

BUSINESS ENTITY AMENDMENTS

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ross I. Romero

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill modifies provisions addressing business entities under the Utah Revised Business Corporation Act, Utah Revised Uniform Limited Partnership Act, and Utah Revised Limited Liability Company Act.

Highlighted Provisions:

This bill:

- ▶ clarifies definitions in the Utah Revised Business Corporation Act;
- ▶ clarifies notice requirements in the Utah Revised Business Corporation Act;
- ▶ addresses who may be a registered agent under the Utah Revised Uniform Limited Partnership Act;
- ▶ addresses the duration of a limited partnership under the Utah Revised Uniform Limited Partnership Act;
- ▶ modifies provisions of the Utah Revised Limited Liability Company Act, including provisions:
 - defining terms;
 - addressing limitations on a company's articles of organization and operating agreement;
 - addressing the effect of certain filings as to third persons, members, and managers;
 - addressing powers of a company;
 - related to annual reports;
 - related to organization of a company under the act;

- related to the duration of a company;
 - related to amending articles of organization;
 - related to an initial operating agreement of a company;
 - related to membership of a company;
 - related to management by members of a company;
 - related to the calculation of a member's profits interest;
 - related to management by managers;
 - related to duties of managers and members;
 - related to capital accounts;
 - related to the rights of a creditor or a member;
 - related to dissolution of a company; and
 - related to company conversion; and
- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

16-10a-102, as last amended by Chapter 218, Laws of Utah 2001

16-10a-103, as enacted by Chapter 277, Laws of Utah 1992

48-2a-104, as last amended by Chapter 193, Laws of Utah 2002

48-2a-201, as last amended by Chapter 189, Laws of Utah 1991

48-2c-102, as enacted by Chapter 260, Laws of Utah 2001

48-2c-110, as last amended by Chapter 193, Laws of Utah 2002

48-2c-120, as enacted by Chapter 260, Laws of Utah 2001

48-2c-121, as enacted by Chapter 260, Laws of Utah 2001

48-2c-203, as enacted by Chapter 260, Laws of Utah 2001

- 48-2c-401, as last amended by Chapter 193, Laws of Utah 2002
- 48-2c-403, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-408, as last amended by Chapter 193, Laws of Utah 2002
- 48-2c-501, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-702, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-803, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-804, as last amended by Chapter 193, Laws of Utah 2002
- 48-2c-807, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-903, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-1103, as last amended by Chapter 193, Laws of Utah 2002
- 48-2c-1201, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-1204, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-1207, as last amended by Chapter 193, Laws of Utah 2002
- 48-2c-1211, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-1404, as enacted by Chapter 260, Laws of Utah 2001
- 48-2c-1406, as enacted by Chapter 260, Laws of Utah 2001

ENACTS:

48-2c-803.1, Utah Code Annotated 1953

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

Section 1. Section **16-10a-102** is amended to read:

16-10a-102. Definitions.

As used in this chapter:

(1) (a) "Address" means a location where mail can be delivered by the United States

Postal Service.

(b) "Address" includes:

(i) a post office box [~~numbers;~~] number;

(ii) a rural free delivery route [~~numbers;~~] number; and

(iii) a street [~~names and numbers~~] name and number.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.

(3) "Assumed corporate name" means the name assumed for use in this state by a foreign corporation pursuant to Section 16-10a-1506 because its corporate name is not available for use in this state.

(4) "Articles of incorporation" include:

(a) amended and restated articles of incorporation[;];

(b) articles of merger[;]; and

(c) documents of a similar import to those described in Subsections (4)(a) and (b).

(5) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(6) "Bylaws" includes amended bylaws and restated bylaws.

(7) "Cash" and "money" are used interchangeably in this chapter and mean legal tender and negotiable instruments and other cash equivalents readily convertible into legal tender.

(8) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it[~~For example~~], including:

(a) printing or typing in italics[;];

(b) boldface[;];

(c) contrasting color[;];

(d) capitals[;]; or

(e) underlining [~~is conspicuous~~].

(9) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting shares, by contract, or otherwise.

(10) "Corporate name" means:

(a) the name of a domestic corporation or a domestic nonprofit corporation as stated in

its articles of incorporation; or

(b) the name of a foreign corporation or a foreign nonprofit corporation as stated in its articles of incorporation or document of similar import.

(11) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter.

(12) "Deliver" includes delivery by mail and any other means of transmission authorized by Section 16-10a-103, except that delivery to the division means actual receipt by the division.

(13) (a) "Distribution" means a direct or indirect transfer of money or other property, except:

(i) a corporation's own shares[;]; or

(ii) incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of [its] the corporation's shares.

(b) A distribution may be in the form of:

(i) a declaration or payment of a dividend[;];

(ii) a purchase, redemption, or other acquisition of shares[;];

(iii) distribution of indebtedness[;]; or [~~otherwise~~]

(iv) other form.

(14) "Division" means the Division of Corporations and Commercial Code.

(15) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-10a-123.

(16) "Effective date of notice" means the date notice is effective as provided in Section 16-10a-103.

(17) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by e-mail, facsimile, or otherwise.

(18) "Employee" includes an officer but not a director[~~—A~~], unless the director [~~may accept~~] accepts duties that make that director also an employee.

(19) "Entity" includes:

- (a) a domestic and foreign corporation[;];
- (b) a nonprofit corporation[;];
- (c) a limited liability company[;];
- (d) a profit or nonprofit unincorporated association[;];
- (e) a business trust[;];
- (f) an estate[;];
- (g) a partnership[;];
- (h) a trust[;];
- (i) two or more persons having a joint or common economic interest[;];
- (j) a state[;];
- (k) the United States[;]; and
- (l) a foreign government.

(20) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(21) "Governmental subdivision" means:

- (a) county[;];
- (b) municipality[~~, and~~]; or
- (c) any other [types] type of governmental subdivision authorized by the laws of this state.

(22) "Individual" means:

- (a) a natural person[;];
- (b) the estate of an incompetent individual[;]; or
- (c) the estate of a deceased individual.

(23) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first class postage prepaid, and includes registered or certified mail for which the proper fee has been paid.

(24) "Notice" is as provided in Section 16-10a-103.

(25) "Principal office" means the office, in or out of this state, designated by a domestic or foreign corporation as its principal office in the most recent document on file with the division providing the information, including:

- (a) an annual report[;];
- (b) an application for a certificate of authority[;]; or
- (c) a notice of change of principal office.

(26) "Proceeding" includes:

- (a) a civil suit[;];
- (b) arbitration or mediation[;]; and
- (c) a criminal, administrative, or investigatory action.

(27) "Qualified shares" means, with respect to a director's conflicting interest transaction pursuant to Section 16-10a-853, any shares entitled to vote on the transaction, except shares:

- (a) that, to the knowledge, before the vote, of the secretary, other officer, or agent of the corporation authorized to tabulate votes, are beneficially owned[;]; or
- (b) the voting of which is controlled, by:
 - (i) a director who has a conflicting interest respecting the transaction[~~, or by~~];
 - (ii) a related person of that director[;]; or [~~both~~]
 - (iii) persons referred to in Subsections (27)(b)(i) and (ii).

(28) "Receive," when used in reference to receipt of a writing or other document by a domestic or foreign corporation, means the writing or other document is actually received:

- (a) by the corporation at its registered office in this state or at its principal office;
- (b) by the secretary of the corporation, wherever the secretary is found; or
- (c) by any other person authorized by the bylaws or the board of directors to receive the writing or other document, wherever that person is found.

(29) "Record date" means the date established under Part 6, Shares and Distributions, or 7 [~~of this chapter~~], Shareholders, on which a corporation determines the identity of its shareholders. The determination shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(30) "Registered office" means the office within this state designated by a domestic or foreign corporation as its registered office in the most recent document on file with the division providing that information, including:

- (a) articles of incorporation~~;~~;
- (b) an application for a certificate of authority~~;~~; or
- (c) a notice of change of registered office.

(31) "Related person" of a director means:

- (a) the spouse of the director, or a child, grandchild, sibling, or parent of the director;
- (b) the spouse of a child, grandchild, sibling, or parent of the director;
- (c) an individual having the same home as the director;
- (d) a trust or estate of which the director or any other individual specified in this

Subsection (31) is a substantial beneficiary; or

- (e) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(32) "Secretary" means the corporate officer to whom the bylaws or the board of directors has delegated responsibility under Subsection 16-10a-830(3) for:

- (a) the preparation and maintenance of:
 - (i) minutes of the meetings of the board of directors and of the shareholders; and ~~[of]~~
 - (ii) the other records and information required to be kept by the corporation by Section

16-10a-830~~;~~; and

- (b) for authenticating records of the corporation.

(33) "Shares" means the units into which the proprietary interests in a corporation are divided.

(34) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent recognized pursuant to Section 16-10a-723. For purposes of this chapter:

(a) the following, ~~[which are]~~ identified as a shareholder in a corporation's current record of shareholders, constitute one shareholder:

- (i) (A) three or fewer coowners; or

(B) in the case of more than three coowners each coowner in excess of the first three will be counted as a separate shareholder;

(ii) a corporation, limited liability company, partnership, trust, estate, or other entity; and

(iii) the trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account;

(b) shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person; and

(c) in any case where the record of shareholders has not been maintained in accordance with accepted practice, any additional person who would be identified as an owner on that record if it had been maintained in accordance with accepted practice shall be included as a holder of record.

(35) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(36) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

Section 2. Section **16-10a-103** is amended to read:

16-10a-103. Notice.

(1) (a) Notice given under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(b) Notice by electronic transmission is written notice.

(2) (a) [Notice] Subject to compliance with any requirement that notice be in writing, notice may be communicated in person, by telephone, by any form of electronic [communication] transmission, or by mail or private carrier.

(b) If [these] the forms of personal notice listed in Subsection (2)(a) are impracticable, notice may be communicated by:

(i) a newspaper of general circulation in the county, or similar subdivision, in which the

corporation's principal or registered office is located~~[, or by radio, television, or]; or~~

(ii) radio, television, or other form of public broadcast communication in the county or subdivision.

(3) (a) Written notice by a domestic or foreign corporation to its shareholders or directors, if in a comprehensible form, is effective as to each shareholder or director:

(i) when mailed, if addressed to the shareholder's or director's address shown in the corporation's current record of ~~[shareholders.]~~ the shareholder or director; or

(ii) when electronically transmitted to the shareholder or director, in a manner and to an address provided by the shareholder or director in an unrevoked consent.

(b) Consent under Subsection (3)(a)(ii) is considered revoked if:

(i) the corporation is unable to deliver by electronic transmission two consecutive notices transmitted by the corporation based on that consent; and

(ii) the corporation's inability to deliver notice by electronic transmission under Subsection (3)(b)(i) is known by the:

(A) corporation's secretary;

(B) an assistant secretary or transfer agent of the corporation; or

(C) any other person responsible for providing notice.

(c) Notwithstanding Subsection (3)(b), a corporation's failure to treat consent under Subsection (3)(a) as revoked does not invalidate any meeting or other act.

(d) Delivery of a notice to shareholders may be excused in accordance with Subsection 16-10a-705(5).

(4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to ~~[its]~~ the corporation's:

(a) registered agent at its registered office; or ~~[to the corporation's]~~

(b) secretary at its principal office.

(5) Except as provided in Subsection (3), written notice, if in a comprehensible form, is effective at the earliest of the following:

(a) when received;

(b) five days after it is mailed; or
(c) on the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(6) Oral notice is effective when communicated if communicated in a comprehensible manner.

(7) Notice by publication is effective on the date of first publication.

(8) (a) If this chapter prescribes notice requirements for particular circumstances, those requirements govern.

(b) If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this chapter, those requirements govern.

Section 3. Section **48-2a-104** is amended to read:

48-2a-104. Registered agent.

(1) (a) A limited partnership shall continuously maintain in this state an agent for service of process on the limited partnership.

(b) The agent required by this Subsection (1) shall be:

(i) an individual resident of this state;

(ii) a domestic corporation; [~~or~~]

(iii) a domestic limited liability company;

~~[(iii)]~~ (iv) a foreign corporation authorized to do business in this state; or

(v) a foreign limited liability company authorized to do business in this state.

(2) (a) The registered agent of a limited partnership may resign by filing with the division a notice of resignation signed by the resigning agent.

(b) After receipt of the notice of resignation under Subsection (2)(a), the division shall provide a copy of the notice of resignation to each general partner of the limited partnership at the address set forth in the limited partnership's certificate for each general partner.

(c) The appointment of a registered agent ends 30 days after the division receives the notice of resignation required by this Subsection (2).

(3) (a) A limited partnership may change the limited partnership's registered agent in this

state by filing with the division a notice of change of registered agent.

(b) The notice of change of registered agent required by this Subsection (3) shall:

(i) state:

(A) the name of the limited partnership;

(B) the name of the limited partnership's registered agent before the change of registered agent; and

(C) the name of the limited partnership's registered agent after the change of registered agent; and

(ii) include the new registered agent's written consent to the appointment:

(A) on the notice of change of registered agent; or

(B) in a document accompanying the notice of change of registered agent.

(c) A registered agent may change the registered agent's street address by:

(i) notifying the limited partnership in writing of the change; and

(ii) filing with the division a notice of change of address that:

(A) is signed by the registered agent;

(B) includes the information required by Subsection (3)(b); and

(C) states that the registered agent notified the limited partnership as required by Subsection (3)(c)(i).

(d) A notice that is required under this section to be filed with the division shall be filed no later than 30 days after the change for which notice under this section is required.

Section 4. Section **48-2a-201** is amended to read:

48-2a-201. Certificate of limited partnerships.

(1) In order to form a limited partnership a certificate of limited partnership must be executed and filed with the division[~~-. The certificate shall set~~], setting forth:

(a) the name of the limited partnership;

(b) the name, street address, and signature of the agent for service of process required to be maintained by Section 48-2a-104;

(c) a statement that the director of the division is appointed the agent of the limited

partnership for service of process if:

- (i) the agent has resigned[;];
- (ii) the agent's authority has been revoked[;]; or
- (iii) the agent cannot be found or served with the exercise of reasonable diligence;

(d) the street address of the limited partnership's principal place of business where the records required to be maintained by Section 48-2a-105 are to be kept;

(e) the name and business address of each general partner;

(f) (i) the latest date upon which the limited partnership is to dissolve, if the duration of the limited partnership is to be limited; or

(ii) a statement to the effect that the limited partnership is to have perpetual duration; and

(g) any other matters the general partners determine to include.

(2) A limited partnership is formed:

(a) at the time of the filing of the certificate of limited partnership with the division as evidenced by the stamped copy returned by the division pursuant to Subsection 48-2a-206 (1)[;];
or

(b) at any later time specified in the certificate of limited partnership.

Section 5. Section **48-2c-102** is amended 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:

(a) the value of all contributions by that member[;];

(b) the amount of all distributions to that member or the member's assignee[;];

(c) the member's share of profits, gains, and losses of the company[;]; and

(d) 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:

(i) an interest in the company[;]; or

(ii) 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) (a) "Filed with the division" means that a statement, document, or report;

(i) complies with the requirements of Section 48-2c-207; and

(ii) has been accepted for filing by the division [~~and~~].

(b) "Filed with the division" 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:

(a) the right to receive distributions from the company; and

(b) 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, Management.

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

(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, Management.

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

(i) concerning the business or purpose of the company and the conduct of its affairs[;];
and

(ii) which complies with Part 5[. ~~An operating~~]. Operating Agreements.

(b) "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, Professions.

(20) "Profits interest" means that portion of the company's profits to be allocated to an individual member upon any allocation of profits.

(21) "Profits interests" or "interests in profits" with respect to a company means the total interests of all of the company's members in the company's profits.

~~[(20)]~~ (22) "Signed," "signs," or "signature" means a manual signature or authorized facsimile ~~[thereof]~~ of the signature and any electronic or digital signature approved by the division.

~~[(21)]~~ (23) "State" means:

(a) a state, territory, or possession of the United States~~;~~;

(b) the District of Columbia~~;~~; or

(c) the Commonwealth of Puerto Rico.

Section 6. Section **48-2c-110** is amended 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) (a) make contracts or guarantees or incur liabilities[;];

(b) borrow money at such rates of interest as the company may determine[;];

(c) issue its notes, bonds, or other obligations[;]; or

(d) secure any of its obligations by mortgage or pledge of all or any part of its property, franchises, and income;

(7) (a) lend money for any lawful purpose[;];

(b) invest or reinvest its funds[;]; or

(c) 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, Operating Agreements;

(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~~] that 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 7. Section **48-2c-120** is amended 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~~] any person vested with management authority 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;

(i) were in bad faith [~~or~~];

(ii) involved gross negligence [~~or~~];

(iii) involved willful misconduct; or [~~that~~]

(iv) 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 8. Section **48-2c-121** is amended 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~~] and 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~~] that 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.

(4) The filing with the division of a certified copy of a court order under Subsection 48-2c-809(5) is notice of the contents of the order to:

- (a) third persons;
- (b) members of the company; and
- (c) managers of the company.

Section 9. Section **48-2c-203** is amended 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:

- (i) the name of the company; ~~and~~
- (ii) the state or country under the laws of which it is formed; and ~~shall set forth~~

(iii) any change in:

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

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

~~[(iii)]~~ (C) the street address of its registered office in this state;

~~[(iv)]~~ (D) the name of the agent for service of process at the address listed in Subsection

(1)(b)(iii)(C);

~~[(v)]~~ (E) 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)]~~ (F) 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]~~ company, 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) (i) any manager in a manager-managed company ~~[or members]~~;
- (ii) any member in a member-managed company; or
- (iii) any 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 10. Section **48-2c-401** is amended to read:

48-2c-401. Organizer.

(1) (a) One or more ~~[individuals 18 years of age or older may form a company under this chapter by]~~ persons may act as organizers of a company by signing and filing with the division articles of organization that meet the requirements of Section 48-2c-403.

(b) An organizer who is a natural person must be 18 years of age or older.

(c) The [individuals] persons acting as [organizer] organizers may[; but need not,] be members or managers of the company at the time of formation or after formation has occurred.

(2) (a) The signing of the articles of organization constitutes an affirmation by the organizers that:

(i) the company has one or more members; and[;]

(ii) 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.

(b) 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] that sets forth[; (a)] for each company that is not to be member-managed, 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 11. Section **48-2c-403** is amended 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]~~ the company's initial registered agent;

(e) a statement that the director of the division is appointed the agent of the company for service of process if:

(i) the agent has resigned~~[-]~~;

(ii) the agent's authority has been revoked~~[-]~~; or

(iii) 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, Professions.

(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:

(i) the business in which the company may engage ~~[or]~~;

(ii) the powers that the company may exercise~~[-]~~; or

(iii) both Subsections (4)(a)(i) and (ii);

(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, or the latest of any amendments to the articles of organization effecting a change in the period of duration, 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, unless the period of duration is extended by an amendment to the articles of organization as permitted by this chapter.

Section 12. Section **48-2c-408** is amended 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~~] that 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 and any managers, as required by Section [~~48-2c-802~~] 48-2c-803 or 48-2c-804, 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~~], the operating agreement, or in Section 48-2c-803 or 48-2c-804, each amendment to the articles of organization of a company must be approved by all [~~of the~~] members and any managers and, if there are classes of members, by all of the members of each class.

(3) A company shall deliver the certificate of amendment required by Subsection (1) to the division for filing within 60 days after adoption of the amendment.

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

Section 13. Section **48-2c-501** is amended to read:

48-2c-501. Initial agreement.

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

Section 14. Section **48-2c-702** is amended 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 as a member;
- (b) when the person signs the operating agreement as a member; 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~~] may not become a member of a company prior to formation of the company.

Section 15. Section **48-2c-803** is amended 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 including:

(i) amendments made only to reflect actions previously taken with the requisite approval, such as a change in managers; or

(ii) to change an address;

(b) amend the operating agreement, except to make ministerial amendments, including:

(i) amendments made only to reflect actions previously taken with the requisite approval, such as a change in managers; or

(ii) to change an address; or

(c) (i) 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]~~

(ii) after authorizing an act under Subsection (2)(c)(i) 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) (i) 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]~~

(ii) after authorizing an act under Subsection (3)(a)(i) 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]~~ the usual and regular course of the company's business;

(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~~] other than 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 16. Section **48-2c-803.1** is enacted to read:

48-2c-803.1. Individual profits interest.

For the purpose of determining compliance with a provision of this chapter that conditions rights, consents, or actions on the participation of members holding a certain percentage of the company's profits interests, unless otherwise provided in the articles of organization or the operating agreement, each member's profits interest shall be determined based on the members' capital account balances on the date on which compliance is measured.

Section 17. Section **48-2c-804** is amended 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) (a) the initial managers shall be designated in the articles of organization; [~~thereafter;~~] and

(b) after the initial managers, the managers shall be those persons identified in documents filed with the division including:

(i) amendments to the articles of organization [~~as well as~~];

(ii) the annual reports required under Section 48-2c-203; and

(iii) 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;

(i) 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]

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

(c) each manager shall serve until the earliest to occur of:

(i) the manager's death, withdrawal, or removal [or];

(ii) an event described in Subsection 48-2c-708(1)(f); or[;]

(iii) if membership in the company is a condition to being a manager, an event described in Subsection 48-2c-708(1)(d) or (e);

(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)]~~;

(i) all of the members and all of the managers shall be required for matters described in Subsection 48-2c-803(2); and

(ii) members holding 2/3 of the profits interests in the company, and 2/3 of the managers shall be required for all matters described in Subsection 48-2c-803(3).

Section 18. Section **48-2c-807** is amended to read:

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

(1) [~~Unless otherwise provided in the articles of organization or an operating agreement,~~
a] 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:

(a) gross negligence [~~or~~];

(b) willful misconduct[~~;~~]; or

(c) a breach of a higher standard of conduct that would result in greater exposure to liability for the member or manager that is established in the company's articles of organization or operating agreement.

(2) [~~Unless otherwise provided in an operating agreement, each~~] Each member and manager [~~must~~] shall 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, or a higher percentage of interests in profits provided for in the company's articles of organization or operating agreement, 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~~] Unless otherwise provided in a company's articles of organization or operating agreement, 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 19. Section **48-2c-903** is amended to read:

48-2c-903. Capital accounts.

(1) (a) A capital account shall be maintained for each member.

(b) The capital account of each member represents that member's share of the net assets

of the company.

(c) 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)]~~ (i) 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)]~~ (ii) a distribution, other than a de minimis amount, made in partial or complete redemption of a member's interest in the company; ~~[(or)]~~

~~[(c)]~~ (iii) the dissolution and winding up of the company~~[-];~~

(iv) a merger of the company; or

(v) the grant of an interest in the company other than a de minimis interest, on or after May 6, 2004, as consideration for the provision of services to or for the benefit of the company
by:

(A) an existing member acting in the capacity of a member; or

(B) a new member acting in a member capacity or in anticipation of becoming a member.

(2) Upon any ~~[such]~~ revaluation event~~[-];~~ under Subsection (1):

(a) the book value of company assets shall be adjusted to fair market value; and

(b) unrealized income, gain, loss, or deduction inherent in ~~[such]~~ those company assets that have not been previously reflected in the members' capital accounts shall be allocated to the members' capital accounts.

Section 20. Section **48-2c-1103** is amended to read:

48-2c-1103. Rights of creditor of member.

(1) (a) 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]~~

(b) A court charging the interest of a member or assignee under Subsection (1)(a) 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~~]

(c) A judgment creditor and receiver under this section shall have only the rights of an assignee. [~~The~~]

(d) A court may make all other orders, directions, accounts, and inquiries [the] a judgment debtor might [~~have made~~] make or [~~which~~] that the circumstances of the case may require.

(2) (a) A charging order constitutes a lien on the judgment debtor's interest in the company. [~~The~~]

(b) A court may order a foreclosure of the interest subject to [the] a charging order entered under this section at any time.

(c) The purchaser at [the] a foreclosure sale under Subsection (2)(b) has only the rights of an assignee[-] if there are other members in the company.

(d) Notwithstanding Subsection (2)(c), if the member whose interest is charged under this section is the sole member of the company when the charging order was entered:

(i) the purchaser at a foreclosure sale acquires all rights of the member, including voting rights; and

(ii) the member is considered to have consented to the admission of the purchaser as a member of the company.

(3) Unless otherwise provided in the articles of 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 21. Section **48-2c-1201** is amended to read:

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) or (5), 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) (5) upon administrative dissolution under Section 48-2c-1207, subject to right of reinstatement under Section 48-2c-1208; or~~

~~[(7) (6) upon entry of a decree of judicial dissolution under Section 48-2c-1213.~~

Section 22. Section **48-2c-1204** is amended 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)]~~ (5) or (6), 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) (i) the address of the company's designated office; or~~;~~

(ii) if ~~[none]~~ a designated office is not to be maintained, a statement that the company

will not maintain a designated office[;]; and[;]

(iii) 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 23. Section **48-2c-1207** is amended 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 for the administrative dissolution, 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~~], Winding Up; 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 director of the division shall be an additional agent of the dissolved company for purposes of service of process.

(b) Service of process on the director of the division under this Subsection (5) is service on the dissolved company.

(c) Upon receipt of process under this Subsection (5), the director of 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 24. Section **48-2c-1211** is amended to read:

48-2c-1211. Procedure for judicial dissolution.

(1) (a) A proceeding by the attorney general or director of the division to dissolve a company shall be brought in [~~either~~]:

(i) 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

(ii) the district court of Salt Lake County.

(b) 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~~] personally.

(3) A court in a proceeding brought to dissolve a company may:

(a) issue [~~injunctions;~~] an injunction;

(b) appoint a receiver or custodian pendente lite with all powers and duties the court directs[;];

(c) take other action required to preserve the company's assets wherever located[;]; and

(d) carry on the business of the company until a full hearing can be held.

Section 25. Section **48-2c-1404** is amended to read:

48-2c-1404. Approval of conversion.

(1) Any conversion involving a foreign subject entity must be permitted by the laws governing the foreign subject entity.

(2) Any filing required to effect the conversion and the change in domicile of a surviving domestic company under the laws of each jurisdiction governing the foreign subject entity shall be timely made.

(3) Prior to filing articles of conversion with the division[;];

(a) 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

(b) the new operating agreement, if any, for the domestic company must be approved by the same authorization required to approve the conversion.

(4) 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 26. Section **48-2c-1406** is amended to read:

48-2c-1406. Approval of company conversion to other entity.

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

(b) If ~~the~~ an operating agreement specifies the manner of authorizing a conversion of ~~the~~ a company, the conversion shall be authorized as specified in the operating agreement.

(c) 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.

(d) 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~~ may 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) (a) Unless otherwise agreed, the conversion of a domestic company to another entity, pursuant to this section, ~~shall~~ does not require the domestic company to wind up its affairs or to pay its liabilities or distribute its assets under this chapter.

(b) 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:

(i) 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

(ii) in addition to or in lieu ~~thereof~~ of an exchange or conversion described in Subsection (3)(b)(i), may be exchanged for or converted into cash, property, interests in, or

securities of or rights in another entity.

(4) A conversion of a domestic company into a foreign subject entity must be:

(a) permitted by the statutes governing the foreign subject entity;

(b) approved in the manner required by the statutes described in Subsection (4)(a); and

(c) accompanied by any filing in the foreign jurisdiction required by the statutes described in Subsection (4)(a).