, as follows:

(a) In the case of a domestic company, by members holding the interest in profits required by Section 48-2c-803, or by a greater vote if required by its articles of organization or operating agreement.

(b) In the case of an entity other than a domestic company, as provided by the statutes governing that entity.

(2) After a merger is authorized, and at any time before articles of merger are filed, the planned merger may be abandoned, subject to any contractual rights:

(a) By a domestic company, in accordance with the procedure set forth in the plan of merger or, if none is set forth, by vote of members holding 2/3 of the profit interests in the domestic company.

(b) By a party to the merger that is not a domestic company, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in the manner permitted by the statutes governing that entity.

Section 147. Section **48-2c-1409** is enacted to read:

**48-2c-1409. Articles of merger.**

(1) After a plan of merger is approved by each entity that is a party to the merger, the surviving entity shall deliver to the division, for filing, articles of merger setting forth:

(a) the plan of merger; and

(b) a statement that the plan of merger was duly authorized and approved by each entity that is a party to the merger in accordance with Section 48-2c-1408.

(2) The merger takes effect on the date of filing the articles of merger with the division, unless otherwise set forth in the plan of merger or the articles of merger, provided the effective date is later than the date of filing the articles of merger.

Section 148. Section **48-2c-1410** is enacted to read:

**48-2c-1410. Effect of merger.**

(1) When a merger involving a limited liability company takes effect:

(a) every other entity that is a party to the merger merges into the surviving entity, and the separate existence of every other party ceases;

(b) title to all real estate and other property owned by each of the entities that were parties to the merger is vested in the surviving entity without reversion or impairment;

(c) all obligations of each of the entities that were parties to the merger, including, without limitation, contractual, tort, statutory, and administrative obligations, are obligations of the surviving entity;

(d) an action or proceeding pending against each of the entities or its owners that were parties to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding;

(e) if a domestic company is the surviving entity, its articles of organization are amended to the extent provided in the plan of merger;

(f) the ownership interests of each owner that are to be converted into ownership interests or obligations of the surviving entity or any other entity, or into cash or other property, are converted as provided in the plan of merger;

(g) liability of an owner for obligations of an entity that is a party to the merger shall be determined:

(i) as to liabilities incurred by the entity prior to the merger, according to the laws applicable prior to the merger; and

(ii) as to liabilities incurred by the entity after the merger, according to the laws applicable

after the merger, except as provided in Subsection (1)(h):

(h) if prior to the merger an owner of an entity was a partner of a partnership or general partner of a limited partnership and was personally liable for the entity's liabilities, and after the merger is an owner normally protected from personal liability, then the owner shall continue to be personally liable for the entity's liabilities incurred during the 12 months following the merger, if the other party or parties to the transaction reasonably believed that the owner would be personally liable and had not received notice of the merger; and

(i) the registration of an assumed business name of an entity under Title 42, Chapter 2, Conducting Business Under Assumed Name, shall not be affected by the merger.

(2) Owners of the entities that are parties to the merger are entitled to:

(a) in the case of members of a domestic company, only the rights described in the articles of merger; and

(b) in the case of owners of entities other than a domestic company, the rights provided in the statutes applicable to the entity prior to the merger, including, without limitation, any rights to dissent, to dissociate, to withdraw, to recover for breach of any duty or obligation owed by the other owners, and to obtain an appraisal or payment for the value of an owner's interest.

Section 149. Section **48-2c-1501** is enacted to read:

#### **Part 15. Professions**

##### **48-2c-1501. Purpose of Part 15.**

This part shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the limited liability company form for the business aspects of their practices while preserving the established professional relationships between the professional person and those receiving the professional services.

Section 150. Section **48-2c-1502** is enacted to read:

##### **48-2c-1502. Definitions.**

As used in this part:

(1) "Professional services company" means a limited liability company organized under this part to render professional services.

- (2) "Professional services" means the personal services rendered by:
- (a) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, and any subsequent laws regulating the practice of architecture;
  - (b) an attorney granted the authority to practice law by the:
    - (i) Supreme Court of Utah as provided in Title 78, Chapter 51, Part 6, Attorneys and Counselors; or
    - (ii) the Supreme Court, other court, agency, instrumentality, or regulating board that licenses or regulates the authority to practice law in any state or territory of the United States other than Utah;
  - (c) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, and any subsequent laws regulating the practice of chiropractic;
  - (d) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentists and Dental Hygienists Practice Act, and any subsequent laws, regulating the practice of dentistry;
  - (e) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
  - (f) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, and any subsequent laws regulating the practice of naturopathy;
  - (g) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;
  - (h) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, and any subsequent laws regulating the practice of optometry;
  - (i) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, and any subsequent laws regulating the practice of osteopathy;
  - (j) a pharmacist holding a license under Title 58, Chapter 17a, Pharmacy Practice Act, and any subsequent laws regulating the practice of pharmacy;
  - (k) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, and any subsequent laws regulating the practice of medicine;
  - (l) a physical therapist holding a license under Title 58, Chapter 24a, Physical Therapist Practice Act, and any subsequent laws regulating the practice of physical therapy;

(m) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, and any subsequent laws regulating the practice of podiatry;

(n) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, and any subsequent laws regulating the practice of psychology;

(o) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, and any subsequent laws regulating the practice of public accounting;

(p) a real estate broker or real estate agent holding a license under Title 61, Chapter 2, Division of Real Estate, and any subsequent laws regulating the sale, exchange, purchase, rental, or leasing of real estate;

(q) a clinical or certified social worker holding a license under Title 58, Chapter 60, Part 2, Social Worker Licensing Act, and any subsequent laws regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, and any subsequent laws regulating the practice of mental health therapy; and

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, and any subsequent laws regulating the practice of veterinary medicine.

(3) "Regulating board" means the board or agency organized pursuant to state law that is charged with the licensing and regulation of the practice of the profession that a company is organized to render.

Section 151. Section **48-2c-1503** is enacted to read:

**48-2c-1503. Rendering professional services.**

(1) A professional services company may render professional services in this state only through individuals licensed or otherwise authorized in this state to render those services.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services company to be licensed to perform services for the company if a license is not otherwise required;

(b) prohibit a licensed individual from rendering professional services in his capacity although he is a member, manager, employee, or agent of a professional services company; or



(c) prohibit an individual licensed in another state from rendering professional services for a professional services company in this state if not prohibited by the regulating board.

(3) A professional services company may not render any professional service other than the professional service authorized by its articles of organization.

Section 152. Section **48-2c-1504** is enacted to read:

**48-2c-1504. No limits on regulating board.**

Nothing in this chapter restricts or limits in any manner the authority and duty of the regulating board to license individuals rendering professional services or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual is a member, manager, or employee of a company and rendering the professional services or engaging in the practice of the profession through the company.

Section 153. Section **48-2c-1505** is enacted to read:

**48-2c-1505. Name limitations.**

(1) The name of a domestic professional services company and of a foreign professional services company authorized to transact business in this state, in addition to satisfying the requirements of Sections 48-2c-106, 48-2c-1602, and 48-2c-1606:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by its articles of organization or by Section 48-2c-1503;

(b) must conform with any rule promulgated by the regulating board having jurisdiction over a professional service described in the company's articles of organization; and

(c) must contain, in its articles of organization and in all reports and documents filed with the division, the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in lieu of the requirements of Subsection 48-2c-106(1)(a).

(2) Notwithstanding the provisions of Subsection (1)(c), a professional services company may hold itself out to the public under a name that does not contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" so long as that name meets the requirements of Subsection 48-2c-106(1)(a).

(3) Sections 48-2c-106, 48-2c-1607, and 48-2c-1608 do not prevent the use of a name

otherwise prohibited by those sections if it is the personal name of an individual member or individual former member of the professional services company or the name of an individual who was associated with a predecessor of the professional services company.

Section 154. Section **48-2c-1506** is enacted to read:

**48-2c-1506. Activity limitations.**

No professional services company may do anything that is prohibited to be done by individuals licensed to practice the profession that the company is organized to render.

Section 155. Section **48-2c-1507** is enacted to read:

**48-2c-1507. Limit of one profession.**

A company organized to render professional services under this chapter may render only one specific type of professional services, and services ancillary to them, and may not engage in any business other than rendering the professional services which it was organized to render, and services ancillary to them; provided, however, that a professional services company may own real and personal property necessary or appropriate for rendering the type of professional service it was organized to render and may invest its funds in real estate, mortgages, stocks, bonds, and any other type of investments.

Section 156. Section **48-2c-1508** is enacted to read:

**48-2c-1508. Members and managers restricted to professionals.**

A company organized to render professional services:

(1) may include members, managers, and employees authorized under the laws of the jurisdiction where they reside to provide similar services;

(2) may include members who are not licensed or registered by the state to render those professional services to the extent allowed by the applicable licensing act relating to those professional services;

(3) may render professional services in this state only through its members, managers, and employees who are licensed or registered by this state to render those professional services; and

(4) shall have all of the other powers provided under Section 48-2c-110.

Section 157. Section **48-2c-1509** is enacted to read:

**48-2c-1509. Additional requirements for articles of organization.**

The articles of organization of a professional services company shall satisfy the requirements of Section 48-2c-403 and, in addition thereto, shall contain the following:

- (1) a name consistent with Section 48-2c-1505;
- (2) a description of the profession to be practiced through the company; and
- (3) notwithstanding Subsection 48-2c-403(2), the names and street addresses of all members and managers of the company.

Section 158. Section **48-2c-1510** is enacted to read:

**48-2c-1510. Restrictions on transfers by members.**

(1) Except as provided in Subsection (2), a member of a professional services company may sell or transfer the member's interest in the company only to the company or to an individual who is licensed or registered by this state to render the same type of professional services as those for which the company was organized.

(2) Upon the death or incapacity of a member of a professional services company, the member's interest in the company may be transferred to the personal representative or estate of the deceased or incapacitated member who may continue to hold that interest for a reasonable period but shall not be authorized to participate in any decision concerning the rendering of professional services.

Section 159. Section **48-2c-1511** is enacted to read:

**48-2c-1511. Purchase of interest upon death, incapacity, or disqualification of members.**

The articles of organization may provide for the purchase of any member's interest in a professional services company subject to this part upon the death, incapacity, or disqualification of that member, or the same may be provided in the operating agreement or by other private agreement. In the absence of such a provision in the articles of organization, the operating agreement, or other private agreement, the professional services company shall purchase the interest of a deceased member or an incapacitated member or a member no longer qualified to own an interest in that professional services company within 90 days after the company is notified of the death, incapacity,

or disqualification, as the case may be. The price for the interest shall be its reasonable fair market value as of the date of death, incapacity, or disqualification. If the professional services company fails to purchase said interest by the end of said 90 days, then the personal representative of a deceased member or the guardian or conservator of an incapacitated member or the disqualified member may bring an action in the district court of the county in which the designated office or place of practice of the professional services company is located for the enforcement of this provision. The court shall have power to award the plaintiff the reasonable fair market value of the interest, or within its jurisdiction, may order the liquidation of the professional services company. Further, if the plaintiff is successful in the action, the plaintiff shall be entitled to recover a reasonable attorney's fee and costs.

Section 160. Section **48-2c-1512** is enacted to read:

**48-2c-1512. Conversion to nonprofessional company.**

Whenever all members of a professional services company subject to this part cease at any one time and for any reason to be licensed for the professional services for which the company was organized, or by vote of members holding at least 2/3 interest in the profits of the company, the company shall thereupon be treated as converted into, and shall operate thereafter solely as, a company subject to this chapter but not subject to this part, but may be reconverted to a professional services company upon removal of the disability or by the vote of members holding at least 2/3 interests in the profits of the company. Upon any such conversion or reconversion, a certificate of amendment to the articles of organization shall be filed with the division within a reasonable time thereafter to reflect the changes.

Section 161. Section **48-2c-1513** is enacted to read:

**48-2c-1513. Application of Part 15.**

Where a conflict arises between the provisions of this part and the other provisions of this chapter, the provisions of this part shall control.

Section 162. Section **48-2c-1601** is enacted to read:

**Part 16. Foreign Limited Liability Companies.**

**48-2c-1601. Law governing foreign companies.**

(1) This chapter does not authorize this state to regulate the organization or internal affairs of a foreign company. The laws of the state or other jurisdiction under which a foreign company is organized govern its organization and internal affairs and the liability of its managers, members, and assignees of members.

(2) A foreign company may not be denied authority to transact business in this state by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

Section 163. Section **48-2c-1602** is enacted to read:

**48-2c-1602. Authority to transact business required.**

(1) A foreign company may not transact business in this state until its application for authority to transact business is filed with the division. This applies to foreign companies that conduct a business governed by other statutes of this state only to the extent this part is not inconsistent with those other statutes.

(2) The following is a nonexhaustive list of activities that do not constitute "transacting business" within the meaning of Subsection (1):

- (a) maintaining, defending, or settling in its own behalf any proceeding;
- (b) holding meetings of the managers or members or otherwise carrying on activities concerning internal company affairs;
- (c) maintaining bank accounts;
- (d) selling through independent contractors;
- (e) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
- (f) creating as borrower or lender or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (g) securing or collecting debts in its own behalf or enforcing mortgages or security interests in property securing those debts;
- (h) owning, without more, real or personal property;
- (i) conducting an isolated transaction that is completed within 30 days and that is not one

in the course of repeated transactions of a like nature;

(j) transacting business in interstate commerce;

(k) acquiring, in transactions outside this state or in interstate commerce, of conditional sales contracts or of debts secured by mortgages or liens on real or personal property in this state, collecting or adjusting of principal or interest payments on the contracts, mortgages, or liens, enforcing or adjusting any rights provided for in conditional sales contracts or securing the described debts, taking any actions necessary to preserve and protect the interest of the conditional vendor in the property covered by a conditional sales contract or the interest of the mortgagee or holder of the lien in the security, or any combination of such transactions; and

(l) any other activities not considered to constitute transacting business in this state as determined in the discretion of the director of the division.

(3) Nothing in this section limits or affects the right to subject a foreign company which does not, or is not required to, have authority to transact business in this state to the jurisdiction of the courts of this state or to serve upon any foreign company any process, notice, or demand required or permitted by law to be served upon a company pursuant to any applicable provision of law or pursuant to any applicable rules of civil procedure.

Section 164. Section **48-2c-1603** is enacted to read:

**48-2c-1603. Consequences of transacting business without authority.**

(1) A foreign company transacting business in this state without authority, or anyone in its behalf, may not maintain a proceeding in any court in this state until an application for authority to transact business is filed with the division.

(2) The successor to a foreign company that transacted business in this state without authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until an application for authority to transact business is filed on behalf of the foreign company or its successor.

(3) A court may stay a proceeding commenced by a foreign company, its successor, or assignee until it determines whether the foreign company, its successor, or assignee is required to file an application for authority to transact business. If it so determines, the court may further stay

the proceeding until the required application for authority to transact business has been filed with the division.

(4) A foreign company that transacts business in this state without authority is subject to a civil penalty, payable to this state, of \$100 for each day in which it transacts business in this state without authority. However, the penalty may not exceed a total of \$5,000 for each year. Each manager or member of a foreign company who authorizes, directs, or participates in the transaction of business in this state without authority and each agent of a foreign company who transacts business in this state on behalf of a foreign company that is not authorized is subject to a civil penalty, payable to this state, not exceeding \$1,000 for each year.

(5) The civil penalties set forth in Subsection (4) may be recovered in an action brought in the district court for Salt Lake County or in any other county in this state in which the foreign company has a registered office or in which it has transacted business. Upon a finding by the court that a foreign company or any of its managers, members, or agents has transacted business in this state in violation of this part, the court shall issue, in addition to or instead of a civil penalty, an injunction restraining the further transaction of the business of the foreign company and the further exercise of any rights and privileges in this state. Upon issuance of the injunction, the foreign company shall be enjoined from transacting business in this state until all civil penalties have been paid, plus any interest and court costs assessed by the court, and until the foreign company has otherwise complied with the provisions of this part.

(6) Notwithstanding Subsections (1) and (2), the failure of a foreign company to have authority to transact business in this state does not impair the validity of its acts, nor does the failure prevent the foreign company from defending any proceeding in this state.

Section 165. Section **48-2c-1604** is enacted to read:

**48-2c-1604. Application for authority to transact business.**

(1) A foreign company may apply for authority to transact business in this state by delivering to the division for filing an application for authority to transact business setting forth:

(a) its name and its assumed name, if any;

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

- (c) the nature of the business or purposes to be conducted or promoted in this state;
  - (d) its date of formation or organization and period of its duration;
  - (e) the street address of its principal office;
  - (f) the address of its registered office in this state and the name of its registered agent at that office;
  - (g) the names and street addresses of its current managers, if it is a manager-managed company, or of its members, if it is a member-managed company;
  - (h) the date it commenced or expects to commence transacting business in this state; and
  - (i) any additional information the division may determine is necessary or appropriate to determine whether the application for authority to transact business should be filed.
- (2) The foreign company shall deliver with the completed application for authority to transact business a certificate of existence, or a document of similar import, duly authorized by the secretary of state or other official having custody of records in the state or country under whose law it is formed or organized. The certificate of existence shall be dated within 90 days prior to the filing of the application for authority to transact business by the division.
- (3) The foreign company shall include in the application for authority to transact business, or in an accompanying document, the written consent to appointment by the designated registered agent in this state.

Section 166. Section **48-2c-1605** is enacted to read:

**48-2c-1605. Amended application for authority to transact business.**

- (1) A foreign company authorized to transact business in this state shall deliver an amended application for authority to transact business to the division for filing if the foreign company changes:
- (a) its name or its assumed name;
  - (b) the period of its duration; or
  - (c) the state or country of its formation or organization.
- (2) The requirements of Section 48-2c-1604 for obtaining an original application for authority to transact business apply to filing an amended application for authority to transact business



under this section.

Section 167. Section **48-2c-1606** is enacted to read:

**48-2c-1606. Effect of filing an application for authority to transact business.**

(1) Filing an application for authority to transact business authorizes the foreign company to transact business in this state subject, however, to the right of this state to revoke the certificate as provided in this part.

(2) A foreign company authorized to transact business in this state has the same rights and privileges as, but no greater rights or privileges than, a domestic company of like character. Except as otherwise provided by this chapter, a foreign company authorized to transact business in this state is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on a domestic company of like character.

Section 168. Section **48-2c-1607** is enacted to read:

**48-2c-1607. Company name and assumed company name of foreign company.**

(1) Except as provided in Subsection (2), if the name of a foreign company does not satisfy the requirements of Section 48-2c-106 which applies to domestic companies, the foreign company in order to obtain authority to transact business in this state, must assume for use in this state a name that satisfies the requirements of Section 48-2c-106.

(2) A foreign company may obtain authority to transact business in this state with a name that does not meet the requirements of Subsection (1) because it is not distinguishable as required under Subsection 48-2c-106(2), if the foreign company delivers to the division for filing either:

(a) a written consent to the foreign company's use of the name, given and signed by the other person entitled to the use of the name together with a written undertaking by the other person, in a form satisfactory to the division, to change its name to a name that is distinguishable from the name of the applicant; or

(b) a certified copy of a final judgment of a court of competent jurisdiction establishing the prior right of the foreign company to use the requested name in this state.

(3) A foreign company may use in this state the name, including the assumed name, of another domestic or foreign company or other entity that is used or registered in this state if the other

company is formed or organized or authorized to transact business in this state and the foreign company:

- (a) has merged with the other company; or
- (b) has been formed by conversion of the other entity.

(4) If a foreign company authorized to transact business in this state, whether under its name or an assumed name, changes its name to one that does not satisfy the requirements of Subsections (1) through (3), or the requirements of Section 48-2c-106, it may not transact business in this state under the changed name but must use an assumed name that does meet the requirements of this section and must deliver to the division for filing an amended application for authority to transact business pursuant to Section 48-2c-1605.

Section 169. Section **48-2c-1608** is enacted to read:

**48-2c-1608. Registered name of foreign company.**

(1) A foreign company may register its name as provided in this section if the name would be available for use as a name for a domestic company under Section 48-2c-106. If the foreign company's name would not be available for such use, then the foreign company may register its name modified by the addition of any of the following words or abbreviations, if the modified name would be available for use under Section 48-2c-106: "limited liability company", "limited company", "L.L.C.", "L.C.", "LLC", or "LC".

(2) A foreign company registers its name, or its name with any addition permitted by Subsection (1), by delivering to the division for filing an application for registration:

(a) setting forth its name, the name to be registered which must meet the requirements of Section 48-2c-106 that apply to domestic companies, the state or country and date of formation or organization, and a brief description of the nature of the business in which it is engaged; and

(b) accompanied by a certificate of existence, or a document of similar import from the state or country of formation or organization as evidence that the foreign company is in existence or has authority to transact business under the laws of the state or country in which it is formed or organized.

(3) The name is registered for the applicant upon the effective date of the application, and

the initial registration is effective until the end of the calendar year in which it became effective.

(4) A foreign company that has in effect a registration of its name as permitted by Subsection (1) may renew the registration for the following year by delivering to the division for filing a renewal application for registration, which complies with the requirements of Subsection (2) between October 1 and December 31 of the preceding year. When filed, the renewal application for registration renews the registration for the following calendar year.

(5) A foreign company that has in effect registration of its name may apply for authority to transact business in this state under the registered name in accordance with the procedure set forth in this part or it may assign the registration to another foreign company by delivering to the division for filing an assignment of the registration that states the registered name, the name of the assigning foreign corporation, and the name of the assignee, concurrently with the delivery to the division for filing of the assignee's application for registration of the name. The assignee's application must meet the requirements of this part.

(6) (a) A foreign company that has in effect registration of its name may terminate the registration at any time by delivering to the division for filing a statement of termination setting forth the name and stating that the registration is terminated.

(b) A registration of name automatically terminates upon the filing of an application for authority to transact business in this state under the registered name.

(7) The registration of a name under Subsection (1) constitutes authority by the division to file an application meeting the requirements of this part for authority to transact business in this state under the registered name, but the authorization is subject to the limitations applicable to company names as set forth in Section 48-2c-106.

Section 170. Section **48-2c-1609** is enacted to read:

**48-2c-1609. Amendment of articles of organization of foreign company.**

Whenever the articles of organization of a foreign company authorized to transact business in this state are amended, it shall not be necessary for the foreign company to file a copy of the amendments with the division; but amending the articles of organization shall not of itself enlarge or alter the purpose or purposes which the foreign company is authorized to pursue in transacting its

business in this state, nor authorize the foreign company to transact business in this state under any other name than the name set forth in its application for authority filed with the division.

Section 171. Section **48-2c-1610** is enacted to read:

**48-2c-1610. Merger of foreign company authorized to transact business in this state.**

Whenever a foreign company authorized to transact business in this state shall be a party to a merger permitted by the laws of the state or jurisdiction under the laws of which it is organized, and such company shall be the surviving company, it shall, within 30 days after the merger becomes effective, file with the division a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which the merger was effected; and it shall not be necessary for the foreign company to procure either new or amended authority to transact business in this state unless the name of the company be changed thereby or unless the foreign company desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

Section 172. Section **48-2c-1611** is enacted to read:

**48-2c-1611. Withdrawal of foreign company.**

(1) A foreign company authorized to transact business in this state may not withdraw from this state until its application for withdrawal has been filed with the division.

(2) A foreign company authorized to transact business in this state may apply for withdrawal by delivering to the division for filing an application for withdrawal setting forth:

(a) its company name and its assumed name, if any;

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

(c) the address of its principal office, or if none is to be maintained, a statement that the foreign company will not maintain a principal office, and if different from the address of the principal office or if no principal office is to be maintained, the address to which service of process may be mailed pursuant to Section 48-2c-309;

(d) that the foreign company is not transacting business in this state and that it surrenders its authority to transact business in this state;

(e) whether its registered agent will continue to be authorized to accept service on its behalf

in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state; and

(f) any additional information that the division determines is necessary or appropriate to determine whether the foreign company is entitled to withdraw, and to determine and assess any unpaid taxes, fees, and penalties payable by it as prescribed by this chapter.

(3) A foreign company's application for withdrawal may not be filed by the division until all outstanding fees and state tax obligations of the foreign company have been paid and the division has received a tax clearance certificate from the State Tax Commission.

Section 173. Section **48-2c-1612** is enacted to read:

**48-2c-1612. Grounds for revocation.**

The division may commence a proceeding under Section 48-2c-1613 to revoke the authority of a foreign company to transact business in this state if:

(1) the foreign company does not deliver its annual report to the division when it is due;

(2) the foreign company does not pay when they are due any taxes, fees, or penalties imposed by this chapter or other applicable laws of this state;

(3) the foreign company is without a registered agent or registered office in this state;

(4) the foreign company does not inform the division under Section 48-2c-303 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued;

(5) an organizer, member, manager, or agent of the foreign company signs a document knowing it is false in any material respect with intent that the document be delivered to the division for filing; or

(6) the division receives a duly authenticated certificate from the secretary of state or other official having custody of limited liability company records in the state or country under whose law the foreign company is formed or organized stating that the foreign company has dissolved or disappeared as the result of a merger.

Section 174. Section **48-2c-1613** is enacted to read:

**48-2c-1613. Procedure for and effect of revocation.**

(1) If the division determines that one or more grounds exist under Section 48-2c-1612 for revoking the authority of a foreign company to transact business in this state, the division shall mail to the foreign company written notice of:

(a) the division's determination that one or more grounds exist for revocation; and

(b) the grounds for revocation.

(2) (a) If the foreign company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, within 60 days after mailing the notice under Subsection (1), the division shall revoke the foreign company's authority to transact business in this state.

(b) If a foreign company's authority to transact business in this state is revoked under Subsection (2)(a), the division shall mail to the foreign company written notice of:

(i) revocation; and

(ii) the effective date of the revocation.

(c) The division shall mail a copy of the notice to:

(i) the last registered agent of the foreign company; or

(ii) if there is no registered agent of record, at least one member or manager of the foreign company.

(3) The authority of a foreign company to transact business in this state ceases on the date shown on the division's certificate revoking the company's certificate of authority.

(4) Revocation of a foreign company's authority to transact business in this state does not terminate the authority of the registered agent of the foreign company.

(5) (a) Upon the revocation of a foreign company's authority to transact business in this state, the division becomes an agent for the foreign company for service of process in any proceeding based on a cause of action that arose during the time the foreign company:

(i) transacted business in this state; or

(ii) was authorized to transact business in this state.

(b) Service of process on the division under this Subsection (5) is service on the foreign company.

(c) Upon receipt of process under this Subsection (5), the division shall mail a copy of the process to the foreign company at its principal office.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the foreign company, if the notice is required to be mailed to the registered agent; or

(ii) the member or manager of the foreign company that is mailed the notice, if the notice is required to be mailed to a member or manager of the foreign company.

Section 175. Section **48-2c-1614** is enacted to read:

**48-2c-1614. Appeal from revocation.**

(1) A foreign company may appeal the division's revocation of its authority to transact business in this state to the district court of the county in this state where the last registered office of the company was located or in Salt Lake County, within 30 days after the notice of revocation is mailed under Section 48-2c-1613. The foreign company appeals by petitioning the court to set aside the revocation and attaching to the petition a copy of the company's application for authority to transact business, and any amended applications, each as filed with the division, and the division's notice of revocation.

(2) The court may summarily order the division to reinstate the authority of the foreign company to transact business in this state or it may take any other action it considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 176. Section **48-2c-1615** is enacted to read:

**48-2c-1615. Actions to restrain transaction of business in state.**

The division may order any foreign company, or any agent of a foreign company, to cease doing any business in this state if the foreign company has failed to register under this chapter.

Section 177. Section **48-2c-1701** is enacted to read:

**Part 17. Derivative Actions**

**48-2c-1701. Right of action.**

A member may bring an action in the right of a company to recover a judgment in its favor:

(1) if the managers or, if no managers, the members with authority to do so have refused to bring the action and the decision of the managers or members not to sue constitutes an abuse of discretion or involves a conflict of interest that prevents an unbiased exercise of judgment; or

(2) if an effort to cause those managers or members to bring the action is not likely to succeed.

Section 178. Section **48-2c-1702** is enacted to read:

**48-2c-1702. Proper plaintiff.**

In an action under Section 48-2c-1701, the plaintiff must be a member at the time of bringing the action and:

(1) must have been a member at the time of the transaction of which the member complains;

or

(2) the member's status as a member must have devolved upon him by transfer or by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

Section 179. Section **48-2c-1703** is enacted to read:

**48-2c-1703. Pleading.**

In a derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure the initiation of the action by the managers or members or the reasons for not making the effort.

Section 180. Section **48-2c-1704** is enacted to read:

**48-2c-1704. Stay of proceedings.**

Whether or not a demand for action was made, if the company promptly commences an investigation of the allegations made in the demand or complaint, the court may stay the action for such reasonable period as the court considers appropriate but, in any event, the stay shall expire at the earlier of 30 days or when the company's investigation is completed.

Section 181. Section **48-2c-1705** is enacted to read:



**48-2c-1705. Expenses.**

If an action under Section 48-2c-1701 is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of any such action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees. The court shall order that any such award be paid out of the proceeds received by the plaintiff, if any, in which case the plaintiff shall remit to the company the remainder of the proceeds. If those proceeds are insufficient to reimburse the plaintiff's reasonable expenses, the court may direct that any such award of the plaintiff's expenses or a portion of the expenses be paid by the company.

Section 182. Section **48-2c-1706** is enacted to read:

**48-2c-1706. Security and costs.**

(1) In any action instituted in the right of any company or foreign company, unless the fair market value of the plaintiff's interest in the company as a member exceeds the greater of \$25,000 or 5% of the fair market value of the company, the company in whose right the action is brought shall be entitled, at any time before final judgment, to require the plaintiff to give security for the costs and reasonable expenses which may be directly attributable to and incurred by it in the defense of the action or may be incurred by other parties named as defendant for which the company may become legally liable, but not including attorney's fees.

(2) Fair market value shall be determined as of the date that the plaintiff institutes the action, or, in the case of an intervener as of the date that he becomes a party to the action.

(3) The amount and nature of the security shall be determined by the court, and the amount of the security may from time to time be increased or decreased by the court, upon showing that the security provided has or may become inadequate or is excessive.

(4) The company shall have recourse to the security in the amount as the court having jurisdiction shall determine upon the termination of the action if the court finds the action was brought without reasonable cause.

Section 183. Section **48-2c-1801** is enacted to read:

**Part 18. Indemnification**

**48-2c-1801. Definitions.**

As used in this part:

(1) "Company" includes any domestic company and any domestic or foreign entity that is a predecessor of a company by reason of a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

(2) "Manager" means an individual who is or was a manager of a company or an individual who, while a manager of a company, is or was serving at the company's request as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign company or other person or of an employee benefit plan. A manager is considered to be serving an employee benefit plan at the company's request if his duties to the company also impose duties on, or otherwise involve services by him to the plan or to participants in or beneficiaries of the plan. "Manager" includes, unless the context requires otherwise, the estate or personal representative of a manager.

(3) "Expenses" include attorney's fees.

(4) "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses.

(5) "Member," "employee," "fiduciary," and "agent" include any person who, while serving the indicated relationship to the company, is or was serving at the company's request as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign company or other person or of an employee benefit plan. A member, employee, fiduciary, or agent is considered to be serving an employee benefit plan at the company's request if that person's duties to the company also impose duties on, or otherwise involve services by, that person to the plan or participants in, or beneficiaries of the plan. Unless the context requires otherwise, the terms include the estates or personal representatives of such persons.

(6) (a) "Official capacity" means:

(i) when used with respect to a manager, the office of manager in a manager-managed company;

(ii) when used with respect to a member, the position of member in a member-managed

company; and

(iii) when used with respect to a person other than a manager under Subsection (6)(a)(i) or a member under Subsection (6)(a)(ii), as contemplated in Section 48-2c-1807, the office in a company held by the person, or the employment, fiduciary, or agency relationship undertaken by the person on behalf of the company.

(b) "Official capacity" does not include service for any other foreign or domestic limited liability company, other person, or employee benefit plan.

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

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

Section 184. Section **48-2c-1802** is enacted to read:

**48-2c-1802. Authority to indemnify.**

(1) Except as provided in Subsection (4), a company may indemnify an individual made a party to a proceeding because he is or was a manager, against liability incurred in the proceeding if:

(a) his conduct was in good faith;

(b) he reasonably believed that his conduct was in, or not opposed to, the company's best interests; and

(c) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(2) A manager's conduct with respect to any employee benefit plan for a purpose he reasonably believed to be in, or not opposed to, the interests of the participants in and beneficiaries of the plan is conduct that satisfies the requirement of Subsection (1)(b).

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

(4) A company may not indemnify a manager under this section:

(a) in connection with a proceeding by or in the right of the company in which the manager

was adjudged liable to the company; or

(b) in connection with any other proceeding charging that the manager derived an improper personal benefit, whether or not involving action in his official capacity, in which proceeding he was adjudged liable on the basis that he derived an improper personal benefit.

Section 185. Section **48-2c-1803** is enacted to read:

**48-2c-1803. Mandatory indemnification of managers.**

Unless limited by its articles of organization, a company shall indemnify a manager who was successful, on the merits or otherwise, in the defense of any proceeding, or in the defense of any claim, issue, or matter in the proceeding, to which he was a party because he is or was a manager of the company, against reasonable expenses, including attorney's fees, incurred by him in connection with the proceeding or claim with respect to which he has been successful.

Section 186. Section **48-2c-1804** is enacted to read:

**48-2c-1804. Advancement of expenses.**

(1) A company may pay for or reimburse the reasonable expenses incurred by a manager who is a party to a proceeding in advance of final disposition of the proceeding if:

(a) the manager furnishes the company a written affirmation of his good faith belief that he has met the applicable standard of conduct described in Section 48-2c-1802;

(b) the manager furnishes to the company a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he did not meet the standard of conduct; and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under this part.

(2) The undertaking required by Subsection (1)(b) must be an unlimited general obligation of the manager but need not be secured and may be accepted without reference to financial ability to make repayment.

(3) Determinations and authorizations of payments under this section shall be made in the manner specified in Section 48-2c-1806.

Section 187. Section **48-2c-1805** is enacted to read:

**48-2c-1805. Court-ordered indemnification.**

Unless a company's articles of organization provide otherwise, a manager of the company who is or was a party to a proceeding may apply for indemnification to the court or other decision-maker conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(1) if the court determines that the manager is entitled to mandatory indemnification under Section 48-2c-1803, the court shall order indemnification, in which case the court shall also order the company to pay the manager's reasonable expenses, including attorney's fees, incurred to obtain court-ordered indemnification; and

(2) if the court determines that the manager is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the manager met the applicable standard of conduct set forth in Section 48-2c-1802 or was adjudged liable as described in Subsection 48-2c-1802(4), the court may order indemnification as the court determines to be proper, except that the indemnification with respect to any proceeding in which liability has been adjudged in the circumstances described in Subsection 48-2c-1802(4) is limited to reasonable expenses incurred.

Section 188. Section **48-2c-1806** is enacted to read:

**48-2c-1806. Determination and authorization of indemnification.**

(1) A company may not indemnify a manager under Section 48-2c-1802 unless authorized and a determination has been made in the specific case that indemnification of the manager is permissible in the circumstances because the manager has met the applicable standard of conduct set forth in Section 48-2c-1802. A company may not advance expenses to a manager under Section 48-2c-1804 unless authorized in the specific case after the written affirmation and undertaking required by Subsections 48-2c-1804(1)(a) and (b) are received and the determination required by Subsection 48-2c-1804(1)(c) has been made.

(2) The determinations required by Subsection (1) shall be made:

(a) by the managers by a majority vote and only those managers not parties to the proceeding

shall be counted:

(b) by special legal counsel selected by a majority vote of the managers of the company who are not parties to the proceeding or, if none, by members holding a majority interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding; or

(c) by the members holding more than 50% interest in the profits of the company not counting any interest held by the manager who is a party to the proceeding.

(3) Unless authorization is required by the operating agreement, authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible. However, if the determination that indemnification or advance of expenses is permissible is made by special legal counsel, authorization of indemnification and advance of expenses shall be made by those entitled under Subsection (2)(b) to select legal counsel.

Section 189. Section **48-2c-1807** is enacted to read:

**48-2c-1807. Indemnification of members, employees, fiduciaries, and agents.**

Unless a company's articles of organization provide otherwise:

(1) a member of a company is entitled to mandatory indemnification under Section 48-2c-1803 and is entitled to apply for court-ordered indemnification under Section 48-2c-1805 in each case to the same extent as a manager;

(2) the company may indemnify and advance expenses to a member, employee, fiduciary, or agent of the company to the same extent as to a manager; and

(3) a company may also indemnify and advance expenses to a member, employee, fiduciary, or agent who is not a manager to a greater extent, if not inconsistent with public policy, and if provided for by its articles of organization, operating agreement, general or specific action of its managers or members, or contract.

Section 190. Section **48-2c-1808** is enacted to read:

**48-2c-1808. Insurance.**

A company may purchase and maintain liability insurance on behalf of a person who is or was a manager, member, employee, fiduciary, or agent of the company, or who, while serving as a

manager, member, employee, fiduciary, or agent of the company, is or was serving at the request of the company as a manager, member, director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic limited liability company or other person, or of an employee benefit plan, against liability asserted against or incurred by him in that capacity or arising from his status as a manager, member, employee, fiduciary, or agent, whether or not the company would have power to indemnify him against the same liability under Sections 48-2c-1802, 48-2c-1803, and 48-2c-1807. Insurance may be procured from any insurance company designated by the company, whether the insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the company has an equity or any other interest through stock ownership or otherwise.

Section 191. Section **48-2c-1809** is enacted to read:

**48-2c-1809. Limitations on indemnification.**

(1) A provision treating a company's indemnification of, or advance for expenses to, managers or members that is contained in its articles of organization or operating agreement or in a resolution of its members or in a contract, except an insurance policy, or otherwise, is valid only if and to the extent the provision is not inconsistent with this part. If the articles of organization limit indemnification or advancement of expenses, indemnification and advancement of expenses are valid only to the extent not inconsistent with the articles of organization.

(2) This part does not limit a company's power to pay or reimburse expenses incurred by a manager or member in connection with the manager's or member's appearance as a witness in a proceeding at a time when the manager or member has not been made a named defendant or respondent in the proceeding.

Section 192. Section **48-2c-1901** is enacted to read:

**Part 19. Miscellaneous**

**48-2c-1901. Legislative intent -- Freedom of contract.**

It is the intent of the Legislature that this chapter be interpreted so as to give the maximum effect to the principle of freedom of contract and to the enforceability of operating agreements of companies.

Section 193. Section **48-2c-1902** is enacted to read:

**48-2c-1902. Transitional provisions.**

(1) Each limited liability company formed prior to July 1, 2001, under the laws of this state, and existing on July 1, 2001:

(a) shall continue in existence with all rights and privileges applicable to limited liability companies formed under this chapter;

(b) need not amend its articles of organization to include the address of its designated office if it includes the information in its first annual report filed with the division after July 1, 2001, and in all subsequent annual reports; and

(c) that provides professional services as defined in Part 15 of this chapter, need not amend its articles of organization to comply with Section 48-2c-1509 if it includes the information in its first annual report filed with the division after July 1, 2001, and in all subsequent annual reports.

(2) All domestic companies formed prior to July 1, 2001, under the laws this state, as well as their managers, members, and assignees of members, as applicable, shall have all the rights and privileges and shall be subject to all the requirements, restrictions, duties, liabilities, and remedies prescribed in this chapter.

(3) Each foreign limited liability company authorized to transact business in this state as of July 1, 2001, is subject to the provisions of this chapter, but is not required by reason of enactment of this chapter to obtain a new certificate of authority to transact business in this state.

Section 194. Section **53B-5-114 (Effective 04/30/01)** is amended to read:

**53B-5-114 (Effective 04/30/01). Consent to use of educational terms in business names.**

(1) For purposes of this section:

(a) "Business name" means a name filed with the Division of Corporations and Commercial Code under:

(i) Section 16-6a-401;

(ii) Section 16-10a-401;

(iii) Section 42-2-6.6;

(iv) Section 48-2a-102; or



(v) Section [~~48-2b-106~~] 48-2c-106.

(b) "Educational term" means the term:

- (i) "university";
- (ii) "college"; or
- (iii) "institution."

(2) If a statute listed in Subsection (1)(a) requires the written consent of the board to file a business name with the Division of Corporations and Commercial Code that includes an educational term, the board may consent to the use of an educational term in accordance with this statute.

(3) The board shall consent to the use of an educational term in a business name if the person seeking to file the name:

- (a) is registered under this chapter;
- (b) is exempt from the chapter under Section 53B-5-105; or
- (c) (i) is not engaged in educational activities; and
- (ii) does not represent that it is engaged in educational activities.

(4) The board may withhold consent to use of an educational term in a business name if the person seeking to file the name:

- (a) offers, sells, or awards a degree or any other type of educational credential; and
- (b) fails to provide bona fide instruction through student-faculty interaction according to the standards and criteria established by the board under Subsection 53B-5-104(5).

Section 195. Section **53C-1-201** is amended to read:

**53C-1-201. Creation of administration -- Purpose -- Director.**

(1) (a) There is established within state government the School and Institutional Trust Lands Administration.

(b) The administration shall manage all school and institutional trust lands and assets within the state, except as otherwise provided in Chapter 3 of this title and Section 51-7-12.

(2) The administration is an independent state agency and not a division of any other department.

(3) (a) It is subject to the usual legislative and executive department controls except as

follows:

(i) (A) the director may make rules as approved by the board that allow the administration to classify a business proposal submitted to the administration as protected under Section 63-2-304, for as long as is necessary to evaluate the proposals;

(B) the administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal;

(C) the administration shall classify the proposal pursuant to law if it decides to proceed with the proposal; and

(D) Section 63-2-403 does not apply during the review period;

(ii) the director shall make rules in compliance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, except that the director, with the board's approval, may establish a procedure for the expedited approval of rules, based on written findings by the director showing:

(A) the changes in business opportunities affecting the assets of the trust;

(B) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(C) the reasons the normal procedures under Section 63-46a-4 cannot be met without causing the loss of the specific opportunity;

(D) approval by at least five board members; and

(E) that the director has filed a copy of the rule and a rule analysis, stating the specific reasons and justifications for its findings, with the Division of Administrative Rules and notified interested parties as provided in Subsection 63-46a-4(7); and

(iii) the administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as follows:

(A) the board may approve, upon recommendation of the director, that exemption for specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable the administration to efficiently fulfill its responsibilities under the law. The director shall consult with the director of the Department of Human Resource Management prior to making such a

recommendation. The positions of director, deputy director, assistant director, legal counsel appointed under Subsection 53C-1-305(2), administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1);

(B) salary for exempted positions, except for the director, shall be set by the director, after consultation with the director of the Department of Human Resource Management, within ranges approved by the board. The board and director shall consider salaries for similar positions in private enterprise and other public employment when setting salary ranges; and

(C) the board may create an annual incentive and bonus plan for the director and other administration employees designated by the board, based upon the attainment of financial performance goals and other measurable criteria defined and budgeted in advance by the board; and

(iv) the administration shall comply with Title 63, Chapter 56, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of policies for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(b) (i) The board and director shall review the exceptions under Subsection (3)(a) and make recommendations for any modification, if required, which the Legislature would be asked to consider during its annual General Session.

(ii) The board and director may include in their recommendations any other proposed exceptions from the usual executive and legislative controls the board and director consider necessary to accomplish the purpose of this title.

(4) The administration is managed by a director of school and institutional trust lands appointed by a majority vote of the board of trustees with the consent of the governor.

(5) (a) The board of trustees shall provide policies for the management of the administration and for the management of trust lands and assets.

(b) The board shall provide policies for the ownership and control of Native American remains that are discovered or excavated on school and institutional trust lands in consultation with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4, Native American Grave Protection and Repatriation Act.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Subsection 53C-1-303(4)(c), the administration may become a member of a limited liability company under Title 48, Chapter 2b, Utah Limited Liability Company Act, and is considered a person under [~~Subsection 48-2b-102(6)~~] Section 48-2c-102 for such purposes.

**Section 196. Repealer.**

This act repeals:

**Section 48-2b-101, Short title.**

**Section 48-2b-102, Definitions.**

**Section 48-2b-103, Formation.**

**Section 48-2b-104, Scope -- Definitions.**

**Section 48-2b-105, Powers.**

**Section 48-2b-106 (Effective 04/30/01), Name -- Exclusive right.**

**Section 48-2b-106 (Superseded 04/30/01), Name -- Exclusive right.**

**Section 48-2b-107, Limited liability company name - Limited rights.**

**Section 48-2b-108, Name -- Omission.**

**Section 48-2b-109, Liability of members, managers, and employees -- Waiver.**

**Section 48-2b-110, Liability for acting without authority.**

**Section 48-2b-111, Professional relationship -- Personal liability.**

**Section 48-2b-112, Member as a party to proceedings.**

**Section 48-2b-113, Service of process, notice, or demand.**

**Section 48-2b-114, Waiver of notice.**

**Section 48-2b-115, Regulating board authority -- Prohibitions on individuals apply.**

**Section 48-2b-116, Articles of organization.**

**Section 48-2b-117, Filing of articles.**

**Section 48-2b-118, Effect of filing -- Prefiling activities.**

**Section 48-2b-119, Records.**

**Section 48-2b-120, Annual report.**

**Section 48-2b-121, When amendments to the articles of organization are required.**

Section **48-2b-122**, Additional members.

Section **48-2b-123**, Registered agent.

Section **48-2b-124**, Capital contributions.

Section **48-2b-125**, Management.

Section **48-2b-126**, Operating agreements.

Section **48-2b-127**, Ownership and disposition of property.

Section **48-2b-128**, Conditions for property distribution.

Section **48-2b-129**, Assets distribution.

Section **48-2b-130**, Profits and losses.

Section **48-2b-131**, Character, transfer, adjustment, and assignment of member interests

-- Effect -- Charge order.

Section **48-2b-132**, Conditions for distribution of property -- Return of contribution.

Section **48-2b-133**, Member liabilities.

Section **48-2b-134**, Execution of documents.

Section **48-2b-135**, Penalty for false execution.

Section **48-2b-136**, Restated articles of organization.

Section **48-2b-137**, Dissolution.

Section **48-2b-138**, Settlement upon dissolution.

Section **48-2b-139**, Articles of dissolution.

Section **48-2b-140**, Filing of articles of dissolution -- Effect.

Section **48-2b-141**, Cancellation of articles of organization.

Section **48-2b-142**, Involuntary dissolution.

Section **48-2b-143**, Foreign limited liability companies.

Section **48-2b-144**, Registration of foreign limited liability companies.

Section **48-2b-145**, Cancellation of foreign limited liability companies' registration.

Section **48-2b-146**, Effect of registration.

Section **48-2b-147**, Effect of failure to register by foreign limited liability companies.

Section **48-2b-148**, Foreign limited liability companies -- Service of process -- Cause of

**action.**

Section **48-2b-149, Merger and consolidation.**

Section **48-2b-150, Right of action.**

Section **48-2b-151, Proper plaintiff.**

Section **48-2b-152, Pleading.**

Section **48-2b-153, Expenses.**

Section **48-2b-154, Security and costs.**

Section **48-2b-155, Indemnification of a manager.**

Section **48-2b-156, Correction of technical errors in instruments.**

Section **48-2b-157, Application of partnership provisions to limited liability companies.**

Section **48-2b-158, Taxation of limited liability companies.**

Section 197. **Effective date.**

This act takes effect on July 1, 2001.