

## SB0131S01 compared with SB0131

~~text~~ shows text that was in SB0131 but was deleted in SB0131S01.

inserted text shows text that was not in SB0131 but was inserted into SB0131S01.

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Senator Lyle W. Hillyard proposes the following substitute bill:

### UNINCORPORATED BUSINESS ENTITY UNIFORM ACTS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill repeals the existing ~~partnership act~~ Partnership Act, Utah Revised Uniform Limited Partnership Act, and Utah Revised Limited Liability Company Act, and enacts with modifications the Utah Uniform Partnership Act, Utah Uniform Limited Partnership Act, and Utah Revised Uniform Limited Liability Company Act.

##### Highlighted Provisions:

This bill:

- ▶ enacts provisions related to partnerships, including:
  - enacting general provisions related to partnerships such as defining terms, addressing what constitutes knowledge and notice, addressing the effect of a partnership agreement, designating supplemental principles of law, providing for execution, filing, and recording of statements, addressing what is the

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- governing law, and the affects of amendments or repeals to the chapter;
- addressing the nature of a partnership;
- addressing the relations of partners to persons dealing with a partnership;
- addressing relations of partners to each other and to the partnership;
- addressing transferees and creditors of partners;
- providing for a partner's dissociation including when business is not wound up;
- providing for winding up partnership business;
- providing for conversion and merger; and
- providing for a limited liability partnership, a limited liability partnership that provides a professional service, and foreign limited liability partnership;
- ▶ enacts provisions related to limited partnerships, including:
  - providing for general provisions related to limited partnerships;
  - addressing formation of limited partnerships and various filing requirements;
  - addressing limited partners;
  - addressing general partners;
  - providing for contributions and distributions;
  - providing for dissociation;
  - addressing transferable interests and rights of transferees and creditors;
  - providing for dissolution;
  - addressing foreign limited partnerships;
  - providing for actions by partners; and
  - providing for conversions and mergers;
- ▶ enacts provisions related to limited liability companies, including:
  - addressing various general provisions related to limited liability companies;
  - providing for the formation and filings of limited liability companies;
  - addressing relations of members and managers to a person dealing with a limited liability company;
  - addressing relations of members to each other and to the limited liability company;
  - addressing transferable interests and rights of transferees and creditors;
  - providing for dissociation;

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- providing for dissolution and winding up;
  - addressing foreign limited liability companies;
  - providing for actions by members;
  - providing for merger, conversion, and domestication;
  - providing for professional services companies;
  - providing for series; and
  - providing for low-profit limited liability company act;
- ▶ includes miscellaneous provisions such as providing for uniformity of application, severability, and savings; and
- ▶ makes technical and conforming amendments.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill takes effect on ~~January~~ July 1, 2012.

### **Utah Code Sections Affected:**

#### AMENDS:

**7-1-810**, as last amended by Laws of Utah 2008, Chapter 382

**7-3-10**, as last amended by Laws of Utah 2007, Chapter 277

**7-8-3**, as last amended by Laws of Utah 2004, Chapter 92

**13-34-114**, as last amended by Laws of Utah 2010, Chapter 218

**16-6a-1008.7**, as last amended by Laws of Utah 2006, Chapter 228

**16-10a-401**, as last amended by Laws of Utah 2010, Chapters 218 and 378

**16-10a-1008.7**, as enacted by Laws of Utah 2002, Chapter 193

**16-11-16**, as last amended by Laws of Utah 2010, Chapters 218 and 378

**16-16-111**, as last amended by Laws of Utah 2010, Chapter 378

**16-17-102**, as enacted by Laws of Utah 2008, Chapter 364

**31A-37a-102**, as enacted by Laws of Utah 2008, Chapter 302

**46-4-503**, as last amended by Laws of Utah 2008, Chapter 382

**53C-1-201**, as last amended by Laws of Utah 2010, Chapter 218

**61-2b-25**, as last amended by Laws of Utah 2010, Chapter 379

**61-2f-401**, as last amended by Laws of Utah 2010, Chapter 184 and renumbered and

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amended by Laws of Utah 2010, Chapter 379

**75-7-1011**, as enacted by Laws of Utah 2004, Chapter 89

ENACTS:

**48-1a-101**, Utah Code Annotated 1953

**48-1a-102**, Utah Code Annotated 1953

**48-1b-101**, Utah Code Annotated 1953

**48-1b-102**, Utah Code Annotated 1953

**48-1b-103**, Utah Code Annotated 1953

**48-1b-104**, Utah Code Annotated 1953

**48-1b-105**, Utah Code Annotated 1953

**48-1b-106**, Utah Code Annotated 1953

**48-1b-107**, Utah Code Annotated 1953

**48-1b-201**, Utah Code Annotated 1953

**48-1b-202**, Utah Code Annotated 1953

**48-1b-203**, Utah Code Annotated 1953

**48-1b-204**, Utah Code Annotated 1953

**48-1b-301**, Utah Code Annotated 1953

**48-1b-302**, Utah Code Annotated 1953

**48-1b-303**, Utah Code Annotated 1953

**48-1b-304**, Utah Code Annotated 1953

**48-1b-305**, Utah Code Annotated 1953

**48-1b-306**, Utah Code Annotated 1953

**48-1b-307**, Utah Code Annotated 1953

**48-1b-308**, Utah Code Annotated 1953

**48-1b-401**, Utah Code Annotated 1953

**48-1b-402**, Utah Code Annotated 1953

**48-1b-403**, Utah Code Annotated 1953

**48-1b-404**, Utah Code Annotated 1953

**48-1b-405**, Utah Code Annotated 1953

**48-1b-406**, Utah Code Annotated 1953

**48-1b-501**, Utah Code Annotated 1953

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**48-1b-502**, Utah Code Annotated 1953  
**48-1b-503**, Utah Code Annotated 1953  
**48-1b-504**, Utah Code Annotated 1953  
**48-1b-601**, Utah Code Annotated 1953  
**48-1b-602**, Utah Code Annotated 1953  
**48-1b-603**, Utah Code Annotated 1953  
**48-1b-701**, Utah Code Annotated 1953  
**48-1b-702**, Utah Code Annotated 1953  
**48-1b-703**, Utah Code Annotated 1953  
**48-1b-704**, Utah Code Annotated 1953  
**48-1b-705**, Utah Code Annotated 1953  
**48-1b-801**, Utah Code Annotated 1953  
**48-1b-802**, Utah Code Annotated 1953  
**48-1b-803**, Utah Code Annotated 1953  
**48-1b-804**, Utah Code Annotated 1953  
**48-1b-805**, Utah Code Annotated 1953  
**48-1b-806**, Utah Code Annotated 1953  
**48-1b-807**, Utah Code Annotated 1953  
**48-1b-901**, Utah Code Annotated 1953  
**48-1b-902**, Utah Code Annotated 1953  
**48-1b-903**, Utah Code Annotated 1953  
**48-1b-904**, Utah Code Annotated 1953  
**48-1b-905**, Utah Code Annotated 1953  
**48-1b-906**, Utah Code Annotated 1953  
**48-1b-907**, Utah Code Annotated 1953  
**48-1b-908**, Utah Code Annotated 1953  
**48-1b-909**, Utah Code Annotated 1953  
**48-1b-910**, Utah Code Annotated 1953  
**48-1b-911**, Utah Code Annotated 1953  
**48-1b-912**, Utah Code Annotated 1953  
**48-1b-913**, Utah Code Annotated 1953

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**48-1b-914**, Utah Code Annotated 1953  
**48-1b-915**, Utah Code Annotated 1953  
**48-1b-1001**, Utah Code Annotated 1953  
**48-1b-1002**, Utah Code Annotated 1953  
**48-1b-1003**, Utah Code Annotated 1953  
**48-1b-1004**, Utah Code Annotated 1953  
**48-1b-1101**, Utah Code Annotated 1953  
**48-1b-1102**, Utah Code Annotated 1953  
**48-1b-1102.1**, Utah Code Annotated 1953  
**48-1b-1103**, Utah Code Annotated 1953  
**48-1b-1104**, Utah Code Annotated 1953  
**48-1b-1105**, Utah Code Annotated 1953  
**48-1b-1201**, Utah Code Annotated 1953  
**48-1b-1202**, Utah Code Annotated 1953  
**48-1b-1203**, Utah Code Annotated 1953  
**48-1b-1204**, Utah Code Annotated 1953  
**48-1b-1205**, Utah Code Annotated 1953  
**48-2d-101**, Utah Code Annotated 1953  
**48-2d-102**, Utah Code Annotated 1953  
**48-2d-103**, Utah Code Annotated 1953  
**48-2d-104**, Utah Code Annotated 1953  
**48-2d-105**, Utah Code Annotated 1953  
**48-2d-106**, Utah Code Annotated 1953  
**48-2d-107**, Utah Code Annotated 1953  
**48-2d-108**, Utah Code Annotated 1953  
**48-2d-109**, Utah Code Annotated 1953  
**48-2d-110**, Utah Code Annotated 1953  
**48-2d-111**, Utah Code Annotated 1953  
**48-2d-112**, Utah Code Annotated 1953  
**48-2d-113**, Utah Code Annotated 1953  
**48-2d-114**, Utah Code Annotated 1953

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**48-2d-201**, Utah Code Annotated 1953  
**48-2d-202**, Utah Code Annotated 1953  
**48-2d-203**, Utah Code Annotated 1953  
**48-2d-204**, Utah Code Annotated 1953  
**48-2d-205**, Utah Code Annotated 1953  
**48-2d-206**, Utah Code Annotated 1953  
**48-2d-207**, Utah Code Annotated 1953  
**48-2d-208**, Utah Code Annotated 1953  
**48-2d-209**, Utah Code Annotated 1953  
**48-2d-210**, Utah Code Annotated 1953  
**48-2d-301**, Utah Code Annotated 1953  
**48-2d-302**, Utah Code Annotated 1953  
**48-2d-303**, Utah Code Annotated 1953  
**48-2d-304**, Utah Code Annotated 1953  
**48-2d-305**, Utah Code Annotated 1953  
**48-2d-306**, Utah Code Annotated 1953  
**48-2d-401**, Utah Code Annotated 1953  
**48-2d-402**, Utah Code Annotated 1953  
**48-2d-403**, Utah Code Annotated 1953  
**48-2d-404**, Utah Code Annotated 1953  
**48-2d-405**, Utah Code Annotated 1953  
**48-2d-406**, Utah Code Annotated 1953  
**48-2d-407**, Utah Code Annotated 1953  
**48-2d-408**, Utah Code Annotated 1953  
**48-2d-501**, Utah Code Annotated 1953  
**48-2d-502**, Utah Code Annotated 1953  
**48-2d-503**, Utah Code Annotated 1953  
**48-2d-504**, Utah Code Annotated 1953  
**48-2d-505**, Utah Code Annotated 1953  
**48-2d-506**, Utah Code Annotated 1953  
**48-2d-507**, Utah Code Annotated 1953

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**48-2d-508**, Utah Code Annotated 1953  
**48-2d-509**, Utah Code Annotated 1953  
**48-2d-601**, Utah Code Annotated 1953  
**48-2d-602**, Utah Code Annotated 1953  
**48-2d-603**, Utah Code Annotated 1953  
**48-2d-604**, Utah Code Annotated 1953  
**48-2d-605**, Utah Code Annotated 1953  
**48-2d-606**, Utah Code Annotated 1953  
**48-2d-607**, Utah Code Annotated 1953  
**48-2d-701**, Utah Code Annotated 1953  
**48-2d-702**, Utah Code Annotated 1953  
**48-2d-703**, Utah Code Annotated 1953  
**48-2d-704**, Utah Code Annotated 1953  
**48-2d-801**, Utah Code Annotated 1953  
**48-2d-802**, Utah Code Annotated 1953  
**48-2d-803**, Utah Code Annotated 1953  
**48-2d-804**, Utah Code Annotated 1953  
**48-2d-805**, Utah Code Annotated 1953  
**48-2d-806**, Utah Code Annotated 1953  
**48-2d-807**, Utah Code Annotated 1953  
**48-2d-808**, Utah Code Annotated 1953  
**48-2d-809**, Utah Code Annotated 1953  
**48-2d-810**, Utah Code Annotated 1953  
**48-2d-811**, Utah Code Annotated 1953  
**48-2d-812**, Utah Code Annotated 1953  
**48-2d-901**, Utah Code Annotated 1953  
**48-2d-902**, Utah Code Annotated 1953  
**48-2d-903**, Utah Code Annotated 1953  
**48-2d-904**, Utah Code Annotated 1953  
**48-2d-905**, Utah Code Annotated 1953  
**48-2d-906**, Utah Code Annotated 1953



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**48-2d-907**, Utah Code Annotated 1953  
**48-2d-908**, Utah Code Annotated 1953  
**48-2d-1001**, Utah Code Annotated 1953  
**48-2d-1002**, Utah Code Annotated 1953  
**48-2d-1003**, Utah Code Annotated 1953  
**48-2d-1004**, Utah Code Annotated 1953  
**48-2d-1005**, Utah Code Annotated 1953  
**48-2d-1101**, Utah Code Annotated 1953  
**48-2d-1102**, Utah Code Annotated 1953  
**48-2d-1103**, Utah Code Annotated 1953  
**48-2d-1104**, Utah Code Annotated 1953  
**48-2d-1105**, Utah Code Annotated 1953  
**48-2d-1106**, Utah Code Annotated 1953  
**48-2d-1107**, Utah Code Annotated 1953  
**48-2d-1108**, Utah Code Annotated 1953  
**48-2d-1109**, Utah Code Annotated 1953  
**48-2d-1110**, Utah Code Annotated 1953  
**48-2d-1111**, Utah Code Annotated 1953  
**48-2d-1112**, Utah Code Annotated 1953  
**48-2d-1113**, Utah Code Annotated 1953  
**48-2d-1114**, Utah Code Annotated 1953  
**48-2d-1115**, Utah Code Annotated 1953  
**48-2d-1116**, Utah Code Annotated 1953  
**48-2d-1117**, Utah Code Annotated 1953  
**48-2d-1201**, Utah Code Annotated 1953  
**48-2d-1202**, Utah Code Annotated 1953  
**48-2d-1203**, Utah Code Annotated 1953  
**48-2d-1204**, Utah Code Annotated 1953  
**48-2d-1205**, Utah Code Annotated 1953  
**48-3-101**, Utah Code Annotated 1953  
**48-3-102**, Utah Code Annotated 1953

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**48-3-103**, Utah Code Annotated 1953  
**48-3-104**, Utah Code Annotated 1953  
**48-3-105**, Utah Code Annotated 1953  
**48-3-106**, Utah Code Annotated 1953  
**48-3-107**, Utah Code Annotated 1953  
**48-3-108**, Utah Code Annotated 1953  
**48-3-109**, Utah Code Annotated 1953  
**48-3-110**, Utah Code Annotated 1953  
**48-3-111**, Utah Code Annotated 1953  
**48-3-112**, Utah Code Annotated 1953  
**48-3-201**, Utah Code Annotated 1953  
**48-3-202**, Utah Code Annotated 1953  
**48-3-203**, Utah Code Annotated 1953  
**48-3-204**, Utah Code Annotated 1953  
**48-3-205**, Utah Code Annotated 1953  
**48-3-206**, Utah Code Annotated 1953  
**48-3-207**, Utah Code Annotated 1953  
**48-3-208**, Utah Code Annotated 1953  
**48-3-209**, Utah Code Annotated 1953  
**48-3-301**, Utah Code Annotated 1953  
**48-3-302**, Utah Code Annotated 1953  
**48-3-303**, Utah Code Annotated 1953  
**48-3-304**, Utah Code Annotated 1953  
**48-3-401**, Utah Code Annotated 1953  
**48-3-402**, Utah Code Annotated 1953  
**48-3-403**, Utah Code Annotated 1953  
**48-3-404**, Utah Code Annotated 1953  
**48-3-405**, Utah Code Annotated 1953  
**48-3-406**, Utah Code Annotated 1953  
**48-3-407**, Utah Code Annotated 1953  
**48-3-408**, Utah Code Annotated 1953

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48-3-409, Utah Code Annotated 1953  
48-3-410, Utah Code Annotated 1953  
48-3-501, Utah Code Annotated 1953  
48-3-502, Utah Code Annotated 1953  
48-3-503, Utah Code Annotated 1953  
48-3-504, Utah Code Annotated 1953  
48-3-601, Utah Code Annotated 1953  
48-3-602, Utah Code Annotated 1953  
48-3-603, Utah Code Annotated 1953  
48-3-701, Utah Code Annotated 1953  
48-3-702, Utah Code Annotated 1953  
48-3-703, Utah Code Annotated 1953  
48-3-704, Utah Code Annotated 1953  
48-3-705, Utah Code Annotated 1953  
48-3-706, Utah Code Annotated 1953  
48-3-707, Utah Code Annotated 1953  
48-3-708, Utah Code Annotated 1953  
48-3-709, Utah Code Annotated 1953  
48-3-801, Utah Code Annotated 1953  
48-3-802, Utah Code Annotated 1953  
48-3-803, Utah Code Annotated 1953  
48-3-804, Utah Code Annotated 1953  
48-3-805, Utah Code Annotated 1953  
48-3-806, Utah Code Annotated 1953  
48-3-807, Utah Code Annotated 1953  
48-3-808, Utah Code Annotated 1953  
48-3-809, Utah Code Annotated 1953  
48-3-901, Utah Code Annotated 1953  
48-3-902, Utah Code Annotated 1953  
48-3-903, Utah Code Annotated 1953  
48-3-904, Utah Code Annotated 1953

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48-3-905, Utah Code Annotated 1953  
48-3-906, Utah Code Annotated 1953  
48-3-1001, Utah Code Annotated 1953  
48-3-1002, Utah Code Annotated 1953  
48-3-1003, Utah Code Annotated 1953  
48-3-1004, Utah Code Annotated 1953  
48-3-1005, Utah Code Annotated 1953  
48-3-1006, Utah Code Annotated 1953  
48-3-1007, Utah Code Annotated 1953  
48-3-1008, Utah Code Annotated 1953  
48-3-1009, Utah Code Annotated 1953  
48-3-1010, Utah Code Annotated 1953  
48-3-1011, Utah Code Annotated 1953  
48-3-1012, Utah Code Annotated 1953  
48-3-1013, Utah Code Annotated 1953  
48-3-1014, Utah Code Annotated 1953  
48-3-1015, Utah Code Annotated 1953  
48-3-1101, Utah Code Annotated 1953  
48-3-1102, Utah Code Annotated 1953  
48-3-1103, Utah Code Annotated 1953  
48-3-1104, Utah Code Annotated 1953  
48-3-1105, Utah Code Annotated 1953  
48-3-1106, Utah Code Annotated 1953  
48-3-1107, Utah Code Annotated 1953  
48-3-1108, Utah Code Annotated 1953  
48-3-1109, Utah Code Annotated 1953  
48-3-1110, Utah Code Annotated 1953  
48-3-1111, Utah Code Annotated 1953  
48-3-1112, Utah Code Annotated 1953  
~~48-3-1113, Utah Code Annotated 1953~~  
48-3-1201, Utah Code Annotated 1953

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48-3-1202, Utah Code Annotated 1953

48-3-1203, Utah Code Annotated 1953

48-3-1204, Utah Code Annotated 1953

48-3-1205, Utah Code Annotated 1953

48-3-1206, Utah Code Annotated 1953

48-3-1207, Utah Code Annotated 1953

48-3-1208, Utah Code Annotated 1953

48-3-1209, Utah Code Annotated 1953

48-3-1210, Utah Code Annotated 1953

~~{ 48-3-1211, Utah Code Annotated 1953~~

~~— 48-3-1212, Utah Code Annotated 1953~~

~~— 48-3-1213, Utah Code Annotated 1953~~

‡ 48-3-1301, Utah Code Annotated 1953

48-3-1302, Utah Code Annotated 1953

48-3-1303, Utah Code Annotated 1953

48-3-1304, Utah Code Annotated 1953

~~{ 48-3-1305, Utah Code Annotated 1953~~

‡ 48-3-1401, Utah Code Annotated 1953

48-3-1402, Utah Code Annotated 1953

48-3-1403, Utah Code Annotated 1953

48-3-1404, Utah Code Annotated 1953

48-3-1405, Utah Code Annotated 1953

### REPEALS:

48-1-1, as last amended by Laws of Utah 2008, Chapter 249

48-1-2, Utah Code Annotated 1953

48-1-3, as last amended by Laws of Utah 1994, Chapter 61

48-1-3.1, as enacted by Laws of Utah 1985, Chapter 14

48-1-4, Utah Code Annotated 1953

48-1-5, Utah Code Annotated 1953

48-1-6, Utah Code Annotated 1953

48-1-7, Utah Code Annotated 1953

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- 48-1-8, Utah Code Annotated 1953
- 48-1-9, Utah Code Annotated 1953
- 48-1-10, Utah Code Annotated 1953
- 48-1-11, Utah Code Annotated 1953
- 48-1-12, as last amended by Laws of Utah 1994, Chapter 61
- 48-1-13, Utah Code Annotated 1953
- 48-1-14, Utah Code Annotated 1953
- 48-1-15, as last amended by Laws of Utah 1994, Chapter 61
- 48-1-16, Utah Code Annotated 1953
- 48-1-17, Utah Code Annotated 1953
- 48-1-18, Utah Code Annotated 1953
- 48-1-19, Utah Code Annotated 1953
- 48-1-20, Utah Code Annotated 1953
- 48-1-21, Utah Code Annotated 1953
- 48-1-22, Utah Code Annotated 1953
- 48-1-23, Utah Code Annotated 1953
- 48-1-24, Utah Code Annotated 1953
- 48-1-25, Utah Code Annotated 1953
- 48-1-26, Utah Code Annotated 1953
- 48-1-27, Utah Code Annotated 1953
- 48-1-28, Utah Code Annotated 1953
- 48-1-29, Utah Code Annotated 1953
- 48-1-30, Utah Code Annotated 1953
- 48-1-31, as last amended by Laws of Utah 1994, Chapter 61
- 48-1-32, Utah Code Annotated 1953
- 48-1-33, as last amended by Laws of Utah 1994, Chapter 61
- 48-1-34, Utah Code Annotated 1953
- 48-1-35, Utah Code Annotated 1953
- 48-1-36, Utah Code Annotated 1953
- 48-1-37, as last amended by Laws of Utah 1994, Chapter 61
- 48-1-38, Utah Code Annotated 1953

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**48-1-39**, Utah Code Annotated 1953  
**48-1-40**, Utah Code Annotated 1953  
**48-1-41**, as enacted by Laws of Utah 1994, Chapter 61  
**48-1-42**, as last amended by Laws of Utah 2009, Chapter 183  
**48-1-43**, as enacted by Laws of Utah 1994, Chapter 61  
**48-1-44**, as last amended by Laws of Utah 2008, Chapter 249  
**48-1-45**, as enacted by Laws of Utah 1994, Chapter 61  
**48-1-46**, as enacted by Laws of Utah 1994, Chapter 61  
**48-1-47**, as enacted by Laws of Utah 1994, Chapter 61  
**48-1-48**, as last amended by Laws of Utah 2000, Chapter 261  
**48-2a-101**, as last amended by Laws of Utah 2008, Chapter 249  
**48-2a-102**, as last amended by Laws of Utah 2010, Chapter 218  
**48-2a-103**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-103.5**, as enacted by Laws of Utah 1991, Chapter 189  
**48-2a-105**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-106**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-107**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-108**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2a-109**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2a-110**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2a-111**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2a-112**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2a-113**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2a-201**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2a-202**, as last amended by Laws of Utah 2002, Chapter 193  
**48-2a-202.5**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2a-203**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-203.5**, as last amended by Laws of Utah 2008, Chapter 382  
**48-2a-204**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-205**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-206**, as last amended by Laws of Utah 2009, Chapter 183

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**48-2a-207**, as last amended by Laws of Utah 1992, Chapter 30  
**48-2a-208**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-209**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-210**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2a-301**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-302**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-303**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-304**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-305**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-401**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-402**, as last amended by Laws of Utah 2010, Chapter 324  
**48-2a-403**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-404**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-405**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-501**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-502**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-503**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-504**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-601**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-602**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-603**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-604**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-605**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-606**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-607**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-608**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-701**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-702**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-703**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-704**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-705**, as last amended by Laws of Utah 1991, Chapter 189



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**48-2a-802**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-803**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-804**, as last amended by Laws of Utah 1991, Chapter 189  
**48-2a-901**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-902**, as last amended by Laws of Utah 2008, Chapters 249 and 364  
**48-2a-903**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-904**, as enacted by Laws of Utah 1990, Chapter 233  
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**48-2a-906**, as last amended by Laws of Utah 1991, Chapter 189  
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**48-2a-1003**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1004**, as enacted by Laws of Utah 1990, Chapter 233  
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**48-2a-1006**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1101**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1102**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1103**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1104**, as last amended by Laws of Utah 1991, Chapters 5 and 189  
**48-2a-1105**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1106**, as enacted by Laws of Utah 1990, Chapter 233  
**48-2a-1107**, as last amended by Laws of Utah 2009, Chapter 183  
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**48-2c-103**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-104**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-108**, as last amended by Laws of Utah 2002, Chapter 193  
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**48-2c-110**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-113**, as last amended by Laws of Utah 2010, Chapter 43  
**48-2c-114**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-115**, as last amended by Laws of Utah 2008, Chapter 364  
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**48-2c-118**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-119**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-120**, as last amended by Laws of Utah 2006, Chapter 92  
**48-2c-121**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-122**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-201**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-202**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-204**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-205**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-206**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-207**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-208**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-209**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-210**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-404**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-408**, as last amended by Laws of Utah 2005, Chapter 141  
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**48-2c-503**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-504**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-505**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-506**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-601**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-603**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-604**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-605**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-608**, as enacted by Laws of Utah 2006, Chapter 92  
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**48-2c-610**, as enacted by Laws of Utah 2006, Chapter 92  
**48-2c-611**, as enacted by Laws of Utah 2006, Chapter 92  
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**48-2c-614**, as enacted by Laws of Utah 2006, Chapter 92

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**48-2c-616**, as enacted by Laws of Utah 2006, Chapter 92  
**48-2c-701**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-703**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-705**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-706**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-709**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-710**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-801**, as last amended by Laws of Utah 2002, Chapter 193  
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**48-2c-803**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-803.1**, as enacted by Laws of Utah 2005, Chapter 141  
**48-2c-804**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-805**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-806**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-808**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-809**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-901**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-902**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-903**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-904**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-905**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-906**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1001**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1002**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1005**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1006**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1007**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1008**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1101**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1102**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1103**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-1104**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1106**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1201**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-1202**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1204**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-1205**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1206**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-1207**, as last amended by Laws of Utah 2009, Chapter 141  
**48-2c-1208**, as last amended by Laws of Utah 2009, Chapter 141  
**48-2c-1209**, as last amended by Laws of Utah 2009, Chapter 141  
**48-2c-1210**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1211**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-1212**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1213**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1214**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1301**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1302**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1303**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1304**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1305**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1306**, as last amended by Laws of Utah 2009, Chapter 141

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**48-2c-1307**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1308**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1309**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1401**, as last amended by Laws of Utah 2009, Chapter 141  
**48-2c-1402**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1403**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1404**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-1405**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1406**, as last amended by Laws of Utah 2005, Chapter 141  
**48-2c-1407**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1408**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1409**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1504**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1506**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1507**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1510**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1512**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1606**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1607**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1609**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1611**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-1612**, as last amended by Laws of Utah 2008, Chapter 364  
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**48-2c-1614**, as last amended by Laws of Utah 2008, Chapter 364  
**48-2c-1615**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1701**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1702**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1703**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1704**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1705**, as enacted by Laws of Utah 2001, Chapter 260  
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**48-2c-1804**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1805**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1806**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1807**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1808**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1809**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1901**, as enacted by Laws of Utah 2001, Chapter 260  
**48-2c-1902**, as enacted by Laws of Utah 2001, Chapter 260

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

Section 1. Section **7-1-810** is amended to read:

## SB0131S01 compared with SB0131

### 7-1-810. Limited liability companies.

(1) Notwithstanding any other provision of this title and subject to Subsection (8), if the conditions of this section are met, the following may be organized as or convert to a limited liability company under Title 48, Chapter ~~[2e]3~~, Utah Revised ~~[3] 3~~ Uniform Limited Liability Company Act:

- (a) an industrial bank chartered under Chapter 8, Industrial Banks;
- (b) an industrial loan company as defined in Section 7-8-21; or
- (c) any of the following if the institution is an S Corporation, as defined in Section

1361, Internal Revenue Code, immediately before becoming a limited liability company:

- (i) a bank chartered under Chapter 3, Banks;
- (ii) a savings and loan association chartered under Chapter 7, Savings and Loan

Associations Act; or

- (iii) a depository institution holding company.

(2) (a) Before an institution described in Subsection (1) may organize as or convert to a limited liability company, the institution shall obtain approval of the commissioner.

(b) (i) To obtain the approval under this section from the commissioner, the institution shall file a request for approval with the commissioner at least 30 days before the day on which the institution becomes a limited liability company.

(ii) If the commissioner does not disapprove the request for approval within 30 days from the day on which the commissioner receives the request, the request is considered approved.

(iii) When taking action on a request for approval filed under this section, the commissioner may:

- (A) approve the request;
- (B) approve the request subject to terms and conditions the commissioner considers

necessary; or

- (C) disapprove the request.

(3) To approve a request for approval, the commissioner shall find:

(a) for an institution described in Subsection (1) that is required to be insured by a federal deposit insurance agency, that the institution:

- (i) will operate in a safe and sound manner;



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(ii) has the following characteristics:

(A) the institution is not subject to automatic termination, dissolution, or suspension upon the happening of some event other than the passage of time;

(B) the exclusive authority to manage the institution is vested in a board of managers or directors that:

(I) is elected or appointed by the owners;

(II) is not required to have owners of the institution included on the board;

(III) possesses adequate independence and authority to supervise the operation of the institution; and

(IV) operates with substantially the same rights, powers, privileges, duties, and responsibilities as the board of directors of a corporation;

(C) neither state law, nor the institution's operating agreement, bylaws, or other organizational documents provide that an owner of the institution is liable for the debts, liabilities, and obligations of the institution in excess of the amount of the owner's investment; and

(D) (I) neither state law, nor the institution's operating agreement, bylaws, or other organizational documents require the consent of any other owner of the institution in order for any owner to transfer an ownership interest in the institution, including voting rights; and

(II) the institution is able to obtain new investment funding if needed to maintain adequate capital; and

(iii) is able to comply with all legal and regulatory requirements for an insured depository institution under applicable federal and state law; and

(b) for an institution described in Subsection (1) that is not required to be insured by a federal deposit insurance agency, that the institution will operate in a safe and sound manner.

(4) An institution described in Subsection (3)(a) that is organized as a limited liability company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it is authorized to conduct business under this title as a limited liability company.

(5) (a) All rights, privileges, powers, duties, and obligations of an institution described in Subsection (1) that is organized as a limited liability company and its members and managers shall be governed by Title 48, Chapter ~~2c~~13, Utah Revised ~~48-13-1~~13-1 Uniform Limited Liability Company Act, except:

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(i) the following [sections] do not apply to an institution that is described in Subsection

(3)(a):

~~[(A) Subsection 48-2c-402(2)(a)(ii);]~~

~~[(B) Section 48-2c-604;]~~

~~[(C) Section 48-2c-703;]~~

~~[(D) Section 48-2c-708;]~~

~~[(E) Subsection 48-2c-801(2);]~~

~~[(F) Section 48-2c-1102;]~~

~~[(G) Section 48-2c-1104; and]~~

~~[(H) Subsections 48-2c-1201(2) through (5); and]~~

~~(A) Section 48-3-201;~~

~~(B) Subsection 48-3-401(3);~~

~~(C) 48-3-110;~~

(B) Section 48-3-112;

(C) Section 48-3-201;

(D) Section 48-3-401;

(E) Subsections 48-3-407(1) and (3)(d);

(F) Section 48-3-410;

(G) Subsection 48-3-502(1)(c);

~~(D) H~~ Title 48, Chapter 3, Part 6, Member's Dissociation; ~~and~~

~~(E) I~~ ~~Subsections~~ Section 48-3-701 ~~(1)(a), (b), and (c)~~; and

(J) Title 48, Chapter 3, Part 8, Foreign Limited Liability Companies; and

(ii) as otherwise provided in this title.

(b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection

(3)(a):

(i) for purposes of transferring a member's interests in the institution, a member's interest in the institution shall be treated like a share of stock in a corporation; and

(ii) if a member's interest in the institution is transferred voluntarily or involuntarily to another person, the person who receives the member's interest shall obtain the member's entire rights associated with the member's interest in the institution including:

(A) all economic rights; and

## SB0131S01 compared with SB0131

(B) all voting rights.

(c) An institution described in Subsection (3)(a) may not by agreement or otherwise change the application of Subsection (5)(a) to the institution.

(6) Unless the context requires otherwise, for the purpose of applying this title to an institution described in Subsection (1) that is organized as a limited liability company:

(a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act, includes the equivalent citation to Title 48, Chapter ~~[2c] 3~~, Utah Revised ~~{} {} 3~~ Uniform Limited Liability Company Act;

(b) "articles of incorporation" includes a limited liability company's ~~[articles]~~ certificate of organization as that term is used in Section ~~[48-2c-403]~~ 48-3-201;

(c) "board of directors" includes one or more persons who have, with respect to an institution described in Subsection (1), authority substantially similar to that of a board of directors of a corporation;

(d) "bylaws" includes a limited liability company's operating agreement as that term is defined in Section ~~[48-2c-102]~~ 48-3-102;

(e) "corporation" includes a limited liability company organized under Title 48, Chapter ~~[2c] 3~~, Utah Revised ~~{} {} 3~~ Uniform Limited Liability Company Act;

(f) "director" includes any of the following of a limited liability company:

(i) a manager;

(ii) a director; or

(iii) other person who has with respect to the institution described in Subsection (1), authority substantially similar to that of a director of a corporation;

(g) "dividend" includes distributions made by a limited liability company under Title 48, Chapter ~~[2c, Part 10, Distributions]~~ 3, Part 4, Relations of Members to Each Other and to Limited Liability Company;

(h) "incorporator" includes ~~[the organizers]~~ an organizer of a limited liability company as provided in Title 48, Chapter ~~[2c, Part 4, Formation]~~ 3, Part 2, Formation - Certificate of Organization and Other Filings;

(i) "officer" includes any of the following of an institution described in Subsection (1):

(i) an officer; or

(ii) other person who has with respect to the institution described in Subsection (1)

## SB0131S01 compared with SB0131

authority substantially similar to that of an officer of a corporation;

(j) "security," "shares," or "stock" of a corporation includes:

(i) a membership interest in a limited liability company as provided in Title 48, Chapter ~~[2c, Part 7, Members]~~ 3, Part 4, Relations of Members to Each Other and to Limited Liability Company; and

(ii) ~~[any]~~ a certificate or other evidence of an ownership interest in a limited liability company; and

(k) "stockholder" or "shareholder" includes an owner of an interest in an institution described in Subsection (1) including a member as provided in Title 48, Chapter ~~[2c, Part 7, Members]~~ 3, Part 4, Relations of Members to Each Other and to Limited Liability Company.

(7) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall make rules governing the form of a request for approval filed under this section.

(8) A depository institution organized under the laws of this state may not be organized as or converted to a series of ~~[members, managers, or]~~ transferable interests in a limited liability company as provided in ~~[Section 48-2c-606]~~ Title 48, Chapter 3, Part 12, Series Limited Liability ~~{Company Series Act}~~ Companies.

Section 2. Section **7-3-10** is amended to read:

**7-3-10. Organization -- Powers, rights, and privileges of banking corporation -- Other business activities.**

(1) A bank chartered under this chapter shall be:

(a) a domestic corporation under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

(b) subject to Section 7-1-810, including the requirement that the bank be an S Corporation immediately before becoming a limited liability company, a limited liability company created under Title 48, Chapter ~~[2c]~~ 3, Utah Revised ~~{}~~ 3, ~~{}~~ Uniform Limited Liability Company Act.

(2) A bank has all the rights, privileges, and powers necessary or incidental to carrying on the business of banking in addition to the powers granted:

(a) if the bank is a corporation, under Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

## SB0131S01 compared with SB0131

(b) subject to Section 7-1-810, if the bank is a limited liability company, under Title 48, Chapter ~~[2c]~~3, Utah Revised ~~[§] §~~3, Uniform Limited Liability Company Act.

(3) The commissioner may, by rule or order, determine that necessary or incidental rights, privileges, and powers include:

(a) the rights, privileges, and powers held by national banks; or

(b) other business activities so long as the commissioner's determination is not inconsistent with the rules, regulations, or other actions of the board of governors of the Federal Reserve System under Section 4(c)(8) of the Bank Holding Company Act of 1956, 12 U.S.C. Sec. 1843(c)(8).

(4) The commissioner shall implement this section in a manner consistent with the purposes set forth in Section 7-1-102.

Section 3. Section ~~7-8-3~~ is amended to read:

### **7-8-3. Organization -- Authorization to conduct business -- Deposit insurance.**

(1) Subject to Subsection (4), the commissioner may authorize a person described in Subsection (2) to conduct business as an industrial bank.

(2) (a) Each person organized to conduct the business of an industrial bank in this state shall be organized under:

(i) Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

(ii) in accordance with Section 7-1-810, Title 48, Chapter ~~[2c]~~3, Utah Revised ~~[§] §~~3, Uniform Limited Liability Company Act.

(b) A person may not conduct business as an industrial bank authorized under this chapter to conduct business as an industrial bank in any form of entity other than those provided in Subsection (2)(a).

(3) (a) All rights, privileges, powers, duties, and obligations of a corporation authorized to conduct business as an industrial bank and its officers, directors, and stockholders shall be governed by Title 16, Chapter 10a, Utah Revised Business Corporation Act, except as otherwise provided in this title.

(b) All rights, privileges, powers, duties, and obligations of a limited liability company authorized to conduct business as an industrial bank and its members and managers shall be governed by Title 48, Chapter ~~[2c, Utah Revised]~~ 3, Uniform Limited Liability Company Act, except as otherwise provided in this title.

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(4) (a) An industrial bank is authorized to receive and hold deposits.

(b) An industrial bank may not conduct business under this chapter as an industrial bank unless the industrial bank obtains insurance from the Federal Deposit Insurance Corporation or a successor federal deposit insurance entity for any deposits received or held by the industrial bank.

Section 4. Section **13-34-114** is amended to read:

### **13-34-114. 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 16-11-16;

(iv) Section 42-2-6.6;

(v) Section [~~48-2a-102~~] 48-2d-108; or

(vi) Section [~~48-2c-106~~] 48-3-108.

(b) "Educational term" means the term:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution."

(2) If a statute listed in Subsection (1)(a) requires the written consent of the division to file a business name with the Division of Corporations and Commercial Code that includes an educational term, the division may consent to the use of an educational term in accordance with this statute.

(3) The division 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 13-34-105; or

(c) (i) is not engaged in educational activities; and

(ii) does not represent that it is engaged in educational activities.

(4) The division may withhold consent to use of an educational term in a business

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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 division under Subsection 13-34-104(5).

Section 5. Section **16-6a-1008.7** is amended to read:

### **16-6a-1008.7. Conversion to or from a domestic limited liability company.**

(1) (a) A domestic nonprofit corporation may convert to a domestic limited liability company subject to Title 48, Chapter ~~[2c]3~~, Utah Revised ~~UT~~ ~~13, 13~~ Uniform Limited Liability Company Act, by complying with:

- (i) this Subsection (1); and
- (ii) Section ~~[48-2c-1401]~~ 48-3-1006.

(b) If a domestic nonprofit corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:

- (i) comply with Section ~~[48-2c-1402]~~ 48-3-1008; and
- (ii) if the corporation has any members, provide for:
  - (A) the cancellation of any membership; or

(B) the conversion of any membership in the domestic nonprofit corporation to a membership interest in the domestic limited liability company.

(c) ~~[In accordance with Section 48-2c-1404, before]~~ Before articles of conversion may be filed with the division, the conversion shall be approved:

(i) in the manner provided for the articles of incorporation or bylaws of the domestic nonprofit corporation; or

(ii) if the articles of incorporation or bylaws of the domestic nonprofit corporation do not provide the method for approval:

(A) if the domestic nonprofit corporation has voting members, by all of the members of the domestic nonprofit corporation regardless of limitations or restrictions on the voting rights of the members; or

(B) if the nonprofit domestic corporation does not have voting members, by a majority of:

(I) the directors in office at the time the conversion is approved by the board of directors; or

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(II) if directors have not been appointed or elected, the incorporators.

(2) A domestic limited liability company may convert to a domestic nonprofit corporation subject to this chapter by:

(a) filing articles of incorporation in accordance with this chapter; and

(b) complying with Section [~~48-2e-1406~~] 48-3-1006.

(3) Any conversion under this section may not result in a violation, directly or indirectly, of:

(a) Section 16-6a-1301; or

(b) any other provision of this chapter.

Section 6. Section **16-10a-401** is amended to read:

### **16-10a-401. Corporate name.**

(1) The name of a corporation:

(a) except for the name of a depository institution as defined in Section 7-1-103, shall

contain:

(i) the word:

(A) "corporation";

(B) "incorporated"; or

(C) "company";

(ii) the abbreviation:

(A) "corp.";

(B) "inc."; or

(C) "co."; or

(iii) words or abbreviations of like import to the words or abbreviations listed in

Subsections (1)(a)(i) and (ii) in another language;

(b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by:

(i) Section 16-10a-301; and

(ii) the corporation's articles of incorporation;

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

(i) "Olympic";



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(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(d) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution."

(2) Except as authorized by Subsections (3) and (4), the name of a corporation shall be distinguishable, as defined in Subsection (5), upon the records of the division from:

(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;

(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;

(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;

(d) the name of any limited partnership formed or authorized to transact business in this state;

(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and

(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

(3) (a) A corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (2).

(b) The division shall approve the application filed under Subsection (3)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation 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

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court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(4) A corporation may make a filing under the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if:

(a) the other corporation is incorporated or authorized to transact business in this state; and

(b) the filing corporation:

(i) has merged with the other corporation; or

(ii) has been formed by reorganization of the other corporation.

(5) (a) A name is distinguishable from other names, trademarks, and service marks on the records of the division if it:

(i) contains one or more different letters or numerals; or

(ii) has a different sequence of letters or numerals from the other names on the division's records.

(b) Differences which are not distinguishing are:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "company";

(C) "incorporated";

(D) "limited partnership";

(E) "L.P.";

(F) "limited";

~~[(G) "ltd.";]~~

~~[(H)]~~ (G) "limited liability company";

~~[(I)]~~ (H) "limited company";

~~[(J)]~~ (I) "L.C."; or

~~[(K)]~~ (J) "L.L.C.";

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

(iii) differences in punctuation and special characters;

(iv) differences in capitalization;

(v) differences between singular and plural forms of words for a corporation:

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(A) incorporated in or authorized to do business in this state on or after May 4, 1998;

or

(B) that changes its name on or after May 4, 1998;

(vi) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:

(A) the sequence of letters or numbers is identical; and

(B) the corporation:

(I) is incorporated in or authorized to do business in this state on or after May 3, 1999;

or

(II) changes its name on or after May 3, 1999; or

(vii) differences in abbreviations, for a corporation:

(A) incorporated in or authorized to do business in this state on or after May 1, 2000;

or

(B) that changes its name on or after May 1, 2000.

(c) The director of the division has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

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

(7) (a) The requirements of Subsection (1)(d) do not apply to a corporation incorporated in or authorized to do business in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any corporation incorporated in or authorized to do business in this state shall comply with the requirements of Subsection (1)(d).

Section 7. Section **16-10a-1008.7** is amended to read:

### **16-10a-1008.7. Conversion to or from a domestic limited liability company.**

(1) (a) A corporation may convert to a domestic limited liability company subject to Title 48, Chapter ~~[2c]~~13, Utah Revised ~~[13]~~ 13 ~~Uniform~~ Limited Liability Company Act, by complying with:

(i) this Subsection (1); and

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(ii) Section [~~48-2c-1401~~] 48-3-1006.

(b) If a corporation converts to a domestic limited liability company in accordance with this Subsection (1), the articles of conversion shall:

(i) comply with Section [~~48-2c-1402~~] 48-3-1008; and

(ii) if the corporation has issued shares, provide for:

(A) the cancellation of any issued share; or

(B) the conversion of any issued share to a membership interest in the domestic limited liability company.

(c) [~~In accordance with Section 48-2c-1404, before~~] Before articles of conversion may be filed with the division, the conversion shall be approved:

(i) in the manner provided for the articles of incorporation or bylaws of the corporation; or

(ii) if the articles of incorporation or bylaws of the corporation do not provide the method for approval:

(A) if the corporation has issued shares, by all of the outstanding shares of all classes of shares of the corporation regardless of limitations or restrictions on the voting rights of the shares; or

(B) if the corporation has not issued shares, by a majority of:

(I) the directors in office at the time that the conversion is approved by the board of directors; or

(II) if directors have not been appointed or elected, the incorporators.

(2) A domestic limited liability company may convert to a corporation subject to this chapter by:

(a) filing articles of incorporation in accordance with this chapter; and

(b) complying with Section [~~48-2c-1406~~] 48-3-1006.

Section 8. Section **16-11-16** is amended to read:

### **16-11-16. Corporate name.**

(1) The name of each professional corporation as set forth in its articles of incorporation:

(a) shall contain the terms:

(i) "professional corporation"; or

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(ii) "P.C.";

(b) may not contain the words:

(i) "incorporated"; or

(ii) "inc.";

(c) may not contain language stating or implying that the professional corporation is organized for a purpose other than that permitted by:

(i) Section 16-11-6; and

(ii) the professional corporation's articles of incorporation;

(d) 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

(e) without the written consent of the Division of Consumer Protection in accordance with Section 13-34-114, may not contain the words:

(i) "university";

(ii) "college"; or

(iii) "institute" or "institution."

(2) The professional corporation may not imply by any word in the name that it is an agency of the state or of any of its political subdivisions.

(3) A person, other than a professional corporation formed or registered under this chapter, may not use in its name in this state any of the terms:

(a) "professional corporation"; or

(b) "P.C."

(4) Except as authorized by Subsection (5), the name of the professional corporation shall be distinguishable, as defined in Subsection (6), upon the records of the division from:

(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;

(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;

(c) the name of any domestic or foreign limited liability company formed or authorized

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to transact business in this state;

(d) the name of any limited partnership formed or authorized to transact business in this state;

(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and

(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

(5) (a) A professional corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (4).

(b) The division shall approve the application filed under Subsection (5)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation 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 make the requested filing in this state under the name applied for.

(6) (a) A name is distinguishable from other names, trademarks, and service marks registered with the division if it:

(i) contains one or more different letters or numerals from other names upon the division's records; or

(ii) has a different sequence of letter or numerals from the other names on the division's records.

(b) The following differences are not distinguishable:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "incorporated";

(C) "company";

(D) "limited partnership";

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(E) "limited";

(F) "L.P.";

~~[(G) "Ltd.,"]~~

~~[(H)]~~ (G) "limited liability company";

~~[(H)]~~ (H) "limited company";

~~[(I)]~~ (I) "L.C."; or

~~[(K)]~~ (J) "L.L.C.";

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

(iii) differences in punctuation and special characters;

(iv) differences in capitalization; or

(v) differences in abbreviations.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

Section 9. Section **16-16-111** is amended to read:

### **16-16-111. Name.**

(1) Use of the term "cooperative" or its abbreviation under this chapter is not a violation of the provisions restricting the use of the term under any other law of this state.

(2) (a) Notwithstanding Section ~~[48-2a-102]~~ 48-2d-108, the name of a limited cooperative association shall contain:

(i) the words "limited cooperative association" or "limited cooperative"; or

(ii) the abbreviation "L.C.A." or "LCA". [~~"Limited" may be abbreviated as "Ltd."~~]

(b) "Cooperative" may be abbreviated as "Co-op" or "Coop".

(c) "Association" may be abbreviated as "Assoc." or "Assn.".

(d) (i) Use of the term "cooperative" or its abbreviation as permitted by this chapter is not a violation of the provisions restricting the use of the term under any other law of this state.

(ii) A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under this chapter and any other law of this state.

(iii) A limited cooperative association or a member may enforce the restrictions on the use of the term "cooperative" under any other law of this state.

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(3) Except as otherwise provided in Subsection (4), a limited cooperative association may use only a name that is available. A name is available if it is distinguishable in the records of the division from:

- (a) the name of any entity organized or authorized to transact business in this state;
- (b) a name reserved under Section 16-16-112; and
- (c) an alternative name approved for a foreign cooperative authorized to transact business in this state.

(4) A limited cooperative association may apply to the division for authorization to use a name that is not available. The division shall authorize use of the name if:

- (a) the person with ownership rights to use the name consents in a record to the use and applies in a form satisfactory to the division to change the name used or reserved to a name that is distinguishable upon the records of the division from the name applied for; or
- (b) the applicant delivers to the division a certified copy of the final judgment of a court establishing the applicant's right to use the name in this state.

Section 10. Section **16-17-102** is amended to read:

### **16-17-102. Definitions.**

In this chapter:

(1) "Appointment of agent" means a statement appointing an agent for service of process filed by:

- (a) a domestic or foreign unincorporated nonprofit association under Section 16-17-204; or
- (b) a domestic entity that is not a filing entity or a nonqualified foreign entity under Section 16-17-210.

(2) "Commercial registered agent" means an individual or a domestic or foreign entity listed under Section 16-17-204.

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

(4) "Domestic entity" means an entity whose internal affairs are governed by the law of this state.

(5) "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:

- (a) an individual;



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(b) a testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;

(c) an association or relationship that is not a partnership by reason of [~~Section 202(c) of the Uniform Partnership Act (1997)~~] Subsection 48-1a-303(3) or a similar provision of the law of any other jurisdiction;

(d) a decedent's estate; or

(e) a public corporation, government or governmental subdivision, agency, or instrumentality, or quasi-governmental instrumentality.

(6) "Filing entity" means an entity that is created by the filing of a public organic document.

(7) "Foreign entity" means an entity other than a domestic entity.

(8) "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the division by a foreign entity.

(9) "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:

(a) receive or demand access to information concerning, or the books and records of, the entity;

(b) vote for the election of the governors of the entity; or

(c) receive notice of or vote on any or all issues involving the internal affairs of the entity.

(10) "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.

(11) "Interest" means:

(a) a governance interest in an unincorporated entity;

(b) a transferable interest in an unincorporated entity; or

(c) a share or membership in a corporation.

(12) "Interest holder" means a direct holder of an interest.

(13) "Jurisdiction of organization," with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.

(14) "Noncommercial registered agent" means a person that is not listed as a

## **SB0131S01 compared with SB0131**

commercial registered agent under Section 16-17-204 and that is:

(a) an individual or a domestic or foreign entity that serves in this state as the agent for service of process of an entity; or

(b) the individual who holds the office or other position in an entity that is designated as the agent for service of process pursuant to Subsection 16-17-203(1)(b)(ii).

(15) "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the division.

(16) "Nonresident LLP statement" means:

(a) a statement of qualification of a domestic limited liability partnership that does not have an office in this state; or

(b) a statement of foreign qualification of a foreign limited liability partnership that does not have an office in this state.

(17) "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.

(18) "Organic rules" means the public organic document and private organic rules of an entity.

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

(20) "Private organic rules" mean the rules, whether or not in a record, that govern the internal affairs of an entity, are binding on all of its interest holders, and are not part of its public organic document, if any.

(21) "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.

(22) "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the division.

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

(24) "Registered agent" means a commercial registered agent or a noncommercial registered agent.

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(25) "Registered agent filing" means:

- (a) the public organic document of a domestic filing entity;
- (b) a nonresident LLP statement;
- (c) a foreign qualification document; or
- (d) an appointment of agent.

(26) "Represented entity" means:

- (a) a domestic filing entity;
- (b) a domestic or qualified foreign limited liability partnership that does not have an office in this state;

(c) a qualified foreign entity;

(d) a domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;

(e) a domestic entity that is not a filing entity for which an appointment of agent has been filed; or

(f) a nonqualified foreign entity for which an appointment of agent has been filed.

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

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

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

(28) "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

(29) "Type," with respect to an entity, means a generic form of entity:

(a) recognized at common law; or

(b) organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

Section 11. Section **31A-37a-102** is amended to read:

### **31A-37a-102. Definitions.**

(1) For purposes of this chapter:

(a) "Ceding insurer" means an insurer that:

(i) is approved by the commissioner;

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(ii) is licensed or otherwise authorized to transact the business of insurance or reinsurance in the insurer's state or country of domicile; and

(iii) cedes risk to a special purpose financial captive insurance company pursuant to a reinsurance contract.

(b) Notwithstanding Section 31A-27a-102, "insolvency" or "insolvent" for purposes of applying Chapter 27a, Insurer Receivership Act, to a special purpose financial captive insurance company, means that a special purpose financial captive insurance company:

(i) is unable to pay an obligation when the obligation is due, unless the obligation is the subject of a bona fide dispute; or

(ii) fails to meet the criteria and conditions for solvency of the special purpose financial captive insurance company established by the commissioner by rule or order.

(c) (i) "Insurance securitization" means a transaction or a group of related transactions:

(A) that may include a capital market offering;

(B) that is effected through one or more related risk transfer instruments and facilitating administrative agreements;

(C) where all or part of the result of the transaction or group of related transactions is used to fund the special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer;

(D) by which:

(I) proceeds are obtained by a special purpose financial captive insurance company, directly or indirectly, through the issuance of one or more securities by the special purpose financial captive insurance company or another person; or

(II) a person provides one or more letters of credit or other assets for the benefit of the special purpose financial captive insurance company if the commissioner authorizes the special purpose financial captive insurance company to treat the letter of credit or asset as an admitted asset for purposes of the special purpose financial captive insurance company's annual report; and

(E) if all or a part of the proceeds, a letter of credit, or asset described in this Subsection (1)(c) is used to fund the special purpose financial captive insurance company's obligations under a reinsurance contract with a ceding insurer.

(ii) "Insurance securitization" does not include the issuance of a letter of credit for the

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benefit of the commissioner to satisfy all or part of the special purpose financial captive insurance company's capital and surplus requirements under Section 31A-37a-302.

(d) "Management" means:

- (i) a board of directors of a special purpose financial captive insurance company;
- (ii) a managing board of a special purpose financial captive insurance company; or
- (iii) one or more individuals with the overall responsibility for the management of the

affairs of the special purpose financial captive insurance company, including:

(A) an officer elected or appointed to act on behalf of the special purpose financial captive insurance company; or

(B) an agent elected or appointed to act on behalf of the special purpose financial captive insurance company.

(e) "Organizational document" means:

(i) in the case of a special purpose financial captive insurance company formed as a stock corporation, the special purpose financial captive insurance company's:

(A) articles of incorporation; and

(B) bylaws; and

(ii) in the case of a special purpose financial captive insurance company formed as a limited liability company, the special purpose financial captive insurance company's:

(A) [~~articles~~] certificate of organization; and

(B) operating agreement.

(f) "Reinsurance contract" means a contract between a special purpose financial captive insurance company and a ceding insurer pursuant to which the special purpose financial captive insurance company agrees to provide reinsurance to the ceding insurer for risks associated with the ceding insurer's insurance or reinsurance business.

(g) "Security" means:

(i) a security as defined in Section 31A-1-301; or

(ii) one or more of the following that the commissioner designates, by rule or order, as a "security" for purposes of this chapter:

(A) a debt obligation;

(B) equity;

(C) a surplus certificate;

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- (D) a surplus note;
- (E) a funding agreement;
- (F) a derivative; or
- (G) another financial instrument.

(h) "Special purpose financial captive insurance company" means a captive insurance company has a certificate of authority under this chapter from the commissioner to operate as a special purpose financial captive insurance company pursuant to this chapter.

(i) "Special purpose financial captive insurance company security" means:

- (i) a security issued by a special purpose financial captive insurance company; or
- (ii) a security issued by a third party, the proceeds of which are obtained directly or indirectly by a special purpose financial captive insurance company.

(j) "Surplus note" means an unsecured subordinated debt obligation that has one or more characteristics that are consistent with paragraph 3 of the National Association of Insurance Commissioners Statement of Statutory Accounting Principals No. 41, as amended from time to time and as modified or supplemented by rule or order of the commissioner.

(2) The terms defined in Section 31A-37-102 shall have the same meaning for purposes of this chapter.

Section 12. Section **46-4-503** is amended to read:

### **46-4-503. Government products and services provided electronically.**

(1) Notwithstanding Section 46-4-501, a state governmental agency that administers one or more of the following transactions shall allow those transactions to be conducted electronically:

- (a) an application for or renewal of a professional or occupational license issued under Title 58, Occupations and Professions;
- (b) the renewal of a drivers license;
- (c) an application for a hunting or fishing license;
- (d) the filing of:
  - (i) a return under Title 59, Chapter 10, Individual Income Tax Act or 12, Sales and Use Tax Act;
  - (ii) a court document, as defined by the Judicial Council; or
  - (iii) a document under Title 70A, Uniform Commercial Code;

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- (e) a registration for:
  - (i) a product; or
  - (ii) a brand;
- (f) a renewal of a registration of a motor vehicle;
- (g) a registration under:
  - (i) Title 16, Corporations;
  - (ii) Title 42, Names; or
  - (iii) Title 48, ~~[Partnership]~~ Unincorporated Business Entities Act; or
- (h) submission of an application for benefits:
  - (i) under Title 35A, Chapter 3, Employment Support Act;
  - (ii) under Title 35A, Chapter 4, Employment Security Act; or
  - (iii) related to accident and health insurance.

(2) The state system of public education, in coordination with the Utah Education Network, shall make reasonable progress toward making the following services available electronically:

- (a) secure access by parents and students to student grades and progress reports;
- (b) email communications with:
  - (i) teachers;
  - (ii) parent-teacher associations; and
  - (iii) school administrators;
- (c) access to school calendars and schedules; and
- (d) teaching resources that may include:
  - (i) teaching plans;
  - (ii) curriculum guides; and
  - (iii) media resources.

(3) A state governmental agency shall:

(a) in carrying out the requirements of this section, take reasonable steps to ensure the security and privacy of records that are private or controlled as defined by Title 63G, Chapter 2, Government Records Access and Management Act;

(b) in addition to those transactions listed in Subsections (1) and (2), determine any additional services that may be made available to the public through electronic means; and

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(c) as part of the agency's information technology plan required by Section 63F-1-204, report on the progress of compliance with Subsections (1) through (3).

(4) Notwithstanding the other provisions of this part, a state governmental agency is not required by this part to conduct a transaction electronically if:

(a) conducting the transaction electronically is not required by federal law; and

(b) conducting the transaction electronically is:

(i) impractical;

(ii) unreasonable; or

(iii) not permitted by laws pertaining to privacy or security.

(5) (a) For purposes of this Subsection (5), "one-stop shop" means the consolidation of access to diverse services and agencies at one location including virtual colocation.

(b) State agencies that provide services or offer direct assistance to the business community shall participate in the establishment, maintenance, and enhancement of an integrated Utah business web portal known as Business.utah.gov. The purpose of the business web portal is to provide "one-stop shop" assistance to businesses.

(c) State agencies shall partner with other governmental and nonprofit agencies whose primary mission is to provide services or offer direct assistance to the business community in Utah in fulfilling the requirements of this section.

(d) The following state entities shall comply with the provisions of this Subsection (5):

(i) Governor's Office of Economic Development, which shall serve as the managing partner for the website;

(ii) Department of Workforce Services;

(iii) Department of Commerce;

(iv) Tax Commission;

(v) Department of Administrative Services - Division of Purchasing and General Services, including other state agencies operating under a grant of authority from the division to procure goods and services in excess of \$5,000;

(vi) Department of Agriculture;

(vii) Department of Natural Resources; and

(viii) other state agencies that provide services or offer direct assistance to the business sector.



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(e) The business services available on the business web portal may include:

- (i) business life cycle information;
- (ii) business searches;
- (iii) employment needs and opportunities;
- (iv) motor vehicle registration;
- (v) permit applications and renewal;
- (vi) tax information;
- (vii) government procurement bid notifications;
- (viii) general business information;
- (ix) business directories; and
- (x) business news.

Section 13. Section **48-1a-101** is enacted to read:

### **TITLE 48. UNINCORPORATED BUSINESS ENTITIES ACT**

#### **CHAPTER 1a. GENERAL PROVISIONS**

##### **Part 1. General Provisions**

#### **48-1a-101. Title.**

(1) This title is known as the "Unincorporated Business Entities Act."

(2) This chapter is known as "General Provisions."

Section 14. Section **48-1a-102** is enacted to read:

#### **48-1a-102. Definitions.**

As used in this title, "division" means the Division of Corporations and Commercial

Code within the Department of Commerce.

Section 15. Section **48-1b-101** is enacted to read:

### **CHAPTER 1b. UTAH UNIFORM PARTNERSHIP ACT**

##### **Part 1. General Provisions**

#### **48-1b-101. Title -- Definitions.**

(1) This chapter may be cited as the "Utah Uniform Partnership Act."

(2) As used in this chapter:

(a) "Business" includes every trade, occupation, and profession.

(b) "Debtor in bankruptcy" means a person who is the subject of:

(i) an order for relief under United States Code, Title 11, or a comparable order under a

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successor statute of general application; or

(ii) a comparable order under federal, state, or foreign law governing insolvency.

(c) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(d) "Foreign limited liability partnership" means a partnership that:

(i) is formed under laws other than the laws of this state; and

(ii) has the status of a limited liability partnership under those laws.

(e) "Limited liability partnership" means a partnership that has filed with the division a statement of qualification under Section 48-1b-1001 and does not have a similar statement in effect in any other jurisdiction.

(f) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed under Section 48-1b-202, predecessor law, or comparable law of another jurisdiction.

(g) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(h) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(i) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(j) "Person" means:

(i) an individual;

(ii) a corporation;

(iii) a business trust;

(iv) an estate;

(v) a trust;

(vi) a partnership;

(vii) an association;

(viii) a joint venture;

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(ix) government;

(x) a governmental subdivision, agency, or instrumentality; or

(xi) any other legal or commercial entity.

(k) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

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

(m) "Statement" means:

(i) a statement of partnership authority under Section 48-1b-303;

(ii) a statement of denial under Section 48-1b-304;

(iii) a statement of dissociation under Section 48-1b-704;

(iv) a statement of dissolution under Section 48-1b-805;

(v) articles of merger under Section 48-1b-904;

(vi) a statement of qualification under Section 48-1b-1001;

(vii) a statement of foreign qualification under Section 48-1b-1102; or

(viii) an amendment or cancellation of any of the foregoing.

(n) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(o) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

(p) "Tribal limited liability partnership" means a limited liability partnership:

(i) formed under the law of a tribe; and

(ii) that is at least 51% owned or controlled by the tribe.

Section 16. Section **48-1b-102** is enacted to read:

**48-1b-102. Knowledge and notice.**

(1) A person knows a fact if the person has actual knowledge of it.

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

(a) knows of it;

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(b) has received a notification of it; or

(c) has reason to know it exists from all of the facts known to the person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(4) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) Except as otherwise provided in Subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

Section 17. Section **48-1b-103** is enacted to read:

### **48-1b-103. Effect of partnership agreement -- Nonwaivable provisions.**

(1) ~~+(a)+~~ Except as otherwise provided in Subsection (2), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

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~~{ (b) A partner asserting the existence or term of an oral partnership agreement shall prove the existence or term of the partnership agreement by clear and convincing evidence.~~

‡ (2) The partnership agreement may not:

(a) vary the rights and duties under Section 48-1b-105 except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict the right of access to books and records under Subsection 48-1b-403(2);

(c) eliminate the duty of loyalty under Subsection 48-1b-404(2) or 48-1b-603(2)(c),  
but:

(i) the partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not ~~{manifestly unreasonable}~~ unconscionable or against public policy; or

(ii) all of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(d) unreasonably reduce the duty of care under Subsection 48-1b-404(3) or 48-1b-603(2)(c);

(e) eliminate the obligation of good faith and fair dealing under Subsection 48-1b-404(4), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(f) vary the power to dissociate as a partner under Subsection 48-1b-602(1), except to require the notice under Subsection 48-1b-601(1) to be in writing;

(g) vary the right of a court to expel a partner in the events specified in Subsection 48-1b-601(5);

(h) vary the requirement to wind up the partnership business in cases specified in Subsection 48-1b-801(4), (5), or (6);

(i) vary the law applicable to a limited liability partnership under Subsection 48-1b-106(2); or

(j) restrict rights of third parties under this chapter.

Section 18. Section **48-1b-104** is enacted to read:

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### **48-1b-104. Supplemental principles of law.**

(1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Section 15-1-1.

Section 19. Section **48-1b-105** is enacted to read:

### **48-1b-105. Execution, filing, and recording of statements.**

(1) A statement may be filed with the division. A certified copy of a statement that is filed in an office in another state may be filed with the division. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A certified copy of a statement that is filed with the division and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed with the division does not have the effect provided for recorded statements in this chapter.

(3) A statement filed with the division by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(4) A person authorized by this chapter to file a statement with the division may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement with the division pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The division may collect a fee, established in accordance with Section 63J-1-504, for filing or providing a certified copy of a statement. The county recorder may in accordance with Section 17-21-18.5 collect a fee for recording a statement.

(7) A statement filed with the division pursuant to this section and in accordance with

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Section 48-1b-303, is effective for a period of five years from the date of filing. At the expiration of that period, if no new filing is made by or on behalf of the person who made the original filing, the division shall send a notice by regular mail, postage prepaid, to the address shown in the filing indicating that it has expired. If no new filing is made within 30 days after the date of mailing the notice, the division shall remove the filing from the division's active file.

Section 20. Section **48-1b-106** is enacted to read:

### **48-1b-106. Governing law.**

(1) Except as otherwise provided in Subsection (2), the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(2) The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

Section 21. Section **48-1b-107** is enacted to read:

### **48-1b-107. Partnership subject to amendment or repeal of chapter.**

A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

Section 22. Section **48-1b-201** is enacted to read:

### **Part 2. Nature of Partnership**

#### **48-1b-201. Partnership as entity.**

(1) A partnership is an entity distinct from its partners.

(2) A limited liability partnership continues to be the same entity that existed before the filing of a statement of qualification with the division under Section 48-1b-1001.

Section 23. Section **48-1b-202** is enacted to read:

#### **48-1b-202. Formation of partnership.**

(1) Except as otherwise provided in Subsection (2), the association of two or more persons to carry on as co-owners a business for profit forms a partnership, whether or not the persons intend to form a partnership.

(2) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

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(3) In determining whether a partnership is formed, the following rules apply:

(a) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.

(b) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(c) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received in payment:

(i) of a debt by installments or otherwise;

(ii) for services as an independent contractor or of wages or other compensation to an employee;

(iii) of rent;

(iv) of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;

(v) of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or

(vi) for the sale of the goodwill of a business or other property by installments or otherwise.

Section 24. Section **48-1b-203** is enacted to read:

### **48-1b-203. Partnership property.**

Property acquired by a partnership is property of the partnership and not of the partners individually.

Section 25. Section **48-1b-204** is enacted to read:

### **48-1b-204. When property is partnership property.**

(1) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.



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(2) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Section 26. Section **48-1b-301** is enacted to read:

### **Part 3. Relations of Partners to Persons Dealing with Partnership**

#### **48-1b-301. Partner agent of partnership.**

Subject to the effect of a statement of partnership authority under Section 48-1b-303:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

Section 27. Section **48-1b-302** is enacted to read:

#### **48-1b-302. Transfer of partnership property.**

(1) Partnership property may be transferred as follows:

(a) Subject to the effect of a statement of partnership authority under Section 48-1b-303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

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(b) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(c) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(2) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 48-1b-301 and:

(a) as to a subsequent transferee who gave value for property transferred under Subsection (1)(a) and (b), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership; or

(b) as to a transferee who gave value for property transferred under Subsection (1)(c), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(3) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under Subsection (2), from any earlier transferee of the property.

(4) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

Section 28. Section **48-1b-303** is enacted to read:

### **48-1b-303. Statement of partnership authority.**

(1) A partnership may file with the division a statement of partnership authority, which:

(a) must include:

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(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of Subsection (2); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to Subsection 48-1b-105(3) and states the name of the partnership but does not contain all of the other information required by Subsection (1), the statement nevertheless operates with respect to a person not a partner as provided in Subsections (4) and (5).

(4) Except as otherwise provided in Subsection (7), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives

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the previous grant of authority.

(5) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(6) Except as otherwise provided in Subsections (4) and (5) and Sections 48-1b-704 and 48-1b-805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless earlier canceled **and if not renewed**, a filed statement of partnership authority is canceled by operation of law five years after the date on which the statement, or the most recent amendment, was filed with the division.

(8) (a) If a partnership files a statement of partnership authority with the division under this section, the partnership is not required to file a certificate with the division under Title 42, Chapter 2, Conducting Business Under Assumed Name.

(b) A filing with the division under Title 42, Chapter 2, Conducting Business Under Assumed Name:

(i) is not subject to Subsection (7); and

(ii) is subject to Section 42-2-8.

Section 29. Section **48-1b-304** is enacted to read:

### **48-1b-304. Statement of denial.**

A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to Subsection 48-1b-303(2) may file a statement of denial with the division stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in Subsections 48-1b-303(4) and (5).

Section 30. Section **48-1b-305** is enacted to read:

### **48-1b-305. Partnership liable for partner's actionable conduct.**

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

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(2) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

Section 31. Section **48-1b-306** is enacted to read:

### **48-1b-306. Partner's liability.**

(1) Except as otherwise provided in Subsections (2) and (3), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(3) (a) An obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner.

(b) This Subsection (3) applies notwithstanding anything inconsistent in the partnership agreement that existed immediately before the vote required to become a limited liability partnership under Subsection 48-1b-1001(2).

(c) This Subsection (3) and Part 10, Limited Liability Partnerships, do not alter any law applicable to the relationship between a person providing a professional service and a person receiving the professional service, including liability arising out of those professional services. A person providing a professional service remains personally liable for a result of that person's act or omission.

Section 32. Section **48-1b-307** is enacted to read:

### **48-1b-307. Actions by and against partnership and partners.**

(1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and, to the extent not inconsistent with Section 48-1b-306, any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

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(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless the partner is personally liable for the claim under Section 48-1b-306 and:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the partnership is a debtor in bankruptcy;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 48-1b-308.

Section 33. Section **48-1b-308** is enacted to read:

### **48-1b-308. Liability of purported partner.**

(1) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(2) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the

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representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority with the division to indicate the partner's dissociation from the partnership.

(5) Except as otherwise provided in Subsections (1) and (2), persons who are not partners as to each other are not liable as partners to other persons.

Section 34. Section **48-1b-401** is enacted to read:

### **Part 4. Relations of Partners to Each Other and to Partnership**

#### **48-1b-401. Partner's rights and duties.**

(1) Each partner is deemed to have an account that is:

(a) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and

(b) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(5) A payment or advance made by a partner which gives rise to a partnership

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obligation under Subsection (3) or (4) constitutes a loan to the partnership which accrues interest from the date of the payment or advance.

(6) Each partner has equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

(8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(9) A person may become a partner only with the consent of all of the partners.

(10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(11) This section does not affect the obligations of a partnership to other persons under Section 48-1b-301.

Section 35. Section **48-1b-402** is enacted to read:

### **48-1b-402. Distributions in kind.**

A partner has no right to receive, and may not be required to accept, a distribution in kind.

Section 36. Section **48-1b-403** is enacted to read:

### **48-1b-403. Partner's rights and duties with respect to information.**

(1) A partnership shall keep its books and records, if any, at its chief executive office.

(2) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(3) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(a) without demand, any information concerning the partnership's business and affairs



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reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(b) on demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Section 37. Section **48-1b-404** is enacted to read:

### **48-1b-404. General standards of partner's conduct.**

(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in Subsections (2) and (3).

(2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and

(c) to refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(3) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

(7) This section applies to a person winding up the partnership business as the personal

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or legal representative of the last surviving partner as if the person were a partner.

Section 38. Section **48-1b-405** is enacted to read:

### **48-1b-405. Actions by partnership and partners.**

(1) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to:

(a) enforce the partner's rights under the partnership agreement;

(b) enforce the partner's rights under this chapter, including:

(i) the partner's rights under Section 48-1b-401, 48-1b-403, or 48-1b-404;

(ii) the partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 48-1b-701 or enforce any other right under Part 6, Partner's Dissociation, or Part 7, Partner's Dissociation When Business Not Wound Up; or

(iii) the partner's right to compel a dissolution and winding up of the partnership business under Section 48-1b-801 or enforce any other right under Part 8, Winding Up Partnership Business; or

(c) enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 39. Section **48-1b-406** is enacted to read:

**48-1b-406. Continuation of partnership beyond definite term or particular undertaking.**

(1) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(2) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the

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partnership, they are presumed to have agreed that the partnership will continue.

Section 40. Section **48-1b-501** is enacted to read:

### **Part 5. Transferees and Creditors of Partner**

#### **48-1b-501. Partner not co-owner of partnership property.**

A partner is not a co-owner of partnership property and has no interest in partnership property which can be transferred, either voluntarily or involuntarily.

Section 41. Section **48-1b-502** is enacted to read:

#### **48-1b-502. Partner's transferable interest in partnership.**

The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

Section 42. Section **48-1b-503** is enacted to read:

#### **48-1b-503. Transfer of partner's transferable interest.**

(1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause the partner's dissociation or a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled; ~~and~~

(b) to receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor; ~~and~~; ~~(c) to seek under Subsection 48-1b-801(6) a judicial determination that it is equitable to wind up the partnership business.~~

~~†~~ (3) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the

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interest in distributions transferred.

(5) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(6) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

Section 43. Section **48-1b-504** is enacted to read:

### **48-1b-504. Partner's transferable interest subject to charging order.**

(1) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and 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 transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

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

(a) by the judgment debtor;

(b) with property other than partnership property, by one or more of the other partners;

or

(c) with partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(4) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

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

Section 44. Section **48-1b-601** is enacted to read:

### **Part 6. Partner's Dissociation**

#### **48-1b-601. Events causing partner's dissociation.**

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A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) the partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, which has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) a partnership that is a partner has been dissolved and its business is being wound up;

(5) on application by the partnership or another partner, the partner's expulsion by judicial determination because:

(a) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 48-1b-404;

or

(c) the partner engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with the partner;

(6) the partner's:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

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(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(a) the partner's death;

(b) the appointment of a guardian or general conservator for the partner; or

(c) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative;  
or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

Section 45. Section **48-1b-602** is enacted to read:

### **48-1b-602. Partner's power to dissociate -- Wrongful dissociation.**

(1) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to Subsection 48-1b-601(1).

(2) A partner's dissociation is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under Subsection 48-1b-601(6) through (10) or wrongful dissociation under this Subsection (2);

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(ii) the partner is expelled by judicial determination under Subsection 48-1b-601(5);  
(iii) the partner is dissociated by becoming a debtor in bankruptcy; or  
(iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(3) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

Section 46. Section **48-1b-603** is enacted to read:

### **48-1b-603. Effect of partner's dissociation.**

(1) (a) If a partner's dissociation results in a dissolution and winding up of the partnership business, Part 8, Winding Up Partnership Business, applies.

(b) Except as provided in Subsection (1)(a), Part 7, Partner's Dissociation When Business Not Wound Up, applies.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in Section 48-1b-803;

(b) the partner's duty of loyalty under Subsection 48-1b-404(2)(c) terminates; and

(c) the partner's duty of loyalty under Subsections 48-1b-404(2)(a) and (b) and duty of care under Subsection 48-1b-404(3) continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to Section 48-1b-803.

Section 47. Section **48-1b-701** is enacted to read:

### **Part 7. Partner's Dissociation When Business Not Wound Up**

#### **48-1b-701. Purchase of dissociated partner's interest.**

(1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under Section 48-1b-801, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to Subsection (2).

(2) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under Subsection 48-1b-807(2) if, on the date of

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dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under Subsection 48-1b-602(2), and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 48-1b-702.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under Subsection (3).

(6) If a deferred payment is authorized under Subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under Subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by Subsection (5) or (6) must be accompanied by the following:

(a) a statement of partnership assets and liabilities as of the date of dissociation;  
(b) the latest available partnership balance sheet and income statement, if any;  
(c) an explanation of how the estimated amount of the payment was calculated; and  
(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under Subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner



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establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to Subsection 48-1b-405(2)(b)(ii), to determine the buyout price of that partner's interest, any offsets under Subsection (3), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under Subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under Subsection (8), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with Subsection (7).

Section 48. Section **48-1b-702** is enacted to read:

### **48-1b-702. Dissociated partner's power to bind and liability to partnership.**

(1) For two years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under Part 9, Merger, Conversion, and Domestication, is bound by an act of the dissociated partner which would have bound the partnership under Section 48-1b-301 before dissociation only if at the time of entering into the transaction the other party:

- (a) reasonably believed that the dissociated partner was then a partner;
- (b) did not have notice of the partner's dissociation; and
- (c) is not deemed to have had knowledge under Subsection 48-1b-303(5) or notice under Subsection 48-1b-704(3).

(2) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under Subsection (1).

Section 49. Section **48-1b-703** is enacted to read:

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### **48-1b-703. Dissociated partner's liability to other persons.**

(1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in Subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Part 9, Merger, Conversion, and Domestication, within two years after the partner's dissociation, only if the partner is liable for the obligation under Section 48-1b-306 and at the time of entering into the transaction the other party:

(a) reasonably believed that the dissociated partner was then a partner;

(b) did not have notice of the partner's dissociation; and

(c) is not deemed to have had knowledge under Subsection 48-1b-303(5) or notice under Subsection 48-1b-704(3).

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Section 50. Section **48-1b-704** is enacted to read:

### **48-1b-704. Statement of dissociation.**

(1) A dissociated partner or the partnership may file a statement of dissociation with the division stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of Subsections 48-1b-303(4) and (5).

(3) For the purposes of Subsections 48-1b-702(1)(c) and 48-1b-703(2)(c), a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

Section 51. Section **48-1b-705** is enacted to read:

### **48-1b-705. Continued use of partnership name.**

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Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Section 52. Section **48-1b-801** is enacted to read:

### **Part 8. Winding Up Partnership Business**

#### **48-1b-801. Events causing dissolution and winding up of partnership business.**

A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Subsections 48-1b-601(2) through (10), of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's dissociation by death or otherwise under Subsections 48-1b-601(6) through (10) or wrongful dissociation under Subsection 48-1b-602(2), the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation pursuant to Subsection 48-1b-602(2)(b)(i) constitutes the expression of that partner's will to wind up the partnership business;

(b) the express will of all of the partners to wind up the partnership business; or

(c) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) on application by a partner, a judicial determination that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in

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conformity with the partnership agreement; or

(6) on application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

(a) after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

(b) at any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

Section 53. Section **48-1b-802** is enacted to read:

### **48-1b-802. Partnership continues after dissolution.**

(1) Subject to Subsection (2), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

(a) the partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and

(b) the rights of a third party accruing under Subsection 48-1b-804(1) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

Section 54. Section **48-1b-803** is enacted to read:

### **48-1b-803. Right to wind up partnership business.**

(1) After dissolution, a partner who has not wrongfully dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the district court, for good cause shown, may order judicial supervision of the winding up.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

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(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 48-1b-807, settle disputes by mediation or arbitration, and perform other necessary acts.

Section 55. Section **48-1b-804** is enacted to read:

### **48-1b-804. Partner's power to bind partnership after dissolution.**

Subject to Section 48-1b-805, a partnership is bound by a partner's act after dissolution that:

- (1) is appropriate for winding up the partnership business; or
- (2) would have bound the partnership under Section 48-1b-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

Section 56. Section **48-1b-805** is enacted to read:

### **48-1b-805. Statement of dissolution.**

(1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution with the division stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of Subsection 48-1b-303(4) and is a limitation on authority for the purposes of Subsection 48-1b-303(5).

(3) For the purposes of Sections 48-1b-301 and 48-1b-804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partner's authority as a result of the statement of dissolution 90 days after it is filed.

(4) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority which will operate with respect to a person not a partner as provided in Subsections 48-1b-303(4) and (5) in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

Section 57. Section **48-1b-806** is enacted to read:

### **48-1b-806. Partner's liability to other partners after dissolution.**

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(1) Except as otherwise provided in Subsection (2) and Section 48-1b-306, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 48-1b-804.

(2) A partner who, with knowledge of the dissolution, incurs a partnership liability under Subsection 48-1b-804(2) by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

Section 58. Section **48-1b-807** is enacted to read:

### **48-1b-807. Settlement of accounts and contributions among partners.**

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under Subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under Section 48-1b-306.

(3) If a partner fails to contribute the full amount required under Subsection (2), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under Section 48-1b-306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under Section 48-1b-306.

(4) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership

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obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 48-1b-306.

(5) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(6) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

Section 59. Section **48-1b-901** is enacted to read:

### **Part 9. Merger, Conversion, and Domestication**

#### **48-1b-901. Definitions.**

In this part:

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

(2) "Constituent partnership" means a constituent organization that is a partnership.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to Sections 48-1b-906 through 48-1b-909.

(4) "Converting organization" means an organization that converts into another organization pursuant to Section 48-1b-906.

(5) "Converting partnership" means a converting organization that is a partnership.

(6) "Domesticated limited liability partnership" means a limited liability partnership that exists after a domesticating foreign limited liability partnership or limited liability partnership effects a domestication pursuant to Sections 48-1b-910 through 48-1b-913.

(7) "Domesticating limited liability partnership" means a limited liability partnership that effects a domestication pursuant to Sections 48-1b-910 through 48-1b-913.

(8) "Foreign partnership" means a partnership that has:

(a) its chief executive office in a jurisdiction other than this state; or

(b) specified in its partnership agreement that relations among the partners and between the partners and the partnership will be governed by the law of a jurisdiction other than this state.

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

(10) (a) "Organization" means:

(i) a general partnership, including a limited liability partnership;

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(ii) a limited partnership, including a limited liability limited partnership;

(iii) a limited liability company;

(iv) a business trust;

(v) a corporation; or

(vi) any other person having a governing statute.

(b) "Organization" includes a domestic or foreign organization regardless of whether organized for profit.

(11) "Organizational documents" means:

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

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

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

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

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

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

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

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

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

(13) "Surviving organization" means an organization into which one or more other



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organizations are merged whether the organization preexisted the merger or was created by the merger.

Section 60. Section **48-1b-902** is enacted to read:

### **48-1b-902. Merger.**

(1) A partnership may merge with one or more other constituent organizations pursuant to this section, Sections 48-1b-903 through 48-1b-905, and a plan of merger, if:

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

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

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

(2) Unless each constituent organization and the surviving organization are partnerships other than limited liability partnerships, a plan of merger must be in a record and must include:

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

(b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

Section 61. Section **48-1b-903** is enacted to read:

### **48-1b-903. Action on plan of merger by constituent partnership.**

(1) Subject to Section 48-1b-914, a plan of merger must be consented to by all the partners of a constituent partnership.

(2) Subject to Section 48-1b-914 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the division for filing under Section

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48-1b-904, a constituent partnership may amend the plan or abandon the merger:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Section 62. Section **48-1b-904** is enacted to read:

### **48-1b-904. Filings required and permitted for merger -- Effective date.**

(1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) each constituent partnership, as provided in Section 48-1b-105, unless the merger is only between or among general partnerships, none of which is a limited liability partnership, and the surviving organization will be a general partnership other than a limited liability partnership; and

(b) each other constituent organization, as provided in its governing statute.

(2) Articles of merger under this section must include:

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

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

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

(d) if the surviving organization is to be created by the merger:

(i) if it will be a limited liability partnership, the limited liability partnership's statement of qualification; or

(ii) if it will be an organization other than a limited liability partnership, the organizational document that creates the organization that is in a public record;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

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

(g) if the surviving organization is a foreign organization not authorized to transact

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business in this state, the street and mailing addresses of an office that may be used for service of process under Section 48-1b-905(2); and

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

(3) Each constituent partnership that is a limited liability partnership shall, and each constituent partnership that is not a limited liability partnership may, deliver the articles of merger for filing in the division.

(4) A merger becomes effective under this part:

(a) if the surviving organization is a partnership, upon the later of:

(i) compliance with Subsection (3); or

(ii) as specified in the articles of merger; or

(b) if the surviving organization is not a partnership, as provided by the governing statute of the surviving organization.

Section 63. Section **48-1b-905** is enacted to read:

### **48-1b-905. Effect of merger.**

(1) When a merger becomes effective:

(a) the surviving organization continues or comes into existence;

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

(c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

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

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

(h) except as otherwise agreed, if a constituent partnership ceases to exist, the merger

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does not dissolve the partnership for the purposes of Part 8, Winding Up Partnership Business:

(i) if the surviving organization is created by the merger:

(i) if it is a partnership, the partnership is formed upon approval of and on the date specified in the plan of merger;

(ii) if it is a limited liability partnership, the limited liability partnership is formed and the statement of qualification takes effect on the later of:

(A) the day after the day on which the division has received for filing both the articles of merger and the statement of qualification pursuant to Section 48-1b-1001; or

(B) the date provided in the statement of qualification; or

(iii) if it is an organization other than a partnership, the organizational document that creates the organization becomes effective; and

(j) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of merger under 48-1b-904(2)(g).

Section 64. Section **48-1b-906** is enacted to read:

### **48-1b-906. Conversion.**

(1) An organization other than a partnership or a foreign partnership may convert to a partnership, and a partnership may convert to an organization other than a foreign partnership pursuant to this section, Sections 48-1b-907 through 48-1b-909, and a plan of conversion, if:

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

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

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

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

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- (a) the name and form of the organization before conversion;
- (b) the name and form of the organization after conversion;
- (c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and
- (d) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Section 65. Section **48-1b-907** is enacted to read:

### **48-1b-907. Action on plan of conversion by converting partnership.**

(1) Subject to Section 48-1b-914, a plan of conversion must be consented to by all the partners of a converting partnership.

(2) Subject to Section 48-1b-914 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the division for filing under Section 48-1b-908, a converting partnership may amend the plan or abandon the conversion:

- (a) as provided in the plan; or
- (b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section 66. Section **48-1b-908** is enacted to read:

### **48-1b-908. Filings required for conversion -- Effective date.**

(1) After a plan of conversion is approved:

(a) a converting limited liability partnership shall deliver to the division for filing articles of conversion, which must be signed as provided in Section 48-1b-105 and must include:

- (i) a statement that the limited liability partnership has been converted into another organization;
- (ii) the name and form of the converted organization and the jurisdiction of its governing statute;
- (iii) the date the conversion is effective under the governing statute of the converted organization;
- (iv) a statement that the conversion was approved as required by this chapter;

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(v) a statement that the conversion is authorized by the governing statute of the converted organization; and

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that may be used for purposes of Subsection 48-1b-909(3); and

(b) if the converting organization is not a converting partnership or limited liability partnership, the converting organization shall deliver to the division for filing articles of conversion, which must include:

(i) a statement that the converted organization was converted from another organization, and whether the converted organization is a partnership or a limited liability partnership;

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

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

(2) A conversion becomes effective:

(a) if the converted organization is a partnership, as provided in the plan or articles of conversion;

(b) if the converted organization is a limited liability partnership, the later of:

(i) the day after the day on which the division has received for filing both the articles of conversion and the statement of qualification pursuant to Section 48-1b-1001; or

(ii) the date provided in the statement of qualification; or

(c) if the converted organization is not a partnership or limited liability partnership, as provided by the governing statute of the converted organization.

Section 67. Section **48-1b-909** is enacted to read:

### **48-1b-909. Effect of conversion.**

(1) An organization that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting organization remains vested in the converted organization;

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

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

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

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

(f) except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of Part 8, Winding Up Partnership Business.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting partnership or limited liability partnership is liable if, before the conversion, the converting partnership or limited liability partnership was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of conversion under Subsection 48-1b-908(1)(a)(vi).

Section 68. Section **48-1b-910** is enacted to read:

### **48-1b-910. Domestication.**

(1) A foreign limited liability partnership may become a limited liability partnership pursuant to this section, Sections 48-1b-911 through 48-1b-913, and a plan of domestication, if:

(a) the foreign limited liability partnership's governing statute authorizes the domestication;

(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the foreign limited liability partnership complies with its governing statute in effecting the domestication.

(2) A limited liability partnership may become a foreign limited liability partnership pursuant to this section, Sections 48-1b-911 through 48-1b-913, and a plan of domestication,

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if:

(a) the foreign limited liability partnership's governing statute authorizes the domestication;

(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the foreign limited liability partnership complies with its governing statute in effecting the domestication.

(3) A plan of domestication must be in a record and must include:

(a) the name of the domesticating limited liability partnership before domestication and the jurisdiction of its governing statute;

(b) the name of the domesticated limited liability partnership after domestication and the jurisdiction of its governing statute;

(c) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating limited liability partnership into any combination of money, interests in the domesticated limited liability partnership, and other consideration; and

(d) the organizational documents of the domesticated limited liability partnership that are, or are proposed to be, in a record.

Section 69. Section **48-1b-911** is enacted to read:

**48-1b-911. Action on plan of domestication by domesticating partnership.**

(1) A plan of domestication must be consented to:

(a) by all the partners, subject to Section 48-1b-914, if the domesticating limited liability partnership is a limited liability partnership; and

(b) as provided in the domesticating limited liability partnership's governing statute, if the limited liability partnership is a foreign limited liability partnership.

(2) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the division for filing under Section 48-1b-912, a domesticating limited liability partnership may amend the plan or abandon the domestication:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.



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Section 70. Section **48-1b-912** is enacted to read:

### **48-1b-912. Filings required for domestication -- Effective date.**

(1) After a plan of domestication is approved, a domesticating limited liability partnership shall deliver to the division for filing articles of domestication, which must include:

(a) a statement, as the case may be, that the limited liability partnership has been domesticated from or into another jurisdiction;

(b) the name of the domesticating limited liability partnership and the jurisdiction of its governing statute;

(c) the name of the domesticated limited liability partnership and the jurisdiction of its governing statute;

(d) the date the domestication is effective under the governing statute of the domesticated limited liability partnership;

(e) if the domesticating limited liability partnership was a limited liability partnership, a statement that the domestication was approved as required by this chapter;

(f) if the domesticating limited liability partnership was a foreign limited liability partnership, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(g) if the domesticated limited liability partnership is a foreign limited liability partnership not authorized to transact business in this state, the street and mailing addresses of an office that the division may use for the purposes of Subsection 48-1b-913(2).

(2) A domestication becomes effective:

(a) if the domesticated limited liability partnership is a limited liability partnership, the later of:

(i) the day after the day on which the division has received for filing both the articles of domestication and the statement of qualification pursuant to Section 48-1b-1001; and

(ii) the date provided in the statement of qualification; or

(b) if it is a foreign limited liability partnership, according to the governing statute of the domesticated limited liability partnership.

Section 71. Section **48-1b-913** is enacted to read:

### **48-1b-913. Effect of domestication.**

(1) When a domestication takes effect:

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(a) the domesticated limited liability partnership is for all purposes the limited liability partnership that existed before the domestication;

(b) all property owned by the domesticating limited liability partnership remains vested in the domesticated limited liability partnership;

(c) all debts, obligations, or other liabilities of the domesticating limited liability partnership continue as debts, obligations, or other liabilities of the domesticated limited liability partnership;

(d) an action or proceeding pending by or against a domesticating limited liability partnership may be continued as if the domestication had not occurred;

(e) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating limited liability partnership remain vested in the domesticated limited liability partnership;

(f) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(g) except as otherwise agreed, the domestication does not dissolve a domesticating limited liability partnership for the purposes of Part 8, Winding Up Partnership Business.

(2) A domesticated limited liability partnership that is a foreign limited liability partnership consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating limited liability partnership, if, before the domestication, the domesticating limited liability partnership was subject to suit in this state on the debt, obligation, or other liability. A domesticated limited liability partnership that is a foreign limited liability partnership and not authorized to transact business in this state may be served with process at the address required in the articles of domestication under Subsection 48-1b-912(1)(g).

(3) If a limited liability partnership has adopted and approved a plan of domestication under Section 48-1b-910 providing for the limited liability partnership to be domesticated in a foreign jurisdiction, a statement pursuant to Subsection 48-1b-1001(4) cancelling the limited liability partnership's statement of qualification must be delivered to the division for filing setting forth:

(a) the name of the limited liability partnership;

(b) a statement that the limited liability partnership's statement of qualification is being

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cancelled in connection with the domestication of the limited liability partnership in a foreign jurisdiction:

(c) a statement the domestication was approved as required by this chapter; and

(d) the jurisdiction of formation of the domesticated foreign limited liability partnership.

Section 72. Section **48-1b-914** is enacted to read:

### **48-1b-914. Restrictions on approval of mergers, conversions, and domestications.**

(1) If a partner of a constituent or converting partnership, or a partner of a domesticating limited liability partnership will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the partner, unless:

(a) the partnership's partnership agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the partners; and

(b) the partner has consented to the provision of the partnership agreement.

(2) A partner does not give the consent required by Subsection (1) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

Section 73. Section **48-1b-915** is enacted to read:

### **48-1b-915. Part not exclusive.**

This part does not preclude an entity from being merged, converted, or domesticated under law other than this chapter.

Section 74. Section **48-1b-1001** is enacted to read:

### **Part 10. Limited Liability Partnership**

#### **48-1b-1001. Statement of qualification.**

(1) A partnership may become a limited liability partnership pursuant to this section.

(2) The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.

(3) After the approval required by Subsection (2), a partnership may become a limited liability partnership by filing a statement of qualification with the division. The statement must

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contain:

(a) the name of the partnership;

(b) the street address of the partnership's chief executive office and, if different, the street address of an office in this state, if any;

(c) if the partnership does not have an office in this state, the information required by Subsection 16-17-203(1);

(d) a statement that the partnership elects to be a limited liability partnership; and

(e) a deferred effective date, if any.

(4) The status of a partnership as a limited liability partnership is effective on the later of the filing of the statement or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Subsection 48-1b-105(4) or revoked pursuant to Section 48-1b-1003.

(5) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under Subsection (3).

(6) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.

(7) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Section 75. Section **48-1b-1002** is enacted to read:

### **48-1b-1002. Name.**

(1) The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP".

(2) The name of a limited liability partnership may not contain:

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

(i) "Olympic";

(ii) "Olympiad"; or

(iii) "Citius Altius Fortius"; and

(b) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, the words:

(i) "university";

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(ii) "college"; or

(iii) "institute" or "institution".

(3) Unless authorized by Subsection (4), the name of a limited liability partnership must be distinguishable in the records of the division from:

(a) the name of each person other than an individual incorporated, organized, or authorized to transact business in this state; and

(b) each name reserved under:

(i) Section 16-6a-401 or 16-6a-402;

(ii) Section 16-10a-401 or 16-10a-402;

(iii) Section 16-11-16;

(iv) Section 42-2-6.6;

(v) Section 48-2d-108 or 48-2d-109; or

(vi) Section 48-3-108 or 48-3-109.

(4) A limited liability partnership may apply to the division for authorization to use a name that does not comply with Subsection (3). The division shall authorize use of the name applied for if, as to each conflicting name:

(a) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the division to change the conflicting name to a name that complies with Subsection (3) and is distinguishable in the records of the division from the name applied for;

(b) the applicant delivers to the division a certified copy of the final judgment of a district court establishing the applicant's right to use in this state the name applied for; or

(c) the applicant delivers to the division proof satisfactory to the division that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

(5) Subject to Section 48-1b-1102.1, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

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(6) The division may not approve for filing a name that implies that a limited liability partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(7) The authorization to file a certificate under or to reserve or register a limited liability partnership name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

(b) 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

(c) create an exclusive right in geographic or generic terms contained within a name.

Section 76. Section **48-1b-1003** is enacted to read:

### **48-1b-1003. Annual report.**

(1) A limited liability partnership, and a foreign limited liability partnership authorized to transact business in this state, shall file an annual report with the division which contains:

(a) the name of the limited liability partnership and the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;

(b) the street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this state, if any; and

(c) if the partnership does not have an office in this state, the information required by Subsection 16-17-203(1).

(2) Following the calendar year in which a partnership files a statement of qualification or a foreign partnership becomes authorized to transact business in this state, the partnership shall file an annual report:

(a) during the month of its anniversary date of formation, in the case of a domestic partnership; or

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

(3) (a) The division may revoke the statement of qualification of a partnership that fails to:

(i) file an annual report when due; or

(ii) pay the required filing fee, established in accordance with Section 63J-1-504.

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(b) To take an action under this Subsection (3), the division shall provide the partnership at least 60 days' written notice of intent to revoke the statement. The notice must be mailed to the partnership at its chief executive office set forth in the last filed statement of qualification or annual report. The notice must specify the annual report that has not been filed, the fee that has not been paid, and the effective date of the revocation. The revocation is not effective if the annual report is filed and the fee is paid before the effective date of the revocation.

(4) A revocation under Subsection (3) only affects a partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.

(5) A partnership whose statement of qualification has been revoked may apply to the division for reinstatement within two years after the effective date of the revocation. The application must state:

(a) the name of the partnership and the effective date of the revocation; and

(b) that the ground for revocation either did not exist or has been corrected.

(6) A reinstatement under Subsection (5) relates back to and takes effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership continues as if the revocation had never occurred.

Section 77. Section **48-1b-1004** is enacted to read:

### **48-1b-1004. Limited liability partnership providing professional services.**

(1) A limited liability partnership organized under this part to provide a professional service:

(a) may provide:

(i) only one specific type of professional service; and

(ii) services ancillary to the professional service described in Subsection (1)(a)(i); and

(b) may not engage in a business other than providing the professional service that it is organized to provide and services ancillary to the professional service.

(2) A limited liability partnership organized to provide a professional service:

(a) may include a partner or employee authorized under the laws of the jurisdiction where the partner or employee reside to provide similar professional service;

(b) may include a partner who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing act relating to the

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professional service; and

(c) may render a professional service in Utah only through a partner or employee who is licensed or registered by the state to render the professional service.

(3) A limited liability partnership organized to provide a professional service has the powers provided a limited liability partnership under this chapter.

(4) (a) This part does not restrict or limit the authority or duty of a regulatory entity to license an individual who provides a professional service or practices the profession that is within the jurisdiction of the regulatory entity, notwithstanding that the individual:

(i) is a partner or employee of a limited liability partnership; or

(ii) provides a professional service or engaging in the practice of the profession through a limited liability partnership.

(b) A limited liability partnership may not do anything an individual licensed to practice the profession that the limited liability partnership is organized to provide may not do.

Section 78. Section **48-1b-1101** is enacted to read:

### **Part 11. Foreign Limited Liability Partnership**

#### **48-1b-1101. Law governing foreign limited liability partnership.**

(1) The law under which a foreign limited liability partnership is formed governs relations among the partners and between the partners and the partnership and the liability of partners for obligations of the partnership.

(2) A foreign limited liability partnership may not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this state.

(3) A statement of foreign qualification does not authorize a foreign limited liability partnership to engage in any business or exercise any power that a partnership may not engage in or exercise in this state as a limited liability partnership.

(4) (a) The division may permit a tribal limited liability partnership to register with the division in the same manner as a foreign limited liability partnership formed in another state.

(b) If a tribal limited liability partnership elects to register with the division, for purposes of this chapter, the tribal limited liability partnership shall be treated in the same manner as a foreign limited liability partnership formed under the laws of another state.

Section 79. Section **48-1b-1102** is enacted to read:



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### **48-1b-1102. Statement of foreign qualification.**

(1) Before transacting business in this state, a foreign limited liability partnership must file a statement of foreign qualification with the division. The statement must contain:

(a) the name of the foreign limited liability partnership which satisfies the requirements of the state or other jurisdiction under whose law it is formed;

(b) the street address of the partnership's chief executive office;

(c) the information required by Subsection 16-17-203(1); and

(d) a deferred effective date, if any.

(2) The status of a partnership as a foreign limited liability partnership is effective on the later of the filing of the statement of foreign qualification or a date specified in the statement. The status remains effective, regardless of changes in the partnership, until it is canceled pursuant to Subsection 48-1b-105(4) or revoked pursuant to Section 48-1b-1003.

(3) An amendment or cancellation of a statement of foreign qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation.

Section 80. Section **48-1b-1102.1** is enacted to read:

### **48-1b-1102.1. Noncomplying name of foreign limited liability partnership.**

(1) A foreign limited liability partnership whose name does not comply with Section 48-1b-1002 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with Section 48-1b-1002. A foreign limited liability partnership that adopts an alternate name under this Subsection (1) and then obtains a certificate of authority with the name need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After obtaining a certificate of authority with an alternate name, a foreign limited liability partnership shall transact business in this state under the name unless the foreign limited liability partnership is authorized under Title 42, Chapter 2, Conducting Business Under Assumed Name, to transact business in this state under another name.

(2) If a foreign limited liability partnership authorized to transact business in this state changes its name to one that does not comply with Section 48-1b-1002, it may not thereafter transact business in this state until it complies with Subsection (1) and obtains an amended certificate of authority.

Section 81. Section **48-1b-1103** is enacted to read:

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### **48-1b-1103. Effect of failure to qualify.**

(1) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a statement of foreign qualification.

(2) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(3) A limitation on personal liability of a partner is not waived solely by transacting business in this state without a statement of foreign qualification.

(4) If a foreign limited liability partnership transacts business in this state without a statement of foreign qualification, service of process with respect to a right of action arising out of the transaction of business in this state shall be served in accordance with Section 16-17-301.

Section 82. Section **48-1b-1104** is enacted to read:

### **48-1b-1104. Activities not constituting transacting business.**

(1) Activities of a foreign limited liability partnership which do not constitute transacting business for the purpose of this part include:

(a) maintaining, defending, or settling an action or proceeding;

(b) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) 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;

(g) creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;

(h) collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

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(i) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions; and

(j) transacting business in interstate commerce.

(2) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under Subsection (1), constitutes transacting business in this state.

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

Section 83. Section **48-1b-1105** is enacted to read:

### **48-1b-1105. Action by attorney general.**

The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this part.

Section 84. Section **48-1b-1201** is enacted to read:

### **Part 12. Miscellaneous Provisions**

### **48-1b-1201. Uniformity of application and construction.**

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Section 85. Section **48-1b-1202** is enacted to read:

### **48-1b-1202. Relation to electronic signatures in global and national commerce act.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§Sec. §§ 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. §§Sec. §§ 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § §Sec. §§ 7003(b).

Section 86. Section **48-1b-1203** is enacted to read:

### **48-1b-1203. Severability clause.**

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

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Section 87. Section **48-1b-1204** is enacted to read:

### **48-1b-1204. Savings clause.**

This chapter does not affect an action or proceeding commenced or right accrued before ~~January~~ July 1, ~~2011~~ 2012.

Section 88. Section **48-1b-1205** is enacted to read:

### **48-1b-1205. Applicability.**

(1) Before January 1, ~~2012~~ 2014, this chapter governs only a partnership formed:

(a) after ~~January~~ July 1, ~~2011~~ 2012, except a partnership that is continuing the business of a dissolved partnership; and

(b) before ~~January~~ July 1, ~~2011~~ 2012, that elects, as provided by Subsection (3), to be governed by this chapter.

(2) On and after January 1, ~~2012~~ 2014, this chapter governs all partnerships.

(3) Before January 1, ~~2012~~ 2014, a partnership voluntarily may elect, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter. The provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year before the partnership's election to be governed by this chapter only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

Section 89. Section **48-2d-101** is enacted to read:

## **CHAPTER 2d. UTAH UNIFORM LIMITED PARTNERSHIP ACT**

### **Part 1. General Provisions**

#### **48-2d-101. Title.**

This chapter is known as the "Utah Uniform Limited Partnership Act."

Section 90. Section **48-2d-102** is enacted to read:

#### **48-2d-102. Definitions.**

As used in this chapter:

(1) (a) "Certificate of limited partnership" means the certificate required by Section 48-2d-201.

(b) "Certificate of limited partnership" includes the certificate as amended or restated.

(2) "Contribution," except in the phrase "right of contribution," means any benefit

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provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

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

(a) an order for relief under United States Code, Title 11, or a comparable order under a successor statute of general application; or

(b) a comparable order under federal, state, or foreign law governing insolvency.

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

(5) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to Subsection 48-2d-404(3).

(6) (a) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners.

(b) "Foreign limited partnership" includes a foreign limited liability limited partnership.

(7) "General partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a general partner under Section 48-2d-401; or

(ii) was a general partner in a limited partnership when the limited partnership became subject to this chapter under Subsection 48-2d-1205(1) or (2); and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(8) "Limited liability limited partnership," except in the phrase "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(9) "Limited partner" means:

(a) with respect to a limited partnership, a person that:

(i) becomes a limited partner under Section 48-2d-301; or

(ii) was a limited partner in a limited partnership when the limited partnership became

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subject to this chapter under Subsection 48-2d-1205(1) or (2); and

(b) with respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(10) (a) "Limited partnership," except in the phrases "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under Part 11, Merger, Conversion, and Domestication, or Subsection 48-2d-1205(1) or (2).

(b) "Limited partnership" includes a limited liability limited partnership.

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

(12) (a) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership.

(b) "Partnership agreement" includes the agreement as amended.

(13) "Person" means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) a limited liability company;

(h) an association;

(i) a joint venture;

(j) government;

(k) a governmental subdivision, agency, or instrumentality;

(l) a public corporation; or

(m) any other legal or commercial entity.

(14) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(15) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located

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in this state.

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

(17) "Required information" means the information that a limited partnership is required to maintain under Section 48-2d-111.

(18) "Sign" means:

(a) to execute or adopt a tangible symbol with the present intent to authenticate a record; or

(b) to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

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

(20) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(21) "Transferable interest" means a partner's right to receive distributions.

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

(23) "Tribal limited partnership" means a limited partnership:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

(24) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Section 91. Section **48-2d-103** is enacted to read:

### **48-2d-103. Knowledge and notice.**

(1) A person knows a fact if the person has actual knowledge of it.

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

(a) knows of it;

(b) has received a notification of it;

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(c) has reason to know it exists from all of the facts known to the person at the time in question; or

(d) has notice of it under Subsection (3) or (4).

(3) A certificate of limited partnership on file in the division is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in Subsection (4), the certificate is not notice of any other fact.

(4) A person has notice of:

(a) another person's dissociation as a general partner, 90 days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated or 90 days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) a limited partnership's dissolution, 90 days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(c) a limited partnership's termination, 90 days after the effective date of a statement of termination;

(d) a limited partnership's conversion under Part 11, Merger, Conversion, and Domestication, 90 days after the effective date of the articles of conversion; or

(e) a merger under Part 11, Merger, Conversion, and Domestication, 90 days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) (a) Except as otherwise provided in Subsection (8), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the



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individual's attention if the person had exercised reasonable diligence.

(b) A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

Section 92. Section **48-2d-104** is enacted to read:

### **48-2d-104. Nature, purpose, and duration of entity.**

(1) (a) A limited partnership is an entity distinct from its partners.

(b) A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration.

Section 93. Section **48-2d-105** is enacted to read:

### **48-2d-105. Powers.**

A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

Section 94. Section **48-2d-106** is enacted to read:

### **48-2d-106. Governing law.**

The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an

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obligation of the limited partnership.

Section 95. Section **48-2d-107** is enacted to read:

### **48-2d-107. Supplemental principles of law-- Rate of interest.**

(1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Section 15-1-1.

Section 96. Section **48-2d-108** is enacted to read:

### **48-2d-108. Name.**

(1) The name of a limited partnership may contain the name of any partner.

(2) (a) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP".

(b) The name of a limited partnership that is not a limited liability partnership may not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.".

(c) The name of a limited partnership may not contain:

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

(A) "Olympic";

(B) "Olympiad"; or

(C) "Citius Altius Fortius"; and

(ii) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, the words:

(A) "university";

(B) "college"; or

(C) "institute" or "institution".

(3) (a) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(b) The name of a limited liability limited partnership may not contain the abbreviation "L.P." or "LP".

(4) Unless authorized by Subsection (5), the name of a limited partnership must be distinguishable in the records of the division from:

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(a) the name of each person other than an individual incorporated, organized, or authorized to transact business in this state; and

(b) each name reserved under:

(i) Section 16-6a-401 or 16-6a-402;

(ii) Section 16-10a-401 or 16-10a-402;

(iii) Section 16-11-16;

(iv) Section 42-2-6.6;

(v) Section 48-1b-1002; or

(vi) Section 48-3-108 or 48-3-109.

(5) A limited partnership may apply to the division for authorization to use a name that does not comply with Subsection (4). The division shall authorize use of the name applied for if, as to each conflicting name:

(a) the present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the division to change the conflicting name to a name that complies with Subsection (4) and is distinguishable in the records of the division from the name applied for;

(b) the applicant delivers to the division a certified copy of the final judgment of a district court establishing the applicant's right to use in this state the name applied for; or

(c) the applicant delivers to the division proof satisfactory to the division that the present user, registrant, or owner of the conflicting name:

(i) has merged into the applicant;

(ii) has been converted into the applicant; or

(iii) has transferred substantially all of its assets, including the conflicting name, to the applicant.

(6) Subject to Section 48-2d-905, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

(7) The division may not approve for filing a name that implies that a limited partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(8) The authorization to file a certificate under or to reserve or register a limited

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partnership name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

(b) 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

(c) create an exclusive right in geographic or generic terms contained within a name.

Section 97. Section **48-2d-109** is enacted to read:

### **48-2d-109. Reservation of name.**

(1) The exclusive right to the use of a name that complies with Section 48-2d-108 may be reserved by:

(a) a person intending to organize a limited partnership under this chapter and to adopt the name;

(b) a limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(c) a foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(d) a person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(e) a foreign limited partnership formed under the name; or

(f) a foreign limited partnership formed under a name that does not comply with Subsection 48-2d-108(2) or (3), but the name reserved under this Subsection (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with Subsections 48-2d-108(2) and (3).

(2) (a) A person may apply to reserve a name under Subsection (1) by delivering to the division for filing an application that states the name to be reserved and the provision of Subsection (1) which applies.

(b) If the division finds that the name is available for use by the applicant, the division shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for 120 days.

(3) An applicant that has reserved a name pursuant to Subsection (2) may reserve the same name for additional 120-day periods. A person having a current reservation for a name may not apply for another 120-day period for the same name until 90 days have elapsed in the

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current reservation.

(4) A person that has reserved a name under this section may deliver to the division for filing a notice of transfer that states the reserved name, the name, and street and mailing address of some other person to which the reservation is to be transferred, and the provision of Subsection (1) which applies to the other person. Subject to Subsection 48-2d-206(3), the transfer is effective when the division files the notice of transfer.

Section 98. Section **48-2d-110** is enacted to read:

### **48-2d-110. Effect of partnership agreement -- Nonwaivable provisions.**

(1) ~~{(a)}~~ Except as otherwise provided in Subsection (2), the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

~~{ (b) A partner asserting the existence or term of an oral partnership agreement shall prove the existence or term of the partnership agreement by clear and convincing evidence.~~

~~‡~~ (2) A partnership agreement may not:

(a) vary a limited partnership's power under Section 48-2d-105 to sue, be sued, and defend in its own name;

(b) vary the law applicable to a limited partnership under Section 48-2d-106;

(c) vary the requirements of Section 48-2d-204;

(d) vary the information required under Section 48-2d-111 or unreasonably restrict the right to information under Section 48-2d-304 or 48-2d-407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) eliminate the duty of loyalty under Section 48-2d-408, but the partnership agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not ~~{manifestly unreasonable}~~unconscionable or against public policy; and

(ii) specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

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(f) unreasonably reduce the duty of care under Subsection 48-2d-408(3);

(g) eliminate the obligation of good faith and fair dealing under Subsections 48-2d-305(2) and 48-2d-408(4), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(h) vary the power of a person to dissociate as a general partner under Subsection 48-2d-604(1) except to require that the notice under Subsection 48-2d-603(1) be in a record;

(i) vary the power of a court to decree dissolution in the circumstances specified in Section 48-2d-802;

(j) vary the requirement to wind up the partnership's business as specified in Section 48-2d-803;

(k) unreasonably restrict the right to maintain an action under Part 10, Actions by Partners;

(l) restrict the right of a partner under Subsection 48-2d-1114(1) to approve a conversion or merger or the right of a general partner under Subsection 48-2d-1114(2) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or

(m) restrict rights under this chapter of a person other than a partner or a transferee.

Section 99. Section **48-2d-111** is enacted to read:

### **48-2d-111. Required information.**

A limited partnership shall maintain at its designated office the following information:

(1) a current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) a copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) a copy of any filed articles of conversion or merger;

(4) a copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;

(5) a copy of any partnership agreement made in a record and any amendment made in

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a record to any partnership agreement;

(6) a copy of any financial statement of the limited partnership for the three most recent years;

(7) a copy of the three most recent annual reports delivered by the limited partnership to the division pursuant to Section 48-2d-210;

(8) a copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) unless contained in a partnership agreement made in a record, a record stating:

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

(b) the times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(c) for any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

Section 100. Section **48-2d-112** is enacted to read:

### **48-2d-112. Business transactions of partner with partnership.**

A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner.

Section 101. Section **48-2d-113** is enacted to read:

### **48-2d-113. Dual capacity.**

(1) A person may be both a general partner and a limited partner.

(2) A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

## **SB0131S01 compared with SB0131**

Section 102. Section **48-2d-114** is enacted to read:

### **48-2d-114. Consent and proxies of partners.**

Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney-in-fact.

Section 103. Section **48-2d-201** is enacted to read:

### **Part 2. Formation and Certificate of Limited Partnership and Other Filings**

#### **48-2d-201. Formation of limited partnership -- Certificate of limited partnership.**

(1) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the division for filing. The certificate must state:

(a) the name of the limited partnership, which must comply with Section 48-2d-108;

(b) the information required by Subsection 16-17-203(1);

(c) the name and the street and mailing address of each general partner;

(d) whether the limited partnership is a limited liability limited partnership; and

(e) any additional information required by Part 11, Merger, Conversion, and

Domestication.

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in Subsection 48-2d-110(2) in a manner inconsistent with that section.

(3) If there has been substantial compliance with Subsection (1), subject to Subsection 48-2d-206(3) a limited partnership is formed when the division files the certificate of limited partnership.

(4) Subject to Subsection (2), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

(a) the partnership agreement prevails as to partners and transferees; and

(b) the filed certificate of limited partnership, statement of dissociation, termination, or change, or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

Section 104. Section **48-2d-202** is enacted to read:

#### **48-2d-202. Amendment or restatement of certificate.**



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(1) To amend its certificate of limited partnership, a limited partnership must deliver to the division for filing an amendment or, pursuant to Part 11, Merger, Conversion, and Domestication, articles of merger stating:

(a) the name of the limited partnership;

(b) the date of filing of its initial certificate; and

(c) the changes the amendment makes to the certificate as most recently amended or restated.

(2) By no later than 60 days from the day on which one of the following occurs, a limited partnership shall deliver to the division for filing an amendment to a certificate of limited partnership to reflect:

(a) the admission of a new general partner;

(b) the dissociation of a person as a general partner; or

(c) the appointment of a person to wind up the limited partnership's activities under Subsection 48-2d-803(3) or (4).

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(a) cause the certificate to be amended; or

(b) if appropriate, deliver to the division for filing a statement of change pursuant to Section 16-17-206 or a statement of correction pursuant to Section 16-17-206 or 48-2d-207.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(5) A restated certificate of limited partnership may be delivered to the division for filing in the same manner as an amendment.

(6) Subject to Subsection 48-2d-206(3), an amendment or restated certificate is effective when filed by the division.

Section 105. Section **48-2d-203** is enacted to read:

### **48-2d-203. Statement of termination.**

A dissolved limited partnership that has completed winding up may deliver to the division for filing a statement of termination that states:

(1) the name of the limited partnership;

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(2) the date of filing of its initial certificate of limited partnership; and

(3) any other information as determined by the general partners filing the statement or by a person appointed pursuant to Subsection 48-2d-803(3) or (4).

Section 106. Section **48-2d-204** is enacted to read:

### **48-2d-204. Signing of records.**

(1) Each record delivered to the division for filing pursuant to this chapter must be signed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(b) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(c) An amendment designating as general partner a person admitted under Subsection 48-2d-801(3)(b) following the dissociation of a limited partnership's last general partner must be signed by that person.

(d) An amendment required by Subsection 48-2d-803(3) following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(e) Any other amendment must be signed by:

(i) at least one general partner listed in the certificate;

(ii) each other person designated in the amendment as a new general partner; and

(iii) each person that the amendment indicates has dissociated as a general partner.

unless:

(A) the person is deceased or a guardian or a general conservator has been appointed for the person and the amendment so states; or

(B) the person has previously delivered to the division for filing a statement of dissociation.

(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subsection of this Subsection (1), the certificate must be signed in a manner that satisfies that subsection.

(g) A statement of termination must be signed by all general partners listed in the

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certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to Subsection 48-2d-803(3) or (4) to wind up the dissolved limited partnership's activities.

(h) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

(i) Articles of merger must be signed as provided in Subsection 48-2d-1108(1).

(j) Any other record delivered on behalf of a limited partnership to the division for filing must be signed by at least one general partner listed in the certificate.

(k) A statement by a person pursuant to Subsection 48-2d-605(1)(d) stating that the person has dissociated as a general partner must be signed by that person.

(l) A statement of withdrawal by a person pursuant to Section 48-2d-306 must be signed by that person.

(m) A record delivered on behalf of a foreign limited partnership to the division for filing must be signed by at least one general partner of the foreign limited partnership.

(n) Any other record delivered on behalf of any person to the division for filing must be signed by that person.

(2) Any person may sign by an attorney-in-fact any record to be filed pursuant to this chapter.

Section 107. Section **48-2d-205** is enacted to read:

### **48-2d-205. Signing and filing pursuant to judicial order.**

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing does not do so, any other person that is aggrieved may petition a district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned, which will have the same effect as if signed by the person required by this chapter to sign the record.

(2) If the person aggrieved under Subsection (1) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under Subsection (1) may seek the remedies provided in Subsection (1) in the same action in

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combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed.

Section 108. Section **48-2d-206** is enacted to read:

### **48-2d-206. Delivery to and filing of records by division -- Effective time and date.**

(1) A record authorized or required to be delivered to the division for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the division, and be delivered to the division. Unless the division determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the division shall file the record and:

(a) for a statement of dissociation, send:

(i) a copy of the filed statement and a receipt for the fees to the person which the statement indicates has dissociated as a general partner; and

(ii) a copy of the filed statement and receipt to the limited partnership;

(b) for a statement of withdrawal, send:

(i) a copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed; and

(ii) if the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership; and

(c) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, established in accordance with Section 63J-1-504, the division shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in Section 48-2d-207, a record delivered to the division for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the division is effective:

(a) if the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the division's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01

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a.m. on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified

time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

Section 109. Section **48-2d-207** is enacted to read:

### **48-2d-207. Correcting filed record.**

(1) A limited partnership or foreign limited partnership may deliver to the division for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the division and filed by the division, if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

(a) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(b) specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

(c) correct the incorrect information or defective signature.

(3) When filed by the division, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(a) for the purposes of Subsections 48-2d-103(3) and (4); and

(b) as to persons relying on the uncorrected record and adversely affected by the correction.

Section 110. Section **48-2d-208** is enacted to read:

### **48-2d-208. Liability for false information in filed record.**

(1) If a record delivered to the division for filing under this chapter and filed by the division contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and

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(b) a general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under Section 48-2d-202, file a petition pursuant to Section 48-2d-205, or deliver to the division for filing a statement of change pursuant to Section 16-17-206 or a statement of correction pursuant to Section 48-2d-207.

(2) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

Section 111. Section **48-2d-209** is enacted to read:

### **48-2d-209. Certificate of existence or authorization.**

(1) The division, upon request and payment of the requisite fee, shall furnish a certificate of existence for a limited partnership if the records filed in the division show that the division has filed a certificate of limited partnership and has not filed a statement of termination. A certificate of existence must state:

(a) the limited partnership's name;

(b) that it was duly formed under the laws of this state and the date of formation;

(c) whether all fees, taxes, and penalties due to the division under this chapter or other law have been paid;

(d) whether the limited partnership's most recent annual report required by Section 48-2d-210 has been filed by the division;

(e) whether the division has administratively dissolved the limited partnership;

(f) whether the limited partnership's certificate of limited partnership has been amended to state that the limited partnership is dissolved;

(g) that a statement of termination has not been filed by the division; and

(h) other facts of record in the division which may be requested by the applicant.

(2) The division, upon request and payment of the requisite fee, shall furnish a certificate of authorization for a foreign limited partnership if the records filed in the division show that the division has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(a) the foreign limited partnership's name and any alternate name adopted under Subsection 48-2d-905(1) for use in this state;

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(b) that it is authorized to transact business in this state;

(c) whether all fees, taxes, and penalties due to the division under this chapter or other law have been paid;

(d) whether the foreign limited partnership's most recent annual report required by Section 48-2d-210 has been filed by the division;

(e) that the division has not revoked its certificate of authority and has not filed a notice of cancellation; and

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

(3) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the division may be relied upon as conclusive evidence that the limited partnership or foreign limited partnership is in existence or is authorized to transact business in this state.

Section 112. Section **48-2d-210** is enacted to read:

### **48-2d-210. Annual report for division.**

(1) A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the division for filing an annual report that states:

(a) the name of the limited partnership or foreign limited partnership;

(b) the information required by Section 16-17-203(1);

(c) in the case of a limited partnership, the street and mailing address of its principal office; and

(d) in the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under Subsection 48-2d-905(1).

(2) Information in an annual report must be current as of the date the annual report is delivered to the division for filing.

(3) An annual report must be delivered to the division:

(a) during the month of its anniversary date of formation, in the case of domestic limited partnerships; or

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

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(4) If an annual report does not contain the information required in Subsection (1), the division shall promptly notify the reporting limited partnership or foreign limited partnership and return the report to it for correction. If the report is corrected to contain the information required in Subsection (1) and delivered to the division within 30 days after the effective date of the notice, it is timely delivered.

(5) If a filed annual report contains information provided under Subsection (1)(b) which differs from the information shown in the records of the division immediately before the filing, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Section 113. Section **48-2d-301** is enacted to read:

### **Part 3. Limited Partners**

#### **48-2d-301. Becoming limited partner.**

A person becomes a limited partner:

(1) as provided in the partnership agreement;

(2) as the result of a conversion or merger under Part 11, Merger, Conversion, and Domestication; or

(3) with the consent of all the partners.

Section 114. Section **48-2d-302** is enacted to read:

#### **48-2d-302. No right or power as limited partner to bind limited partnership.**

A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership.

Section 115. Section **48-2d-303** is enacted to read:

#### **48-2d-303. No liability as limited partner for limited partnership obligations.**

(1) An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner.

(2) A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

Section 116. Section **48-2d-304** is enacted to read:

#### **48-2d-304. Right of limited partner and former limited partner to information.**



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(1) On 10 days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's principal office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

(a) the limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;

(b) the limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(c) the information sought is directly connected to the limited partner's purpose.

(3) Within 10 days after receiving a demand pursuant to Subsection (2), the limited partnership in a record shall inform the limited partner that made the demand:

(a) what information the limited partnership will provide in response to the demand;

(b) when and where the limited partnership will provide the information; and

(c) if the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to Subsection (6), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's principle office if:

(a) the information pertains to the period during which the person was a limited partner;

(b) the person seeks the information in good faith; and

(c) the person meets the requirements of Subsection (2).

(5) The limited partnership shall respond to a demand made pursuant to Subsection (4) in the same manner as provided in Subsection (3).

(6) If a limited partner dies, Section 48-2d-704 applies.

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(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this Subsection (7), the limited partnership has the burden of proving reasonableness.

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

(9) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(10) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under Subsection (7) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(11) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

Section 117. Section **48-2d-305** is enacted to read:

### **48-2d-305. Limited duties of limited partners.**

(1) (a) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(b) Notwithstanding Subsection (1)(a), a limited partner has a duty of loyalty to the limited partnership and the other partners to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

Section 118. Section **48-2d-306** is enacted to read:

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### **48-2d-306. Person erroneously believing self to be limited partner.**

(1) Except as otherwise provided in Subsection (2), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(a) causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the division for filing; or

(b) withdraws from future participation as an owner in the enterprise by signing and delivering to the division for filing a statement of withdrawal under this section.

(2) A person that makes an investment described in Subsection (1) is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the division files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(3) If a person makes a diligent effort in good faith to comply with Subsection (1)(a) and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the division for filing, the person has the right to withdraw from the enterprise pursuant to Subsection (1)(b) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

Section 119. Section **48-2d-401** is enacted to read:

### **Part 4. General Partners**

#### **48-2d-401. Becoming general partner.**

A person becomes a general partner:

(1) as provided in the partnership agreement;

(2) under Subsection 48-2d-801(3)(b) following the dissociation of a limited partnership's last general partner;

(3) as the result of a conversion or merger under Part 11, Merger, Conversion, and Domestication; or

(4) with the consent of all the partners.

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Section 120. Section **48-2d-402** is enacted to read:

### **48-2d-402. General partner agent of limited partnership.**

(1) (a) Each general partner is an agent of the limited partnership for the purposes of its activities.

(b) An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under Subsection 48-2d-103(4) that the general partner lacked authority.

(2) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

Section 121. Section **48-2d-403** is enacted to read:

### **48-2d-403. Limited partnership liable for general partner's actionable conduct.**

(1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss.

Section 122. Section **48-2d-404** is enacted to read:

### **48-2d-404. General partner's liability.**

(1) Except as otherwise provided in Subsections (2) and (3), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(2) A person that becomes a general partner of an existing limited partnership is not

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personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(3) (a) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership.

(b) A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner.

(c) This Subsection (3) applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under Subsection 48-2d-406(2)(b).

Section 123. Section **48-2d-405** is enacted to read:

### **48-2d-405. Actions by and against partnership and partners.**

(1) To the extent not inconsistent with Section 48-2d-404, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under Section 48-2d-404 and:

(a) a judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) the limited partnership is a debtor in bankruptcy;

(c) the general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of

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the court's equitable powers; or

(e) liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

Section 124. Section **48-2d-406** is enacted to read:

### **48-2d-406. Management rights of general partner.**

(1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) amend the partnership agreement;

(b) amend the certificate of limited partnership to add or, subject to Section 48-2d-1114, delete a statement that the limited partnership is a limited liability limited partnership; and

(c) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner which gives rise to an obligation of the limited partnership under Subsection (3) or (4) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(6) A general partner is not entitled to remuneration for services performed for the partnership.

Section 125. Section **48-2d-407** is enacted to read:

### **48-2d-407. Right of general partner and former general partner to information.**

(1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

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(a) in the limited partnership's principal office, required information; and  
(b) at a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

(a) without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(b) on demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to Subsection (5), on 10 days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in Subsection (1) at the location specified in Subsection (1) if:

(a) the information or record pertains to the period during which the person was a general partner;

(b) the person seeks the information or record in good faith; and

(c) the person satisfies the requirements imposed on a limited partner by Subsection 48-2d-304(2).

(4) The limited partnership shall respond to a demand made pursuant to Subsection (3) in the same manner as provided in Subsection 48-2d-304(3).

(5) If a general partner dies, Section 48-2d-704 applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this Subsection (6), the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under

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Subsection (6) or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under Subsection (3) of a person dissociated as a general may be exercised by the legal representative of an individual who dissociated as a general partner under Subsection 48-2d-603(7)(b) or (c).

Section 126. Section **48-2d-408** is enacted to read:

### **48-2d-408. General standards of general partner's conduct.**

(1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under Subsections (2) and (3).

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) to account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) to refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) to refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(3) ~~{A}~~ The duty of care of a general ~~{partner's duty of care}~~ partner to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is ~~{limited}~~ to ~~{refraining}~~ refrain from ~~{engaging in grossly negligent or reckless conduct.}~~ conduct or inaction that constitutes:

(a) ~~gross negligence;~~

(b) ~~intentional misconduct~~ ~~{,};~~ or ~~{a knowing}~~

(c) ~~an intentional~~ violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.



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(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

Section 127. Section **48-2d-501** is enacted to read:

### **Part 5. Contributions and Distributions**

#### **48-2d-501. Form of contribution.**

A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

Section 128. Section **48-2d-502** is enacted to read:

#### **48-2d-502. Liability for contribution.**

(1) (a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(b) Notwithstanding Subsection (1)(a), a limited partnership's partnership agreement may provide for a partner's obligation to contribute to be excused by the death of the partner.

(2) If a partner does not make a promised non-monetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

(3) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership which extends credit or otherwise acts in reliance on an obligation described in Subsection (2), without notice of any compromise under this Subsection (3), may enforce the original obligation.

Section 129. Section **48-2d-503** is enacted to read:

#### **48-2d-503. Sharing of distributions.**

A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

Section 130. Section **48-2d-504** is enacted to read:

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### **48-2d-504. Interim distributions.**

A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

Section 131. Section **48-2d-505** is enacted to read:

### **48-2d-505. No distribution on account of dissociation.**

A person does not have a right to receive a distribution on account of dissociation.

Section 132. Section **48-2d-506** is enacted to read:

### **48-2d-506. Distribution in kind.**

A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to Subsection 48-2d-812(2), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

Section 133. Section **48-2d-507** is enacted to read:

### **48-2d-507. Right to distribution.**

When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

Section 134. Section **48-2d-508** is enacted to read:

### **48-2d-508. Limitations on distribution.**

(1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) the limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) the limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to

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those of persons receiving the distribution.

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

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

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

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

(i) the distribution is authorized, if the payment occurs within 120 days after that date;

or

(ii) the payment is made, if payment occurs more than 120 days after the distribution is authorized.

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

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

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

Section 135. Section **48-2d-509** is enacted to read:

### **48-2d-509. Liability for improper distributions.**

(1) A general partner that consents to a distribution made in violation of Section 48-2d-508 is personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with

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### Section 48-2d-408.

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of Section 48-2d-508 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under Section 48-2d-508.

(3) A general partner against which an action is commenced under Subsection (1) may:

(a) implead in the action any other person that is liable under Subsection (1) and compel contribution from the person; and

(b) implead in the action any person that received a distribution in violation of Subsection (2) and compel contribution from the person in the amount the person received in violation of Subsection (2).

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

Section 136. Section **48-2d-601** is enacted to read:

### **Part 6. Dissociation**

#### **48-2d-601. Dissociation as limited partner.**

(1) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) the limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(b) an event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) the person's expulsion as a limited partner pursuant to the partnership agreement;

(d) the person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) it is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) there has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's

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interest, which has not been foreclosed:

(iii) the person is a corporation and, within 90 days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) on application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) the person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) the person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under Subsection 48-2d-305(2); or

(iii) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;

(f) in the case of a person who is an individual, the person's death;

(g) in the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) in the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) the limited partnership's participation in a conversion or merger under Part 11, Merger, Conversion, and Domestication, if the limited partnership:

(i) is not the converted or surviving entity; or

(ii) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

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Section 137. Section **48-2d-602** is enacted to read:

### **48-2d-602. Effect of dissociation as limited partner.**

(1) Upon a person's dissociation as a limited partner:

(a) subject to Section 48-2d-704, the person does not have further rights as a limited partner;

(b) the person's obligation of good faith and fair dealing as a limited partner under Subsection 48-2d-305(2) continues only as to matters arising and events occurring before the dissociation; and

(c) subject to Section 48-2d-704 and Part 11, Merger, Conversion, and Domestication, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

Section 138. Section **48-2d-603** is enacted to read:

### **48-2d-603. Dissociation as general partner.**

A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) the limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) an event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) the person's expulsion as a general partner pursuant to the partnership agreement;

(4) the person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) it is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) there has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;

(c) the person is a corporation and, within 90 days after the limited partnership notifies

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the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) the person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) the person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 48-2d-408;

or

(c) the person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) the person's:

(a) becoming a debtor in bankruptcy;

(b) execution of an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(d) failure, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a person who is an individual:

(a) the person's death;

(b) the appointment of a guardian or general conservator for the person; or

(c) a judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) in the case of a person that is a trust or is acting as a general partner by virtue of

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being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) the limited partnership's participation in a conversion or merger under Part 11, Merger, Conversion, and Domestication, if the limited partnership:

(a) is not the converted or surviving entity; or

(b) is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

Section 139. Section **48-2d-604** is enacted to read:

**48-2d-604. Person's power to dissociate as general partner -- Wrongful dissociation.**

(1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to Subsection 48-2d-603(1).

(2) A person's dissociation as a general partner is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) it occurs before the termination of the limited partnership, and:

(i) the person withdraws as a general partner by express will;

(ii) the person is expelled as a general partner by judicial determination under

Subsection 48-2d-603(5);

(iii) the person is dissociated as a general partner by becoming a debtor in bankruptcy;

or

(iv) in the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to Section 48-2d-1001, to the other partners for damages caused by the



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dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners.

Section 140. Section **48-2d-605** is enacted to read:

### **48-2d-605. Effect of dissociation as general partner.**

(1) Upon a person's dissociation as a general partner:

(a) the person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(b) the person's duty of loyalty as a general partner under Subsection 48-2d-408(2)(c) terminates;

(c) the person's duty of loyalty as a general partner under Subsections 48-2d-408(2)(a) and (b) and duty of care under Subsection 48-2d-408(3) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(d) the person may sign and deliver to the division for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and

(e) subject to Section 48-2d-704 and Part 11, Merger, Conversion, and Domestication, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

Section 141. Section **48-2d-606** is enacted to read:

**48-2d-606. Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner.**

(1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under Part 11, Merger, Conversion, and Domestication, or merged out of existence under Part 11, the limited partnership is bound by an act of the person only if:

(a) the act would have bound the limited partnership under Section 48-2d-402 before the dissociation; and

(b) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

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(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under Subsection (1), the person dissociated as a general partner which caused the limited partnership to be bound is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under Subsection (1); and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 142. Section **48-2d-607** is enacted to read:

### **48-2d-607. Liability to other persons of person dissociated as general partner.**

(1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in Subsections (2) and (3), the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under Section 48-2d-404 on an obligation incurred by the limited partnership under Section 48-2d-804.

(3) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) a general partner would be liable on the transaction; and

(b) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation

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of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

Section 143. Section **48-2d-701** is enacted to read:

### **Part 7. Transferable Interests and Rights of Transferees and Creditors**

#### **48-2d-701. Partner's transferable interest.**

The only interest of a partner which is transferable is the partner's transferable interest.

A transferable interest is personal property.

Section 144. Section **48-2d-702** is enacted to read:

#### **48-2d-702. Transfer of partner's transferable interest.**

(1) A transfer, in whole or in part, of a partner's transferable interest:

(a) is permissible;

(b) does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(c) does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in Subsection (3), or to inspect or copy the required information or the limited partnership's other records.

(2) A transferee has a right to receive, in accordance with the transfer:

(a) distributions to which the transferor would otherwise be entitled; and

(b) upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

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

(4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person

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having notice of the restriction at the time of transfer.

(7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under Sections 48-2d-502 and 48-2d-509. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner.

Section 145. Section **48-2d-703** is enacted to read:

### **48-2d-703. Rights of creditor of partner or transferee.**

(1) (a) On application to a district court by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee.

(b) The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

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

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

(a) by the judgment debtor;

(b) with property other than limited partnership property, by one or more of the other partners; or

(c) with limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

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

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

Section 146. Section **48-2d-704** is enacted to read:

### **48-2d-704. Power of estate of deceased partner.**

If a partner dies, the deceased partner's personal representative or other legal

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representative may exercise the rights of a transferee as provided in Section 48-2d-702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under Section 48-2d-304.

Section 147. Section **48-2d-801** is enacted to read:

### **Part 8. Dissolution**

#### **48-2d-801. Nonjudicial dissolution.**

Except as otherwise provided in Section 48-2d-802, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

(1) the happening of an event specified in the partnership agreement;

(2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;

(3) after the dissociation of a person as a general partner:

(a) if the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership given within 90 days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

(b) if the limited partnership does not have a remaining general partner, the passage of 90 days after the dissociation, unless before the end of the period:

(i) consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and

(ii) at least one person is admitted as a general partner in accordance with the consent effective as of the last date the last person to have been a general partner ceases to be a general partner;

(4) the passage of 90 days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or

(5) the signing and filing of a declaration of dissolution by the division under Subsection 48-2d-809(3).

Section 148. Section **48-2d-802** is enacted to read:

#### **48-2d-802. Judicial dissolution.**

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On application by a partner the court of appropriate jurisdiction may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

Section 149. Section **48-2d-803** is enacted to read:

### **48-2d-803. Winding up.**

(1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

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

(a) may amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in Section 48-2d-203, and perform other necessary acts; and

(b) shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this Subsection (3):

(a) has the powers of a general partner under Section 48-2d-804; and

(b) shall promptly amend the certificate of limited partnership to state:

(i) that the limited partnership does not have a general partner;

(ii) the name of the person that has been appointed to wind up the limited partnership;

and

(iii) the street and mailing address of the person.

(4) On the application of any partner, a district court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(a) a limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to Subsection (3); or

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(b) the applicant establishes other good cause.

Section 150. Section **48-2d-804** is enacted to read:

**48-2d-804. Power of general partner and person dissociated as general partner to bind partnership after dissolution.**

(1) A limited partnership is bound by a general partner's act after dissolution which:

(a) is appropriate for winding up the limited partnership's activities; or

(b) would have bound the limited partnership under Section 48-2d-402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) at the time the other party enters into the transaction:

(i) less than two years have passed since the dissociation; and

(ii) the other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) the act:

(i) is appropriate for winding up the limited partnership's activities; or

(ii) would have bound the limited partnership under Section 48-2d-402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

Section 151. Section **48-2d-805** is enacted to read:

**48-2d-805. Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner.**

(1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under Subsection 48-2d-804(1) by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other

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general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under Subsection 48-2d-804(2), the person is liable:

(a) to the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) if a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

Section 152. Section **48-2d-806** is enacted to read:

### **48-2d-806. Known claims against dissolved limited partnership.**

(1) A dissolved limited partnership **in winding up** may dispose of the known claims against it by following the ~~procedure~~ **procedures** described in ~~Subsection (2).~~

~~(2) A dissolved~~ **this section**

(2) A limited partnership in winding up that elects to dispose of known claims pursuant to this section may give written notice of the limited partnership ~~may notify its~~'s dissolution to known claimants **at any time after the effective date** of the dissolution ~~in a record~~. The **written** notice must:

(a) ~~specify~~ **describe** the information ~~required to~~ **that must** be included in a claim;

(b) provide ~~a mailing~~ **an** address to which ~~the~~ **written notice of any** claim ~~is~~ **must be given** to ~~be sent~~ **the limited partnership;**

(c) state the deadline ~~for receipt of the claim~~, which may not be ~~less~~ **fewer** than 120 days after the **effective date** of the notice ~~is received by~~, **by which the dissolved limited partnership must receive** the ~~claimant~~ **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 ~~; and~~.

~~(c) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of~~ **3) Unless sooner barred by another statute**

**limiting actions**, a claim against the ~~limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 48-2d-404.~~

~~(3) A claim against a~~ dissolved limited partnership is barred if ~~the requirements of~~.



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(a) a claimant was given notice under Subsection (2) ~~are met~~ and

~~(a)~~ the claim is not received by the ~~specified~~ dissolved limited partnership by the deadline; or

(b) ~~in the case of a claim that is timely received but~~ the dissolved limited partnership 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 limited partnership does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims that are not rejected by the dissolved limited partnership ~~, the claimant does not commence an action to enforce the claim against the limited partnership~~ in writing within 90 days after ~~the receipt of the notice of the rejection.~~

~~(4)~~ receipt of the claim by the dissolved limited partnership are considered approved.

(5) The failure of the dissolved limited partnership 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) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

Section 153. Section **48-2d-807** is enacted to read:

### **48-2d-807. Other claims against dissolved limited partnership.**

(1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) be published:

(i) at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in Salt Lake County; and

(ii) in accordance with Section 45-1-101;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) state that a claim against the limited partnership is barred unless an action to

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enforce the claim is commenced within five years after publication of the notice; and

(d) unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner which is based on Section 48-2d-404.

(3) If a dissolved limited partnership publishes a notice in accordance with Subsection (2), the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:

(a) a claimant that did not receive notice in a record under Section 48-2d-806;

(b) a claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) a claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) against the dissolved limited partnership, to the extent of its undistributed assets;

(b) if the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this Subsection (4)(b) does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) against any person liable on the claim under Section 48-2d-404.

Section 154. Section **48-2d-808** is enacted to read:

**48-2d-808. Liability of general partner and person dissociated as general partner when claim against limited partnership barred.**

If a claim against a dissolved limited partnership is barred under Section 48-2d-806 or 48-2d-807, any corresponding claim under Section 48-2d-404 is also barred.

Section 155. Section **48-2d-809** is enacted to read:

**48-2d-809. Administrative dissolution.**

(1) The division may dissolve a limited partnership administratively if the limited partnership does not, within 60 days after the due date:

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(a) pay any fee, tax, or penalty due to the division under this chapter or other law; or

(b) deliver its annual report to the division.

(2) If the division determines that a ground exists for administratively dissolving a limited partnership, the division shall file a record of the determination and serve the limited partnership with a copy of the filed record.

(3) If within 60 days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, the division shall administratively dissolve the limited partnership by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The division shall serve the limited partnership with a copy of the filed declaration.

(4) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under Sections 48-2d-803 and 48-2d-812 and to notify claimants under Sections 48-2d-806 and 48-2d-807.

(5) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process.

Section 156. Section **48-2d-810** is enacted to read:

### **48-2d-810. Reinstatement following administrative dissolution.**

(1) A limited partnership that has been administratively dissolved may apply to the division for reinstatement within two years after the effective date of dissolution. The application must be delivered to the division for filing and state:

(a) the name of the limited partnership and the effective date of its administrative dissolution;

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

(c) that the limited partnership's name satisfies the requirements of Section 48-2d-108.

(2) If the division determines that an application contains the information required by Subsection (1) and that the information is correct, the division shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited partnership with a copy.

(3) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its

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activities as if the administrative dissolution had never occurred.

Section 157. Section **48-2d-811** is enacted to read:

### **48-2d-811. Appeal from denial of reinstatement.**

(1) If the division denies a limited partnership's application for reinstatement following administrative dissolution, the division shall prepare, sign and file a notice that explains the reason or reasons for denial and serve the limited partnership with a copy of the notice.

(2) Within 30 days after service of the notice of denial, the limited partnership may appeal from the denial of reinstatement by petitioning a district court to set aside the dissolution. The petition must be served on the division and contain a copy of the division's declaration of dissolution, the limited partnership's application for reinstatement, and the division's notice of denial.

(3) The court may summarily order the division to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

Section 158. Section **48-2d-812** is enacted to read:

### **48-2d-812. Disposition of assets -- When contributions required.**

(1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with Subsection (1) must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under Subsection (1), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under Section 48-2d-607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under Subsection (3)(a)

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with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by Subsection (3)(a) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by Subsection (3)(b), further additional contributions are determined and due in the same manner as provided in Subsection (3)(b).

(4) A person that makes an additional contribution under Subsection (3)(b) or (c) may recover from any person whose failure to contribute under Subsection (3)(a) or (b) necessitated the additional contribution. A person may not recover under this Subsection (4) more than the amount additionally contributed. A person's liability under this Subsection (4) may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under Subsection (3).

Section 159. Section **48-2d-901** is enacted to read:

### **Part 9. Foreign Limited Partnerships**

#### **48-2d-901. Governing law.**

(1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state.

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(4) (a) The division may permit a tribal limited partnership to register with the division in the same manner as a foreign limited partnership formed in another state.

(b) If a tribal limited partnership elects to register with the division, for purposes of this chapter, the tribal limited partnership shall be treated in the same manner as a foreign limited partnership formed under the laws of another state.

Section 160. Section **48-2d-902** is enacted to read:

### **48-2d-902. Application for certificate of authority.**

(1) A foreign limited partnership may apply for a certificate of authority to transact business in this state by delivering an application to the division for filing. The application must state:

(a) the name of the foreign limited partnership and, if the name does not comply with Section 48-2d-108, an alternate name adopted pursuant to Subsection 48-2d-905(1).

(b) the name of the state or other jurisdiction under whose law the foreign limited partnership is organized;

(c) the street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(d) the information required by Subsection 16-17-203(1);

(e) the name and street and mailing address of each of the foreign limited partnership's general partners; and

(f) whether the foreign limited partnership is a foreign limited liability limited partnership.

(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the division or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized.

Section 161. Section **48-2d-903** is enacted to read:

### **48-2d-903. Activities not constituting transacting business.**

(1) Activities of a foreign limited partnership which do not constitute transacting business in this state within the meaning of this part include:

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(a) maintaining, defending, and settling an action or proceeding;

(b) holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) maintaining accounts in financial institutions;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(i) conducting an isolated transaction that is completed within 30 days and is not one in the course of similar transactions of a like manner; and

(j) transacting business in interstate commerce.

(2) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under Subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state.

Section 162. Section **48-2d-904** is enacted to read:

### **48-2d-904. Filing of certificate of authority.**

Unless the division determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the division, upon payment of all filing fees, shall file the application, prepare, sign and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative.

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Section 163. Section **48-2d-905** is enacted to read:

### **48-2d-905. Noncomplying name of foreign limited partnership.**

(1) A foreign limited partnership whose name does not comply with Section 48-2d-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with Section 48-2d-108. A foreign limited partnership that adopts an alternate name under this Subsection (1) and then obtains a certificate of authority with the name need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under Title 42, Chapter 2, Conducting Business Under Assumed Name, to transact business in this state under another name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with Section 48-2d-108, it may not thereafter transact business in this state until it complies with Subsection (1) and obtains an amended certificate of authority.

Section 164. Section **48-2d-906** is enacted to read:

### **48-2d-906. Revocation of certificate of authority.**

(1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the division in the manner provided in Subsections (2) and (3) if the foreign limited partnership does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or other law;

(b) deliver to the division, within 60 days after the due date, its annual report required under Section 48-2d-210;

(c) appoint and maintain an agent for service of process as required by Subsection 16-17-203(1); or

(d) deliver to the division for filing a statement of a change under Section 16-17-206 within 30 days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority, the division must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a



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proper agent in this state, to the foreign limited partnership's principal office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the division sends the copy; and

(b) the foreign limited partnership's failures to comply with Subsection (1) which are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with Subsection (1) stated in the notice. If the foreign limited partnership cures the failures, the division shall so indicate on the filed notice.

Section 165. Section **48-2d-907** is enacted to read:

**48-2d-907. Cancellation of certificate of authority -- Effect of failure to have certificate.**

(1) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the division for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under Section 48-2d-206.

(2) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

(4) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, service of process for rights of action arising out of the transaction of business in this state shall be served in accordance with Section 16-17-301.

Section 166. Section **48-2d-908** is enacted to read:

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### **48-2d-908. Action by attorney general.**

The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this part.

Section 167. Section **48-2d-1001** is enacted to read:

### **Part 10. Actions by Partners**

### **48-2d-1001. Direct action by partner.**

(1) Subject to Subsection (2), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 168. Section **48-2d-1002** is enacted to read:

### **48-2d-1002. Derivative action.**

A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) the partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) a demand would be futile.

Section 169. Section **48-2d-1003** is enacted to read:

### **48-2d-1003. Proper plaintiff.**

A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) that was a partner when the conduct giving rise to the action occurred; or

(2) whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the

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conduct.

Section 170. Section **48-2d-1004** is enacted to read:

### **48-2d-1004. Pleading.**

In a derivative action, the complaint must state with particularity:

(1) the date and content of plaintiff's demand and the general partners' response to the demand; or

(2) why demand should be excused as futile.

Section 171. Section **48-2d-1005** is enacted to read:

### **48-2d-1005. Proceeds and expenses.**

(1) Except as otherwise provided in Subsection (2):

(a) any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff; and

(b) if the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, from the recovery of the limited partnership.

Section 172. Section **48-2d-1101** is enacted to read:

## **Part 11. Merger, Conversion, and Domestication**

### **48-2d-1101. Definitions.**

In this part:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

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

(3) "Converted organization" means the organization into which a converting organization converts pursuant to Sections 48-2d-1106 through 48-2d-1109.

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

(5) "Converting organization" means an organization that converts into another organization pursuant to Section 48-2d-1106.

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(6) "Domesticated limited partnership" means a limited partnership that exists after a domesticating foreign limited partnership or limited partnership effects a domestication pursuant to Sections 48-2d-1110 through 48-2d-1113.

(7) "Domesticating limited partnership" means a limited partnership that effects a domestication pursuant to Sections 48-2d-1110 through 48-2d-1113.

(8) "Foreign limited partnership" means a limited partnership that:

(a) has its chief executive office in a jurisdiction other than this state; or

(b) specified in its partnership agreement that relations among the partners and between the partners and the limited partnership will be governed by the law of a jurisdiction other than this state.

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

(10) (a) "Organization" means:

(i) a general partnership, including a limited liability partnership;

(ii) a limited partnership, including a limited liability limited partnership;

(iii) a limited liability company;

(iv) a business trust;

(v) a corporation; or

(vi) any other person having a governing statute.

(b) "Organization" includes a domestic or foreign organization regardless of whether organized for profit.

(11) "Organizational documents" means:

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

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

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

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

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

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

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

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

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

(13) "Surviving organization" means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Section 173. Section **48-2d-1102** is enacted to read:

### **48-2d-1102. Merger.**

(1) A limited partnership may merge with one or more other constituent organizations pursuant to this section, Sections 48-2d-1103 through 48-2d-1105, and a plan of merger, if:

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

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

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

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

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

(b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

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(d) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

Section 174. Section **48-2d-1103** is enacted to read:

### **48-2d-1103. Action on plan of merger by constituent partnership.**

(1) Subject to Section 48-2d-1114, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to Section 48-2d-1114 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the division for filing under Section 48-2d-1104, a constituent limited partnership may amend the plan or abandon the merger:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

Section 175. Section **48-2d-1104** is enacted to read:

### **48-2d-1104. Filings required and permitted for merger -- Effective date.**

(1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) each constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) each other constituent organization, as provided in its governing statute.

(2) Articles of merger under this section must include:

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

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

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

(d) if the surviving organization is to be created by the merger:

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(i) if it will be a limited partnership, the limited partnership's certificate of limited partnership; or

(ii) if it will be an organization other than a limited partnership, the organizational document that creates the organization that is in a public record;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

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

(g) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that may be used for service of process under Section 48-2d-1105(2); and

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

(3) Each constituent limited partnership shall deliver the articles of merger for filing in the division.

(4) A merger becomes effective under this part:

(a) if the surviving organization is a limited partnership, upon the later of:

(i) compliance with Subsection (3); or

(ii) subject to Subsection 48-2d-206(3), as specified in the articles of merger; or

(b) if the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization.

Section 176. Section **48-2d-1105** is enacted to read:

### **48-2d-1105. Effect of merger.**

(1) When a merger becomes effective:

(a) the surviving organization continues or comes into existence;

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

(c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) all debts, obligations, or other liabilities of each constituent organization that ceases

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to exist continue as debts, obligations, or other liabilities of the surviving organization:

(e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

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

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

(h) except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of Part 8, Dissolution;

(i) if the surviving organization is created by the merger:

(i) if it is a limited partnership, the certificate of limited partnership becomes effective;

or

(ii) if it is an organization other than a limited partnership, the organizational document that creates the organization becomes effective; and

(j) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of merger under 48-2d-1104(2)(g).

Section 177. Section **48-2d-1106** is enacted to read:

### **48-2d-1106. Conversion.**

(1) An organization other than a partnership or a foreign partnership may convert to a limited partnership, and a limited partnership may convert to an organization other than a foreign partnership pursuant to this section, Sections 48-2d-1107 through 48-2d-1109, and a plan of conversion, if:

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



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

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

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

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

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

(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Section 178. Section **48-2d-1107** is enacted to read:

### **48-2d-1107. Action on plan of conversion by converting partnership.**

(1) Subject to Section 48-2d-1114, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to Section 48-2d-1114 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the division for filing under Section 48-2d-1108, a converting limited partnership may amend the plan or abandon the conversion:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section 179. Section **48-2d-1108** is enacted to read:

### **48-2d-1108. Filings required for conversion -- Effective date.**

(1) After a plan of conversion is approved:

(a) a converting limited partnership shall deliver to the division for filing articles of conversion and must include:

(i) a statement that the limited partnership has been converted into another organization;

(ii) the name and form of the converted organization and the jurisdiction of its

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governing statute;

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

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

(v) a statement that the conversion is authorized by the governing statute of the converted organization; and

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that may be used for purposes of Subsection 48-2d-1109(3); and

(b) if the converting organization is not a converting limited partnership, the converting organization shall deliver to the division for filing articles of conversion, which must include:

(i) a statement that the converted organization was converted from another organization, and whether the converted organization is a partnership or a limited liability partnership;

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

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

(2) A conversion becomes effective:

(a) if the converted organization is a limited partnership, when the certificate of limited partnership takes effect; or

(b) if the converted organization is not a limited partnership, as provided by the governing statute of the converted organization.

Section 180. Section **48-2d-1109** is enacted to read:

### **48-2d-1109. Effect of conversion.**

(1) An organization that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting organization remains vested in the converted organization;

(b) all debts, obligations, or other liabilities of the converting organization continue as

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debts, obligations, or other liabilities of the converted organization;

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

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

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

(f) except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of Part 8, Dissolution.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited partnership is liable if, before the conversion, the converting limited partnership was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of conversion under Subsection 48-2d-1108(1)(a)(vi).

Section 181. Section **48-2d-1110** is enacted to read:

### **48-2d-1110. Domestication.**

(1) A foreign limited partnership may become a limited partnership pursuant to this section, Sections 48-2d-1111 through 48-2d-1113, and a plan of domestication, if:

(a) the foreign limited partnership's governing statute authorizes the domestication;

(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the foreign limited partnership complies with its governing statute in effecting the domestication.

(2) A limited partnership may become a foreign limited partnership pursuant to this section, Sections 48-2d-1111 through 48-2d-1113, and a plan of domestication, if:

(a) the foreign limited partnership's governing statute authorizes the domestication;

(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

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(c) the foreign limited partnership complies with its governing statute in effecting the domestication.

(3) A plan of domestication must be in a record and must include:

(a) the name of the domesticating limited partnership before domestication and the jurisdiction of its governing statute;

(b) the name of the domesticated limited partnership after domestication and the jurisdiction of its governing statute;

(c) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating limited partnership into any combination of money, interests in the domesticated limited partnership, and other consideration; and

(d) the organizational documents of the domesticated limited partnership that are, or are proposed to be, in a record.

Section 182. Section **48-2d-1111** is enacted to read:

**48-2d-1111. Action on plan of domestication by domesticating partnership.**

(1) A plan of domestication must be consented to:

(a) by all the partners, subject to Section 48-2d-1114, if the domesticating limited partnership is a limited partnership; and

(b) as provided in the domesticating limited partnership's governing statute, if the limited partnership is a foreign limited partnership.

(2) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the division for filing under Section 48-2d-1112, a domesticating limited partnership may amend the plan or abandon the domestication:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section 183. Section **48-2d-1112** is enacted to read:

**48-2d-1112. Filings required for domestication -- Effective date.**

(1) After a plan of domestication is approved, a domesticating limited partnership shall deliver to the division for filing articles of domestication, which must include:

(a) a statement, as the case may be, that the limited partnership has been domesticated

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from or into another jurisdiction;

(b) the name of the domesticating limited partnership and the jurisdiction of its governing statute;

(c) the name of the domesticated limited partnership and the jurisdiction of its governing statute;

(d) the date the domestication is effective under the governing statute of the domesticated limited partnership;

(e) if the domesticating limited partnership was a limited partnership, a statement that the domestication was approved as required by this chapter;

(f) if the domesticating limited partnership was a foreign limited partnership, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(g) if the domesticated limited partnership is a foreign limited partnership not authorized to transact business in this state, the street and mailing addresses of an office that the division may use for the purposes of Subsection 48-2d-1113(2).

(2) A domestication becomes effective:

(a) upon the filing of the statement of qualification pursuant to Section 48-2d-1001 or on the date provided therein, whichever is later, if the domesticated limited partnership is a limited partnership; and

(b) according to the governing statute of the domesticated limited partnership, if it is a foreign limited partnership.

Section 184. Section **48-2d-1113** is enacted to read:

### **48-2d-1113. Effect of domestication.**

(1) When a domestication takes effect:

(a) the domesticated limited partnership is for all purposes the limited partnership that existed before the domestication;

(b) all property owned by the domesticating limited partnership remains vested in the domesticated limited partnership;

(c) all debts, obligations, or other liabilities of the domesticating limited partnership continue as debts, obligations, or other liabilities of the domesticated limited partnership;

(d) an action or proceeding pending by or against a domesticating limited partnership

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may be continued as if the domestication had not occurred;

(e) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating limited partnership remain vested in the domesticated limited partnership;

(f) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(g) except as otherwise agreed, the domestication does not dissolve a domesticating limited partnership for the purposes of Part 8, Dissolution.

(2) A domesticated limited partnership that is a foreign limited partnership consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating limited partnership, if, before the domestication, the domesticating limited partnership was subject to suit in this state on the debt, obligation, or other liability. A domesticated limited partnership that is a foreign limited partnership and not authorized to transact business in this state may be served with process at the address required in the articles of domestication under Subsection 48-2d-1112(1)(g).

(3) If a limited partnership has adopted and approved a plan of domestication under Section 48-2d-1110 providing for the limited partnership to be domesticated in a foreign jurisdiction, a statement pursuant to Subsection 48-2d-907 cancelling the limited partnership's certificate of authority must be delivered to the division for filing setting forth:

(a) the name of the limited partnership;

(b) a statement that the limited partnership's certificate of authority is being cancelled in connection with the domestication of the limited partnership in a foreign jurisdiction;

(c) a statement the domestication was approved as required by this chapter; and

(d) the jurisdiction of formation of the domesticated foreign limited partnership.

Section 185. Section **48-2d-1114** is enacted to read:

**48-2d-1114. Restrictions on approval of mergers, conversions, and domestications -- Relinquishing limited liability partnership status.**

(1) If a partner of a constituent, converting, or domesticating limited partnership will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication is ineffective without the consent of the partner, unless:

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(a) the limited partnership's partnership agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the partners; and

(b) the partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(a) the limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(b) each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by Subsection (1) or (2) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

Section 186. Section **48-2d-1115** is enacted to read:

### **48-2d-1115. Liability of general partner after conversion or merger.**

(1) A conversion or merger under this part does not discharge any liability under Sections 48-2d-404 and 48-2d-607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

(a) the provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(b) for the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(c) if a person is required to pay any amount under this Subsection (1):

(i) the person has a right of contribution from each other person that was liable as a general partner under Section 48-2d-404 when the obligation was incurred and has not been released from the obligation under Section 48-2d-607; and

(ii) the contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) In addition to any other liability provided by law:

(a) a person that immediately before a conversion or merger became effective was a

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general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that:

(A) the converted or surviving business is the converting or constituent limited partnership;

(B) the converting or constituent limited partnership is not a limited liability limited partnership; and

(C) the person is a general partner in the converting or constituent limited partnership;  
and

(b) a person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(i) immediately before the conversion or merger became effective the converting or surviving limited partnership was a not a limited liability limited partnership; and

(ii) at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:

(A) does not have notice of the dissociation;

(B) does not have notice of the conversion or merger; and

(C) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

Section 187. Section **48-2d-1116** is enacted to read:

**48-2d-1116. Power of general partners and persons dissociated as general partners to bind organization after conversion or merger.**

(1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or



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surviving organization after the conversion or merger becomes effective, if:

(a) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 48-2d-402; and

(b) at the time the third party enters into the transaction, the third party:

(i) does not have notice of the conversion or merger; and

(ii) reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under Section 48-2d-402 if the person had been a general partner; and

(b) at the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(i) does not have notice of the dissociation;

(ii) does not have notice of the conversion or merger; and

(iii) reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(3) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under Subsection (1) or (2), the person is liable:

(a) to the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(b) if another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

Section 188. Section **48-2d-1117** is enacted to read:

**48-2d-1117. Part not exclusive.**

This part does not preclude an entity from being merged, converted, or domesticated under law other than this chapter.

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Section 189. Section **48-2d-1201** is enacted to read:

### **Part 12. Miscellaneous Provisions**

#### **48-2d-1201. Uniformity of application and construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact this uniform act.

Section 190. Section **48-2d-1202** is enacted to read:

#### **48-2d-1202. Relation to electronic signatures in global and national commerce act.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ~~§~~Sec. ~~§~~ 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. ~~§~~Sec. ~~§~~ 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. ~~§~~Sec. ~~§~~ 7003(b).

Section 191. Section **48-2d-1203** is enacted to read:

#### **48-2d-1203. Severability clause.**

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

Section 192. Section **48-2d-1204** is enacted to read:

#### **48-2d-1204. Savings clause.**

This chapter does not affect an action commenced, proceeding brought, or right accrued before ~~this chapter takes effect~~ July 1, 2012.

Section 193. Section **48-2d-1205** is enacted to read:

#### **48-2d-1205. Application to existing relationships.**

(1) Before January 1, ~~2012~~2014, this chapter governs only:

(a) a limited partnership formed on or after ~~January~~July 1, ~~2011~~2012; and

(b) ~~except as otherwise provided in~~subject to Subsections (3) and (4), a limited partnership formed before ~~January~~July 1, ~~2011~~2012, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

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(2) ~~{Except as otherwise provided in}~~ Subject to Subsection (3), on and after January 1, ~~{2012}~~ 2014, this chapter governs all limited partnerships.

(3) With respect to a limited partnership formed before ~~{January}~~ July 1, ~~{2011}~~ 2012, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) Subsection 48-2d-104(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before ~~{January}~~ July 1, ~~{2011}~~ 2012.

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with Subsection 48-2d-201(1)(d).

(c) Sections 48-2d-601 and 48-2d-602 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before ~~{January}~~ July 1, ~~{2011}~~ 2012.

(d) Subsection 48-2d-603(4) does not apply.

(e) Subsection 48-2d-603(5) does not apply and a court has the same power to expel a general partner as the court had immediately before ~~{January}~~ July 1, ~~{2011}~~ 2012.

(f) Subsection 48-2d-801(3) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before ~~{January}~~ July 1, ~~{2011}~~ 2012.

(4) With respect to a limited partnership that elects pursuant to Subsection (1)(b) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(a) before ~~{January}~~ July 1, 2012, to:

(i) a third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) a third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) on and after ~~{January}~~ July 1, 2012, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under Subsection (4)(a)(ii).

Section 194. Section **48-3-101** is enacted to read:

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## CHAPTER 3. UTAH REVISED UNIFORM LIMITED LIABILITY

### COMPANY ACT

#### Part 1. General Provisions

##### 48-3-101. Title.

This chapter may be cited as the "Utah Revised Uniform Limited Liability Company Act."

Section 195. Section **48-3-102** is enacted to read:

##### 48-3-102. Definitions.

As used in this chapter:

- (1) (a) "Certificate of organization" means the certificate required by Section 48-3-201.
- (b) "Certificate of organization" includes the certificate as amended or restated.
- (2) "Contribution" means any benefit provided by a person to a limited liability company:
  - (a) in order to become a member upon formation of the limited liability company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the limited liability company;
  - (b) in order to become a member after formation of the limited liability company and in accordance with an agreement between the person and the limited liability company; or
  - (c) in the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the limited liability company.
- (3) "Debtor in bankruptcy" means a person that is the subject of:
  - (a) an order for relief under United States Code, Title 11, or a successor statute of general application; or
  - (b) a comparable order under federal, state, or foreign law governing insolvency.
- (4) "Distribution," except as otherwise provided in Subsection 48-3-405(7), means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.
- (5) "Effective," with respect to a record required or permitted to be delivered to the division for filing under this chapter, means effective under Subsection 48-3-205(3).
- (6) "Foreign limited liability company" means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability

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company, including a low-profit limited liability company.

(7) "Limited liability company," except in the phrase "foreign limited liability company," means an entity formed under this chapter, including a low-profit limited liability company formed under this chapter.

(8) "Low-profit limited liability company" means a limited liability company meeting the requirements of Part 13, Low-profit Limited Liability ~~Company Act~~ Companies.

(9) "Manager" means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in Subsection 48-3-407(3).

(10) "Manager-managed limited liability company" means a limited liability company that qualifies under Subsection 48-3-407(1).

(11) "Member" means a person that has become a member of a limited liability company under Section 48-3-401 and has not dissociated under Section 48-3-602.

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

(13) (a) "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in Subsection 48-3-110(1).

(b) "Operating agreement" includes the agreement as amended or restated.

(14) "Organizer" means a person that acts under Section 48-3-201 to form a limited liability company.

(15) "Person" means:

(a) an individual;

(b) a corporation;

(c) a business trust;

(d) an estate;

(e) a trust;

(f) a partnership;

(g) a limited liability company;

(h) an association;

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(i) a joint venture;

(j) a public corporation;

(k) government;

(l) a governmental subdivision, agency, or instrumentality; or

(m) any other legal or commercial entity.

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

(17) "Professional services company" means a limited liability company meeting the requirements of Part 11, Professional Services ~~{Company Act}~~Companies.

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

(19) "Series" means a series created in accordance with Part 12, ~~Series Limited Liability {Company Series Act}~~Companies.

(20) "Sign" means, with the present intent to authenticate or adopt a record:

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

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

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

(22) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(23) "Transferable interest" means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

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

(25) "Tribal limited liability company" means a limited liability company:

(a) formed under the law of a tribe; and

(b) that is at least 51% owned or controlled by the tribe.

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(26) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of their status as Indians.

Section 196. Section **48-3-103** is enacted to read:

### **48-3-103. Knowledge -- Notice.**

(1) A person knows a fact when the person:

(a) has actual knowledge of it; or

(b) is deemed to know it under Subsection (4)(a) or law other than this chapter.

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

(a) has reason to know the fact from all of the facts known to the person at the time in question; or

(b) is deemed to have notice of the fact under Subsection (4)(b).

(3) A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

(4) A person that is not a member is deemed:

(a) to know of a limitation on authority to transfer real property as provided in Subsection 48-3-302(7);

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

(i) dissolution, 90 days after a statement of dissolution under Subsection ~~48-3-702~~48-3-703(2)(b)(i) becomes effective;

(ii) termination, 90 days after a statement of termination Subsection ~~48-3-702~~48-3-703(2)(b)(vi) becomes effective; and

(iii) merger, conversion, or domestication, 90 days after articles of merger, conversion, or domestication under Part 10, Merger, Conversion, and Domestication, become effective; and

(c) for a filing not described in Subsection (4)(b), to have constructive notice of an action taken by a filing that is filed with the division.

Section 197. Section **48-3-104** is enacted to read:

### **48-3-104. Nature, purpose, and duration of limited liability company.**

(1) A limited liability company is an entity distinct from its members.

(2) A limited liability company may have any lawful purpose, regardless of whether for

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profit.

(3) A limited liability company has perpetual duration.

Section 198. Section **48-3-105** is enacted to read:

### **48-3-105. Powers.**

A limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

Section 199. Section **48-3-106** is enacted to read:

### **48-3-106. Governing law.**

The law of this state governs:

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

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

Section 200. Section **48-3-107** is enacted to read:

### **48-3-107. Supplemental principles of law.**

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

Section 201. Section **48-3-108** is enacted to read:

### **48-3-108. Name.**

(1) (a) Except as provided in Section ~~48-3-1105~~48-3-1104 or ~~48-3-1303~~48-3-1302, the name of a limited liability company must contain the words "limited liability company" or "limited company" or the abbreviation "L.L.C.," "LLC," "L.C.," or "LC".

(b) "Company" may be abbreviated as "Co."

(c) The name of a limited liability company may not contain:

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

(A) "Olympic";

(B) "Olympiad"; or

(C) "Citius Altius Fortius"; and

(ii) without the written consent of the Division of Consumer Protection issued in accordance with Section 13-34-114, the words:

(A) "university";



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(B) "college"; or

(C) "institute" or "institution".

(2) Unless authorized by Subsection (3), the name of a limited liability company must be distinguishable in the records of the division from:

(a) the name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state; and

(b) each name reserved under Section 48-3-109 and:

(i) Section 16-6a-401 or 16-6a-402;

(ii) Section 16-10a-401 or 16-10a-402;

(iii) Section 16-11-16;

(iv) Section 42-2-6.6;

(v) Section 48-1b-1002; or

(vi) Section 48-2d-108 or 48-2d-109.

(3) A limited liability company may apply to the division for authorization to use a name that does not comply with Subsection (2). The division shall authorize use of the name applied for if, as to each noncomplying name:

(a) the present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the division to change the noncomplying name to a name that complies with Subsection (2) and is distinguishable in the records of the division from the name applied for; or

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

(4) Subject to Section 48-3-805, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

(5) The division may not approve for filing a name that implies that a limited liability company is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision.

(6) The authorization to file a certificate under or to reserve or register a limited liability company name as granted by the division does not:

(a) abrogate or limit the law governing unfair competition or unfair trade practices;

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(b) 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

(c) create an exclusive right in geographic or generic terms contained within a name.

Section 202. Section **48-3-109** is enacted to read:

### **48-3-109. Reservation of name.**

(1) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious or assumed name for a foreign limited liability company whose name is not available, by delivering an application to the division for filing. The application must state the name and address of the applicant and the name proposed to be reserved. If the division finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a 120-day period.

(2) The owner of a name reserved for a limited liability company may transfer the reservation to another person by delivering to the division for filing a signed notice of the transfer which states the name and address of the transferee.

Section 203. Section **48-3-110** is enacted to read:

### **48-3-110. Operating agreement -- Scope, function, and limitations.**

(1) ~~(a)~~ Except as otherwise provided in Subsections (2) and (3), the operating agreement governs:

~~(i)~~<sup>a</sup> relations among the members as members and between the members and the limited liability company;

~~(ii)~~<sup>b</sup> the rights and duties under this chapter of a person in the capacity of manager;

~~(iii)~~<sup>c</sup> the activities of the limited liability company and the conduct of those activities; and

~~(iv)~~<sup>d</sup> the means and conditions for amending the operating agreement.

~~(b) A member asserting the existence or term of an oral operating agreement shall prove the existence or term of the operating agreement by clear and convincing evidence.~~

~~(2) To the extent the operating agreement does not otherwise provide for a matter described in Subsection (1), this chapter governs the matter.~~

(3) An operating agreement may not:

(a) vary a limited liability company's capacity under Section 48-3-105 to sue and be sued in its own name;

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(b) vary the law applicable under Section 48-3-106;

(c) vary the power of the court under Section 48-3-204;

(d) subject to Subsections (4) through (7), eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

(e) subject to Subsections (4) through (7), eliminate the contractual obligation of good faith and fair dealing under Subsection 48-3-409(4);

(f) unreasonably restrict the duties and rights stated in Section 48-3-410;

(g) vary the power of a court to decree dissolution in the circumstances specified in Subsections 48-3-701(~~f~~)(~~d~~4) and (~~f~~5);

(h) vary the requirement to wind up a limited liability company's business as specified in Subsections ~~48-3-702~~48-3-703(1) and (2)(a);

(i) unreasonably restrict the right of a member to maintain an action under Part 9, Actions By Members;

(j) restrict the right to approve a merger, conversion, or domestication under Section 48-3-1014 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

(k) except as otherwise provided in Subsection 48-3-112(2), restrict the rights under this chapter of a person other than a member or manager.

(4) If not ~~manifestly unreasonable~~unconscionable or against public policy, the operating agreement may:

(a) restrict or eliminate the duty:

(i) as required in Subsections 48-3-409(2)(a) and (7), to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the limited liability company's business, from a use by the member of the limited liability company's property, or from the appropriation of a limited liability company opportunity;

(ii) as required in Subsections 48-3-409(2)(b) and (7), to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's business as or on behalf of a party having an interest adverse to the limited liability company; and

(iii) as required by Subsections 48-3-409(2)(c) and (7), to refrain from competing with

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the limited liability company in the conduct of the limited liability company's business before the dissolution of the limited liability company;

(b) identify specific types or categories of activities that do not violate the duty of loyalty;

(c) alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

(d) alter ~~or eliminate~~ any other fiduciary ~~duty, including eliminating particular aspects of that~~ duty; and

(e) prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under Subsection 48-3-409(4), ~~if the standards are not manifestly unreasonable.~~

(5) The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

(6) To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

(7) The operating agreement may alter or eliminate the indemnification for a member or manager provided by Subsection 48-3-408(1) and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for:

(a) breach of the duty of loyalty;

(b) a financial benefit received by the member or manager to which the member or manager is not entitled;

(c) a breach of a duty under Section 48-3-406;

~~(d) intentional infliction of harm on the limited liability company or a member;~~ or ~~(e)~~ (d) an intentional violation of criminal law.

(8) The court shall decide any claim under Subsection (4) that a term of an operating

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agreement is ~~manifestly unreasonable~~ unconscionable or against public policy. The court:

(a) shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

(b) may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(i) the objective of the term is ~~unreasonable~~ unconscionable or against public policy;

or

(ii) the ~~term is an unreasonable~~ means to achieve the ~~provision's~~ term's objective is unconscionable or against public policy.

Section 204. Section **48-3-111** is enacted to read:

**48-3-111. Operating agreement -- Effect on limited liability company and persons becoming members -- Preformation agreement.**

(1) A limited liability company is bound by and may enforce the operating agreement, whether or not the limited liability company has itself manifested assent to the operating agreement.

(2) A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

(3) Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the limited liability company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the limited liability company the terms will become the operating agreement.

Section 205. Section **48-3-112** is enacted to read:

**48-3-112. Operating agreement -- Effect on third parties and relationship to records effective on behalf of limited liability company.**

(1) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(2) The obligations of a limited liability company and its members to a person in the

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person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under Subsection 48-3-503(2)(b) to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(3) If a record that has been delivered by a limited liability company to the division for filing and has become effective under this chapter contains a provision that would be ineffective under Subsection 48-3-110(3) if contained in the operating agreement, the provision is likewise ineffective in the record.

(4) Subject to Subsection (3), if a record that has been delivered by a limited liability company to the division for filing and has become effective under this chapter conflicts with a provision of the operating agreement:

(a) the operating agreement prevails as to members, dissociated members, transferees, and managers; and

(b) the record prevails as to other persons to the extent they reasonably rely on the record.

Section 206. Section **48-3-201** is enacted to read:

### **Part 2. Formation - Certificate of Organization and Other Filings**

#### **48-3-201. Formation of limited liability company -- Certificate of organization.**

(1) One or more persons may act as organizers to form a limited liability company by signing and delivering to the division for filing a certificate of organization.

(2) A certificate of organization must state:

(a) the name of the limited liability company, which must comply with Section 48-3-108;

(b) the information required by Subsection 16-17-203(1); and

(c) (i) if the limited liability company is a low-profit limited liability company, that the limited liability company is a low-profit limited liability company; and

(ii) if the limited liability company is a professional services company, the information required by Section ~~48-3-1104~~48-3-1103.

(3) (a) Subject to Subsection 48-3-112(3), a certificate of organization may also

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contain statements as to matters other than those required by Subsection (2). However, a statement in a certificate of organization is not effective as a statement of authority.

(b) A certificate of organization may also contain a notice of a series in accordance with Section ~~48-3-1204~~48-3-1203.

(4) (a) A limited liability company is formed when the division has filed the certificate of organization, unless the certificate states a delayed effective date pursuant to Subsection 48-3-205(3).

(b) If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the division for filing and the division files the certificate.

(c) Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the division is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

Section 207. Section **48-3-202** is enacted to read:

### **48-3-202. Amendment or restatement of certificate of organization.**

(1) A certificate of organization may be amended or restated at any time, except that in accordance with Section ~~48-3-1304~~48-3-1303, a low-profit limited liability company shall amend its certificate of organization if the limited liability company ceases to be a low-profit limited liability company.

(2) To amend its certificate of organization, a limited liability company must deliver to the division for filing an amendment stating:

(a) the name of the limited liability company;

(b) the date of filing of its certificate of organization; and

(c) the changes the amendment makes to the certificate as most recently amended or restated.

(3) To restate its certificate of organization, a limited liability company must deliver to the division for filing a restatement, designated as such in its heading, stating:

(a) in the heading or an introductory paragraph, the limited liability company's present name and the date of the filing of the limited liability company's initial certificate of organization;

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(b) if the limited liability company's name has been changed at any time since the limited liability company's formation, each of the limited liability company's former names; and

(c) the changes the restatement makes to the certificate as most recently amended or restated.

(4) Subject to Subsections 48-3-112(3) and 48-3-205(3), an amendment to or restatement of a certificate of organization is effective when filed by the division.

(5) If a member of a member-managed limited liability company, or a manager of a manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly:

(a) cause the certificate to be amended; or

(b) if appropriate, deliver to the division for filing a statement of change under Section 16-17-206 or a statement of correction under Section 48-3-206.

Section 208. Section **48-3-203** is enacted to read:

### **48-3-203. Signing of records to be delivered for filing to division.**

(1) A record delivered to the division for filing pursuant to this chapter must be signed as follows:

(a) Except as otherwise provided in Subsections (1)(b) through (d), a record signed on behalf of a limited liability company must be signed by a person authorized by the limited liability company.

(b) A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

(c) A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the limited liability company's activities under Subsection ~~48-3-702~~48-3-703(3) or a person appointed under Subsection ~~48-3-702~~48-3-703(4) to wind up those activities.

(d) A statement of cancellation under Subsection 48-3-201(4)(b) must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

(e) A statement of denial by a person under Section 48-3-303 must be signed by that



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person.

(f) Any other record must be signed by the person on whose behalf the record is delivered to the division.

(2) Any record filed under this chapter may be signed by an agent.

Section 209. Section **48-3-204** is enacted to read:

### **48-3-204. Signing and filing pursuant to judicial order.**

(1) If a person required by this chapter to sign a record or deliver a record to the division for filing under this chapter does not do so, any other person that is aggrieved may petition a district court to order:

(a) the person to sign the record;

(b) the person to deliver the record to the division for filing; or

(c) the division to file the record unsigned, **which will have the same effect as if signed by the person required by this chapter to sign the record.**

(2) If a petitioner under Subsection (1) is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the limited liability company a party to the action.

Section 210. Section **48-3-205** is enacted to read:

### **48-3-205. Delivery to and filing of records by division -- Effective time and date.**

(1) A record authorized or required to be delivered to the division for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the division, and be delivered to the division. If the filing fees have been paid, unless the division determines that a record does not comply with the filing requirements of this chapter, the division shall file the record and:

(a) for a statement of denial under Section 48-3-303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company; and

(b) for all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of the requisite fee, the division shall send to the requester a certified copy of a requested record.

(3) Except as otherwise provided in Section 48-3-206, a record delivered to the

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division for filing under this chapter may specify an effective time and a delayed effective date. Subject to Subsection 48-3-201(4)(a) and Section 48-3-206, a record filed by the division is effective:

(a) if the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the division's endorsement of the date and time on the record;

(b) if the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

(c) if the record specifies a delayed effective date but not an effective time, at 12:01 a.m. ~~12:01~~ on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed; or

(d) if the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

(i) the specified date; or

(ii) the 90th day after the record is filed.

Section 211. Section **48-3-206** is enacted to read:

### **48-3-206. Correcting filed record.**

(1) A limited liability company or foreign limited liability company may deliver to the division for filing a statement of correction to correct a record previously delivered by the limited liability company to the division and filed by the division, if at the time of filing the record contained inaccurate information or was defectively signed.

(2) A statement of correction under Subsection (1) may not state a delayed effective date and must:

(a) describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

(b) specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective; and

(c) correct the defective signature or inaccurate information.

(3) When filed by the division, a statement of correction under Subsection (1) is effective retroactively as of the effective date of the record the statement corrects, but the

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statement is effective when filed:

(a) for the purposes of Subsection 48-3-103(4); and

(b) as to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

Section 212. Section **48-3-207** is enacted to read:

### **48-3-207. Liability for inaccurate information in filed record.**

(1) If a record delivered to the division for filing under this chapter and filed by the division contains inaccurate information, a person that suffers a loss by reliance on the information may recover damages for the loss from:

(a) a person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be inaccurate at the time the record was signed; and

(b) subject to Subsection (2), a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

(i) the record was delivered for filing on behalf of the limited liability company; and

(ii) the member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

(A) effected an amendment under Section 48-3-202;

(B) filed a petition under Section 48-3-204; or

(C) delivered to the division for filing a statement of change pursuant to Section 16-17-206 or a statement of correction under Section 48-3-206.

(2) To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records delivered on behalf of the limited liability company to the division for filing under this chapter and imposes that responsibility on one or more other members, the liability stated in Subsection (1)(b) applies to those other members and not to the member that the operating agreement relieves of the responsibility.

(3) An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

Section 213. Section **48-3-208** is enacted to read:

### **48-3-208. Certificate of existence or authorization.**

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(1) The division, upon request and payment of the requisite fee, shall furnish to any person a certificate of existence for a limited liability company if the records filed in the division show that the limited liability company has been formed under Section 48-3-201 and the division has not filed a statement of termination pertaining to the limited liability company.

A certificate of existence must state:

(a) the limited liability company's name;

(b) that the limited liability company was duly formed under the laws of this state and the date of formation;

(c) whether all fees, taxes, and penalties due under this chapter or other law to the division have been paid;

(d) whether the limited liability company's most recent annual report required by Section 48-3-209 has been filed by the division;

(e) whether the division has administratively dissolved the limited liability company;

(f) whether the limited liability company has delivered to the division for filing a statement of dissolution;

(g) that a statement of termination has not been filed by the division; and

(h) other facts of record in the division which are specified by the person requesting the certificate.

(2) The division, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the division show that the division has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state:

(a) the limited liability company's name and any alternate name adopted under Subsection 48-3-805(1) for use in this state;

(b) that the limited liability company is authorized to transact business in this state;

(c) whether all fees, taxes, and penalties due under this chapter or other law to the division have been paid;

(d) whether the limited liability company's most recent annual report required by Section 48-3-209 has been filed by the division;

(e) that the division has not revoked the limited liability company's certificate of

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authority and has not filed a notice of cancellation; and

(f) other facts of record in the division which are specified by the person requesting the certificate.

(3) Subject to any qualification stated in the certificate, a certificate of existence or certificate of authorization issued by the division is conclusive evidence that the limited liability company is in existence or the foreign limited liability company is authorized to transact business in this state.

Section 214. Section **48-3-209** is enacted to read:

### **48-3-209. Annual report for division.**

(1) Each year, a limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the division for filing a report that states:

(a) the name of the limited liability company;

(b) the information required by Subsection 16-17-203(1);

(c) the street and mailing addresses of its principal office; and

(d) in the case of a foreign limited liability company, the state or other jurisdiction under whose law the limited liability company is formed and any alternate name adopted under Subsection 48-3-805(1).

(2) Information in an annual report under this section must be current as of the date the report is delivered to the division for filing.

(3) A report must be delivered to the division:

(a) during the month of its anniversary date of formation, in the case of a domestic limited liability company; or

(b) during the month of the anniversary date of being granted authority to transact business in this state, in the case of a foreign limited liability company authorized to transact business in this state.

(4) If an annual report under this section does not contain the information required in Subsection (1), the division shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in Subsection (1) and delivered to the division within 30 days after the effective date of the notice, it is timely delivered.

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(5) If an annual report under this section contains information provided under Subsection (1)(b) that differs from the information shown in the records of the division immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under Section 16-17-206.

Section 215. Section **48-3-301** is enacted to read:

### **Part 3. Relations of Members and Managers to Persons Dealing with Limited Liability Company**

#### **48-3-301. No agency power of member as member.**

(1) A member is not an agent of a limited liability company solely by reason of being a member.

(2) A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

Section 216. Section **48-3-302** is enacted to read:

#### **48-3-302. Statement of authority.**

(1) A limited liability company may deliver to the division for filing a statement of authority. The statement:

(a) must include the name of the limited liability company and the street and mailing addresses of its principal office;

(b) with respect to any position that exists in or with respect to the limited liability company, may state the authority, or limitations on the authority, of all persons holding the position to:

(i) execute an instrument transferring real property held in the name of the limited liability company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company; and

(c) may state the authority, or limitations on the authority, of a specific person to:

(i) execute an instrument transferring real property held in the name of the limited liability company; or

(ii) enter into other transactions on behalf of, or otherwise act for or bind, the limited liability company.

(2) To amend or cancel a statement of authority filed by the division under Subsection

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48-3-205(1), a limited liability company must deliver to the division for filing an amendment or cancellation stating:

(a) the name of the limited liability company;

(b) the street and mailing addresses of the limited liability company's principal office;

(c) the caption of the statement being amended or canceled and the date the statement being affected became effective; and

(d) the contents of the amendment or a declaration that the statement being affected is canceled.

(3) A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

(4) Subject to Subsection (3) and Subsection 48-3-103(4) and except as otherwise provided in Subsections (6), (7), and (8), a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

(5) Subject to Subsection (3), a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

(a) the person has knowledge to the contrary;

(b) the statement has been canceled or restrictively amended under Subsection (2); or

(c) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

(6) Subject to Subsection (3), an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

(a) the statement has been canceled or restrictively amended under Subsection (2) and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property; or

(b) a limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the

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later-effective statement is recorded in the office for recording transfers of the real property.

(7) Subject to Subsection (3), if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

(8) Subject to Subsection (9), an effective statement of dissolution or termination is a cancellation of any filed statement of authority for the purposes of Subsection (6) and is a limitation on authority for the purposes of Subsection (7).

(9) After a statement of dissolution becomes effective, a limited liability company may deliver to the division for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in Subsections (6) and (7).

(10) Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under Subsection (6) or (7).

(11) An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of Subsection (6)(a).

Section 217. Section **48-3-303** is enacted to read:

### **48-3-303. Statement of denial.**

A person named in a filed statement of authority granting that person authority may deliver to the division for filing a statement of denial that:

(1) provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

(2) denies the grant of authority.

Section 218. Section **48-3-304** is enacted to read:

### **48-3-304. Liability of members and managers.**

(1) The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

(a) are solely the debts, obligations, or other liabilities of the limited liability company;  
and



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(b) do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

(2) The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the limited liability company.

Section 219. Section **48-3-401** is enacted to read:

### **Part 4. Relations of Members to Each Other and to Limited Liability Company**

#### **48-3-401. Becoming member.**

(1) If a limited liability company is to have only one member upon formation, the person becomes a member as agreed by that person and the organizer of the limited liability company. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

(2) If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the limited liability company. The organizer acts on behalf of the persons in forming the limited liability company and may be, but need not be, one of the persons.

(3) After formation of a limited liability company, a person becomes a member:

(a) as provided in the operating agreement;

(b) as the result of a transaction effective under Part 10, Merger, Conversion, and Domestication;

(c) with the consent of all the members; or

(d) if, within 90 consecutive days after the limited liability company ceases to have any members:

(i) the last person to have been a member, or the legal representative of that person, designates a person to become a member; and

(ii) the designated person consents to become a member effective as of the date the last person to have been a member ceased to be a member.

(4) A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

Section 220. Section **48-3-402** is enacted to read:

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### **48-3-402. Form of contribution.**

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

Section 221. Section **48-3-403** is enacted to read:

### **48-3-403. Liability for contributions.**

(1) (a) A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally.

(b) If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the limited liability company.

(c) Notwithstanding the other provisions of this Subsection (1), the operating agreement of a limited liability company may allow a person's obligation to make a contribution to be excused by the person's death.

(2) A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in Subsection (1) may enforce the obligation.

Section 222. Section **48-3-404** is enacted to read:

### **48-3-404. Sharing of and right to distributions before dissolution.**

(1) Except as otherwise provided in the operating agreement, any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 48-3-502 and any charging order in effect under Section 48-3-503.

(2) A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the limited liability company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in Subsection ~~48-3-708~~48-3-709(3), a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

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(4) If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

Section 223. Section **48-3-405** is enacted to read:

### **48-3-405. Limitations on distribution.**

(1) A limited liability company may not make a distribution if after the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the ordinary course of the limited liability company's activities; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

(2) A limited liability company may base a determination that a distribution is not prohibited under Subsection (1) on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

(3) Except as otherwise provided in Subsection (6), the effect of a distribution under Subsection (1) is measured:

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

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

(i) the distribution is authorized, if the payment occurs within 120 days after that date;

or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

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

(5) A limited liability company's indebtedness, including indebtedness issued in

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connection with or as part of a distribution, is not a liability for purposes of Subsection (1) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

(6) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

(7) In Subsection (1), "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

Section 224. Section **48-3-406** is enacted to read:

### **48-3-406. Liability for improper distributions.**

(1) Except as otherwise provided in Subsection (2), if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of Section 48-3-405 and in consenting to the distribution fails to comply with Section 48-3-409, the member or manager is personally liable to the limited liability company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of Section 48-3-405.

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

(3) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 48-3-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-3-405.

(4) A person against which an action is commenced because the person is liable under Subsection (1) may:

(a) implead any other person that is subject to liability under Subsection (1) and seek to compel contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (3) and

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seek to compel contribution from the person in the amount the person received in violation of Subsection (3).

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

Section 225. Section **48-3-407** is enacted to read:

### **48-3-407. Management of limited liability company.**

(1) A limited liability company is a member-managed limited liability company unless the operating agreement:

(a) expressly provides that:

(i) the limited liability company is or will be "manager-managed";

(ii) the limited liability company is or will be "managed by managers"; or

(iii) management of the limited liability company is or will be "vested in managers"; or

(b) includes words of similar import.

(2) In a member-managed limited liability company, the following rules apply:

(a) The management and conduct of the limited liability company are vested in the members.

(b) Each member has equal rights in the management and conduct of the limited liability company's activities.

(c) A difference arising among members as to a matter in the ordinary course of the activities of the limited liability company ~~may~~ shall be decided by a majority of the members.

(d) An act outside the ordinary course of the activities of the limited liability company may be undertaken only with the consent of all members.

(e) The operating agreement may be amended only with the consent of all members.

(3) In a manager-managed limited liability company, the following rules apply:

(a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the limited liability company is decided exclusively by the managers.

(b) Each manager has equal rights in the management and conduct of the activities of the limited liability company.

(c) A difference arising among managers as to a matter in the ordinary course of the activities of the limited liability company ~~may~~ shall be decided by a majority of the managers.

(d) The consent of all members is required to:

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(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited liability company's property, with or without the good will, outside the ordinary course of the limited liability company's activities;

(ii) approve a merger, conversion, or domestication under Part 10, Merger, Conversion, and Domestication;

(iii) undertake any other act outside the ordinary course of the limited liability company's activities; and

(iv) amend the operating agreement.

(e) A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

(f) A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

(g) A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

(4) An action requiring the consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

(5) The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the limited liability company loses the right to participate in management as a member and a manager.

(6) This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the limited liability company.

Section 226. Section **48-3-408** is enacted to read:

**48-3-408. Indemnification and insurance.**

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(1) A limited liability company shall reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in Sections 48-3-405 and 48-3-409.

(2) A limited liability company may purchase and maintain insurance on behalf of a member or manager of the limited liability company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under Subsection 48-3-110(7), the operating agreement could not eliminate or limit the person's liability to the limited liability company for the conduct giving rise to the liability.

Section 227. Section **48-3-409** is enacted to read:

### **48-3-409. Standards of conduct for members and managers.**

(1) A member of a member-managed limited liability company owes to the limited liability company and, subject to Subsection 48-3-901(2), the other members the fiduciary duties of loyalty and care stated in Subsections (2) and (3).

(2) The duty of loyalty of a member in a member-managed limited liability company includes the duties:

(a) to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member:

(i) in the conduct or winding up of the limited liability company's activities;

(ii) from a use by the member of the limited liability company's property; or

(iii) from the appropriation of a limited liability company opportunity;

(b) to refrain from dealing with the limited liability company in the conduct or winding up of the limited liability company's activities as or on behalf of a person having an interest adverse to the limited liability company; and

(c) to refrain from competing with the limited liability company in the conduct of the limited liability company's activities before the dissolution of the limited liability company.

~~(3) A member or manager is not liable or accountable in damages or otherwise to the company or the members for an action taken or failure to act on behalf of the company unless the act or omission~~ The duty of care of a member in a member-managed limited liability

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company in the conduct and winding up of the limited liability company's activities is to refrain from conduct or inaction that constitutes:

(a) gross negligence;

(b) ~~{willful}~~intentional 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}~~an intentional violation of law.

(4) A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

(5) It is a defense to a claim under Subsection (2)(b) and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

(6) All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(7) In a manager-managed limited liability company, the following rules apply:

(a) Subsections (1), (2), (3), and (5) apply to the manager or managers and not the members, except that the ~~{organization}~~operating agreement of a limited liability company may apply the duty stated in Subsection (2)(c) to a member.

(b) The duty stated under Subsection (2)(c) continues until winding up is completed.

(c) Subsection (4) applies to the members and managers.

(d) Subsection (6) applies only to the members.

(e) A member does not have any fiduciary duty to the limited liability company or to any other member solely by reason of being a member.

Section 228. Section **48-3-410** is enacted to read:

**48-3-410. Right of members, managers, and dissociated members to information.**

(1) In a member-managed limited liability company, the following rules apply:

(a) On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the limited liability company, any record maintained by the limited liability company regarding the limited liability company's activities,



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financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The limited liability company shall furnish to each member:

(i) without demand, any information concerning the limited liability company's activities, financial condition, and other circumstances which the limited liability company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the limited liability company can establish that it reasonably believes the member already knows the information; and

(ii) on demand, any other information concerning the limited liability company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

(c) The duty to furnish information under Subsection (1)(b) also applies to each member to the extent the member knows any of the information described in Subsection (1)(b).

(2) In a manager-managed limited liability company, the following rules apply:

(a) The informational rights stated in Subsection (1) and the duty stated in Subsection (1)(c) apply to the managers and not the members.

(b) During regular business hours and at a reasonable location specified by the limited liability company, a member may obtain from the limited liability company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the limited liability company as is just and reasonable if:

(i) the member seeks the information for a purpose material to the member's interest as a member;

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

(iii) the information sought is directly connected to the member's purpose.

(c) Within 10 days after receiving a demand pursuant to Subsection (2)(b)(ii), the limited liability company shall in a record inform the member that made the demand:

(i) of the information that the limited liability company will provide in response to the demand and when and where the limited liability company will provide the information; and

(ii) if the limited liability company declines to provide any demanded information, the

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limited liability company's reasons for declining.

(d) Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the limited liability company shall, without demand, provide the member with all information that is known to the limited liability company and is material to the member's decision.

(3) On 10 days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by Subsection (2)(b). The limited liability company shall respond to a demand made pursuant to this Subsection (3) in the manner provided in Subsection (2)(c).

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

(5) A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under Subsection (7) applies both to the agent or legal representative and the member or dissociated member.

(6) The rights under this section do not extend to a person as transferee.

(7) In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this Subsection (7), the limited liability company has the burden of proving reasonableness.

Section 229. Section **48-3-501** is enacted to read:

### **Part 5. Transferable Interests and Rights of Transferees and Creditors**

#### **48-3-501. Nature of transferable interest.**

A transferable interest is personal property.

Section 230. Section **48-3-502** is enacted to read:

#### **48-3-502. Transfer of transferable interest.**

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(1) A transfer, in whole or in part, of a transferable interest:

(a) is permissible;

(b) does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities; and

(c) subject to Section 48-3-504, does not entitle the transferee to:

(i) participate in the management or conduct of the limited liability company's activities; or

(ii) except as otherwise provided in Subsection (3), have access to records or other information concerning the limited liability company's activities.

(2) A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

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

(4) A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

(5) A limited liability company need not give effect to a transferee's rights under this section until the limited liability company has notice of the transfer.

(6) A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) Except as otherwise provided in Subsection 48-3-602(4)(b), when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

(8) When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under Section 48-3-403 and Subsection 48-3-406(3) known to the transferee when the transferee becomes a member.

Section 231. Section **48-3-503** is enacted to read:

**48-3-503. Charging order.**

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(1) On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and, after the limited liability company has been served with the charging order, requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

(2) To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under Subsection (1), the court may:

(a) appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

(b) make all other orders necessary to give effect to the charging order.

(3) Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to Section 48-3-502.

(4) Notwithstanding Subsection (3), if the member whose interest is charged under this section is the sole member of the company when the charging order is entered:

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

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

(~~4~~5) At any time before foreclosure under Subsection (3), the member or transferee whose transferable interest is subject to a charging order under Subsection (1) may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

(~~5~~6) At any time before foreclosure under Subsection (3), a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

(~~6~~7) This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

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(~~7~~8) This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

Section 232. Section **48-3-504** is enacted to read:

### **48-3-504. Power of personal representative of deceased member.**

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in Subsection 48-3-502(3) and for the purposes of settling the estate, the rights of a current member under Section 48-3-410.

Section 233. Section **48-3-601** is enacted to read:

### **Part 6. Member's Dissociation**

#### **48-3-601. Member's power to dissociate -- Wrongful dissociation.**

(1) A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under Subsection 48-3-602(1).

(2) A person's dissociation from a limited liability company is wrongful only if the dissociation:

(a) is in breach of an express provision of the operating agreement; or

(b) occurs before the termination of the limited liability company and:

(i) the person withdraws as a member by express will;

(ii) the person is expelled as a member by judicial order under Subsection 48-3-602(5);

(iii) the person is dissociated under Subsection 48-3-602(7)(a) by becoming a debtor in bankruptcy; or

(iv) in the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to Section 48-3-901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the limited liability company or the other members.

Section 234. Section **48-3-602** is enacted to read:

#### **48-3-602. Events causing dissociation.**

A person is dissociated as a member from a limited liability company when:

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(1) the limited liability company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the limited liability company had notice, on that later date;

(2) an event stated in the operating agreement as causing the person's dissociation occurs;

(3) the person is expelled as a member pursuant to the operating agreement;

(4) the person is expelled as a member by the unanimous consent of the other members if:

(a) it is unlawful to carry on the limited liability company's activities with the person as a member;

(b) there has been a transfer of all of the person's transferable interest in the limited liability company, other than:

(i) a transfer for security purposes; or

(ii) a charging order in effect under Section 48-3-503 which has not been foreclosed;

(c) the person is a corporation and, within 90 days after the limited liability company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated; or

(d) the person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) on application by the limited liability company, the person is expelled as a member by judicial order because the person:

(a) has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the limited liability company's activities;

(b) has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under Section 48-3-409; or

(c) has engaged in, or is engaging, in conduct relating to the limited liability company's activities which makes it not reasonably practicable to carry on the activities with the person as

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a member:

(6) in the case of a person who is an individual:

(a) the person dies; or

(b) in a member-managed limited liability company:

(i) a guardian or general conservator for the person is appointed; or

(ii) there is a judicial order that the person has otherwise become incapable of

performing the person's duties as a member under this chapter or the operating agreement;

(7) in a member-managed limited liability company, the person:

(a) becomes a debtor in bankruptcy;

(b) executes an assignment for the benefit of creditors; or

(c) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or

liquidator of the person or of all or substantially all of the person's property;

(8) in the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the limited liability company is distributed;

(9) in the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the limited liability company is distributed;

(10) in the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

(11) the limited liability company participates in a merger under Part 10, Merger, Conversion, and Domestication, if:

(a) the limited liability company is not the surviving entity; or

(b) otherwise as a result of the merger, the person ceases to be a member;

(12) the limited liability company participates in a conversion under Part 10, Merger, Conversion, and Domestication;

(13) the limited liability company participates in a domestication under Part 10, Merger, Conversion, and Domestication, if, as a result of the domestication, the person ceases to be a member; or

(14) the limited liability company terminates.

Section 235. Section **48-3-603** is enacted to read:

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### **48-3-603. Effect of person's dissociation as member.**

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

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

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

(c) subject to Section 48-3-504 and Part 10, Merger, Conversion, and Domestication, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

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

Section 236. Section **48-3-701** is enacted to read:

### **Part 7. Dissolution and Winding Up**

#### **48-3-701. Events causing dissolution.**

~~(1)~~ A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

~~(a)~~1) an event or circumstance that the operating agreement states causes dissolution;

~~(b)~~2) the consent of all the members;

~~(c)~~3) the passage of 90 consecutive days during which the limited liability company has no members;

~~(d)~~4) on application by a member, the entry by a district court of an order dissolving the limited liability company on the grounds that:

~~(i)~~a) the conduct of all or substantially all of the limited liability company's activities is unlawful; or

~~(ii)~~b) it is not reasonably practicable to carry on the limited liability company's activities in conformity with the certificate of organization and the operating agreement; or

~~(e)~~5) on application by a member, the entry by a district court of an order dissolving the limited liability company on the grounds that the managers or those ~~members~~ in control of the limited liability company ~~;~~



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~~(i) have acted, are acting, or will act in a manner that is illegal or fraudulent; or~~

~~(ii) have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.~~

~~(2) In a proceeding brought under Subsection (1)(c), the court may order a remedy other than dissolution, oppressive, or fraudulent.~~

Section 237. Section **48-3-702** is enacted to read:

### **48-3-702. Election to purchase in lieu of dissolution.**

(1) In a proceeding under Subsection 48-3-701(5) to dissolve a limited liability company, the limited liability company may elect, or if it fails to elect, one or more members may elect to purchase the interest in the limited liability 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 48-3-701(5) or at any later time as the court in its discretion may allow. If the limited liability 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 limited liability company owned by the petitioning member, the limited liability company shall purchase the interest in the manner provided in this section.

(b) If the limited liability company does not file an election with the court within the time period, but an election to purchase the interest in the limited liability company owned by the petitioning member is filed by one or more members within the time period, the limited liability company shall, within 10 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 limited liability company owned by the petitioning member as provided in this section, give written notice of the election to purchase to all members of the limited liability company, other than the petitioning member. The notice shall state the name and the percentage interest in the limited liability company owned by the petitioning member and the name and the percentage interest in the limited liability company owned by each electing member. The notice shall advise any recipients who have not

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participated in the election of their right to join in the election to purchase the interest in the limited liability 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 limited liability 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 limited liability 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 limited liability 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 limited liability company or one or more members, the proceedings under Subsection 48-3-701(5) may not be discontinued or settled, nor may the petitioning member sell or otherwise dispose of the petitioning member's interest in the limited liability company, unless the court determines that it would be equitable to the limited liability 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 limited liability company filing of an election to purchase the interest in the limited liability company of the petitioning member or the limited liability company's mailing of a notice to its members of the filing of an election by the members to purchase the interest in the limited liability company of the petitioning member, the petitioning member and electing limited liability 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 48-3-701(5) and determine the fair market value of the petitioning member's interest in the limited liability company as of the day before the date on which the petition under Subsection 48-3-701(5) was filed or as of any other date the court determines to be appropriate under the

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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 limited liability company of the petitioning member, the court shall enter an order directing the purchase of the interest in the limited liability 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 limited liability company among members if the interest in the limited liability company is to be purchased by members.

(b) In allocating the petitioning member's interest in the limited liability 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 may not participate in the purchase. The court may not require any electing member to purchase more of the interest in the limited liability company owned by the petitioning member than the percentage interest that the purchasing member may have set forth in the purchasing member's 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 48-3-701(5), the court 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 limited liability company under Subsection 48-3-701(5) and the petitioning member shall no longer have any rights or status as a member of the limited liability 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 10 days after the date the order becomes final, unless before that time the limited liability company files with the court a notice of its intention to file a certificate of dissolution. The certificate of

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dissolution must then be adopted and filed within 60 days after notice.

(b) Upon filing of articles of dissolution, the limited liability company is dissolved and shall be wound up pursuant to Section 48-3-703, 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 Subsection (5)(d). The petitioning member may continue to pursue any claims previously asserted on behalf of the limited liability company.

(8) Any payment by the limited liability 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 48-3-405 and 48-3-406.

Section 238. Section 48-3-703 is enacted to read:

### 48-3-703. Winding up.

(1) A dissolved limited liability company shall wind up its activities, and the limited liability company continues after dissolution only for the purpose of winding up.

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

(a) shall discharge the limited liability company's debts, obligations, or other liabilities, settle and close the limited liability company's activities, and marshal and distribute the assets of the limited liability company; and

(b) may:

(i) deliver to the division for filing a statement of dissolution stating the name of the limited liability company and that the limited liability company is dissolved;

(ii) preserve the limited liability company activities and property as a going concern for a reasonable time;

(iii) prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(iv) transfer the limited liability company's property;

(v) settle disputes by mediation or arbitration;

(vi) deliver to the division for filing a statement of termination stating the name of the limited liability company and that the limited liability company is terminated; and

(vii) perform other acts necessary or appropriate to the winding up.

(3) If a dissolved limited liability company has no members, the legal representative of

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the last person to have been a member may wind up the activities of the limited liability company. If the person does so, the person has the powers of a sole manager under Subsection 48-3-407(3) and is deemed to be a manager for the purposes of Subsection 48-3-304(1)(b).

(4) If the legal representative under Subsection (3) declines or fails to wind up the limited liability company's activities, a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this Subsection (4):

(a) has the powers of a sole manager under Subsection 48-3-407(3) and is deemed to be a manager for the purposes of Subsection 48-3-304(1)(b); and

(b) shall promptly deliver to the division for filing an amendment to the limited liability company's certificate of organization to:

(i) state that the limited liability company has no members;

(ii) state that the person has been appointed pursuant to this Subsection (4) to wind up the limited liability company; and

(c) provide the street and mailing addresses of the person.

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

(a) on application of a member, if the applicant establishes good cause;

(b) on the application of a transferee, if:

(i) the limited liability company does not have any members;

(ii) the legal representative of the last person to have been a member declines or fails to wind up the limited liability company's activities; and

(iii) within a reasonable time following the dissolution a person has not been appointed pursuant to Subsection (4); or

(c) in connection with a proceeding under Subsection 48-3-701~~(f)~~(d) or (e):

~~Section 238. Section 48-3-703 is enacted to read:~~

~~48-3-703. Known claims against dissolved limited liability company.~~

~~(1) Except as otherwise provided in Subsection (4), a dissolved limited liability company may give notice of a known claim under Subsection (2), which has the effect as provided in Subsection (3):~~

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

~~(a) specify the information required to be included in a claim;~~

~~(b) provide a mailing address to which the claim is to be sent;~~

~~(c) state the deadline for receipt of the claim, which may not be less than 120 days after the date the notice is received by the claimant; and~~

~~(d) state that the claim will be barred if not received by the deadline.~~

~~(3) A claim against a dissolved limited liability company is barred if the requirements of Subsection (2) are met and:~~

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

~~(b) if the claim is timely received but rejected by the limited liability company:~~

~~(i) the limited liability company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the limited liability company to enforce the claim within 90 days after the claimant receives the notice; and~~

~~(ii) the claimant does not commence the required action within the 90 days.~~

~~(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.~~

~~†4) or (5).~~

Section 239. Section **48-3-704** is enacted to read:

**48-3-704. ~~Other~~ Known claims against dissolved limited liability company.**

(1) A dissolved limited liability company in winding up may dispose of the known claims against it by following the procedures described in this section.

(2) A limited liability company in winding up electing to dispose of known claims pursuant to this section may give written notice of the limited liability 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 limited liability company;

(c) state the deadline, which may not be fewer than 120 days after the effective date of

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the notice, by which the dissolved limited liability 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 limited liability company is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved limited liability company by the deadline; or

(b) the dissolved limited liability 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 limited liability 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 limited liability company in writing within 90 days after receipt of the claim by the dissolved limited liability company shall be considered approved.

(5) The failure of the dissolved limited liability 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) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

Section 240. Section 48-3-705 is enacted to read:

### **48-3-705. Other claims against dissolved limited liability company.**

(1) A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the limited liability company to present them in accordance with the notice.

(2) The notice authorized by Subsection (1) must:

(a) be published:

(i) at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in Salt Lake County; and

(ii) in accordance with Section 45-1-101;

(b) describe the information required to be contained in a claim and provide a mailing

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address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

(3) If a dissolved limited liability company publishes a notice in accordance with Subsection (2), unless the claimant commences an action to enforce the claim against the limited liability company within five years after the publication date of the notice, the claim of each of the following claimants is barred:

(a) a claimant that did not receive notice in a record under Section ~~48-3-703~~48-3-704;

(b) a claimant whose claim was timely sent to the limited liability company but not acted on; and

(c) a claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) against a dissolved limited liability company, to the extent of its undistributed assets; and

(b) if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this Subsection (4)(b) does not exceed the total amount of assets distributed to the person after dissolution.

Section ~~240~~241. Section ~~48-3-705~~48-3-706 is enacted to read:

~~48-3-705~~48-3-706. **Administrative dissolution.**

(1) The division may dissolve a limited liability company administratively if the limited liability company does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or law other than this chapter; or

(b) deliver, within 60 days after the due date, its annual report to the division.

(2) If the division determines that a ground exists for administratively dissolving a limited liability company, the division shall file a record of the determination and serve the limited liability company with a copy of the filed record.



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(3) If within 60 days after service of the copy pursuant to Subsection (2) a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the division that each ground determined by the division does not exist, the division shall dissolve the limited liability company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The division shall serve the limited liability company with a copy of the filed declaration.

(4) A limited liability company that has been administratively dissolved continues in existence but, subject to Section ~~48-3-706~~48-3-707, may carry on only activities necessary to wind up its activities and liquidate its assets under Sections ~~48-3-702~~48-3-703 and ~~48-3-708~~48-3-709 and to notify claimants under Sections ~~48-3-703~~48-3-704 and ~~48-3-704~~48-3-705.

(5) The administrative dissolution of a limited liability company does not terminate the authority of its agent for service of process.

Section ~~{241}~~242. Section ~~{48-3-706}~~48-3-707 is enacted to read:

~~48-3-706~~48-3-707. **Reinstatement following administrative dissolution.**

(1) A limited liability company that has been administratively dissolved may apply to the division for reinstatement within two years after the effective date of dissolution. The application must be delivered to the division for filing and state:

- (a) the name of the limited liability company and the effective date of its dissolution;
- (b) that the grounds for dissolution did not exist or have been eliminated; and
- (c) that the limited liability company's name satisfies the requirements of Section 48-3-108.

(2) If the division determines that an application under Subsection (1) contains the required information and that the information is correct, the division shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and serve the limited liability company with a copy.

(3) When a reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume its activities as if the dissolution had not occurred.

Section ~~{242}~~243. Section ~~{48-3-707}~~48-3-708 is enacted to read:

~~48-3-707~~48-3-708. **Appeal from rejection of reinstatement.**

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(1) If the division rejects a limited liability company's application for reinstatement following administrative dissolution, the division shall prepare, sign, and file a notice that explains the reason for rejection and serve the limited liability company with a copy of the notice.

(2) Within 30 days after service of a notice of rejection of reinstatement under Subsection (1), a limited liability company may appeal from the rejection by petitioning a court of appropriate jurisdiction to set aside the dissolution. The petition must be served on the division and contain a copy of the division's declaration of dissolution, the limited liability company's application for reinstatement, and the division's notice of rejection.

(3) The court may order the division to reinstate a dissolved limited liability company or take other action the court considers appropriate.

Section ~~{243}~~244. Section ~~{48-3-708}~~48-3-709 is enacted to read:

~~{48-3-708}~~48-3-709. **Distribution of assets in winding up limited liability company's activities.**

(1) In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

(2) After a limited liability company complies with Subsection (1), any surplus must be distributed in the following order, subject to any charging order in effect under Section 48-3-503:

(a) to each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

(b) in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under Section 48-3-502.

(3) If a limited liability company does not have sufficient surplus to comply with Subsection (2)(a), any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

(4) All distributions made under Subsections (2) and (3) must be paid in money.

Section ~~{244}~~245. Section **48-3-801** is enacted to read:

### **Part 8. Foreign Limited Liability Companies**

#### **48-3-801. Governing law.**

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(1) The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

(a) the internal affairs of the limited liability company; and

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

(2) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the limited liability company is formed and the law of this state.

(3) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

(4) (a) The division may permit a tribal limited liability company to apply for authority to transact business in the state in the same manner as a foreign company formed in another state.

(b) If a tribal limited liability company elects to apply for authority to transact business in the state, for purposes of this chapter, the tribal limited liability company shall be treated in the same manner as a foreign company formed under the laws of another state.

Section ~~{245}~~246. Section **48-3-802** is enacted to read:

### **48-3-802. Application for certificate of authority.**

(1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the division for filing. The application must state:

(a) the name of the limited liability company and, if the name does not comply with Section 48-3-108, an alternate name adopted pursuant to Subsection 48-3-805(1);

(b) the name of the state or other jurisdiction under whose law the limited liability company is formed;

(c) the street and mailing addresses of the limited liability company's principal office and, if the law of the jurisdiction under which the limited liability company is formed requires the limited liability company to maintain an office in that jurisdiction, the street and mailing addresses of the required office; and

(d) the information required by Subsection 16-17-203(1).

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(2) A foreign limited liability company shall deliver with a completed application under Subsection (1) a certificate of existence or a record of similar import signed by the division or other official having custody of the limited liability company's publicly filed records in the state or other jurisdiction under whose law the limited liability company is formed.

Section ~~{246}~~247. Section **48-3-803** is enacted to read:

### **48-3-803. Activities not constituting transacting business.**

(1) Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of this part include:

(a) maintaining, defending, or settling an action or proceeding;

(b) carrying on any activity concerning its internal affairs, including holding meetings of its members or managers;

(c) maintaining accounts in financial institutions;

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

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired;

(i) conducting an isolated transaction that is completed within 30 days and is not in the course of similar transactions; and

(j) transacting business in interstate commerce.

(2) For purposes of this part, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under Subsection (1), constitutes transacting business in this state.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under

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law of this state other than this chapter.

Section ~~{247}~~248. Section **48-3-804** is enacted to read:

### **48-3-804. Filing of certificate of authority.**

Unless the division determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the division, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the limited liability company or its representative.

Section ~~{248}~~249. Section **48-3-805** is enacted to read:

### **48-3-805. Noncomplying name of foreign limited liability company.**

(1) A foreign limited liability company whose name does not comply with Section 48-3-108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with Section 48-3-108. A foreign limited liability company that adopts an alternate name under this Subsection (1) and obtains a certificate of authority with the alternate name need not comply with Title 42, Chapter 2, Conducting Business Under Assumed Name. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name unless the limited liability company is authorized under Title 42, Chapter 2, Conducting Business Under Assumed Name, to transact business in this state under another name.

(2) If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with Section 48-3-108, it may not thereafter transact business in this state until it complies with Subsection (1) and obtains an amended certificate of authority.

Section ~~{249}~~250. Section **48-3-806** is enacted to read:

### **48-3-806. Revocation of certificate of authority.**

(1) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the division in the manner provided in Subsections (2) and (3) if the limited liability company does not:

(a) pay, within 60 days after the due date, any fee, tax, or penalty due to the division under this chapter or law other than this chapter;

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(b) deliver, within 60 days after the due date, its annual report required under Section 48-3-209;

(c) appoint and maintain an agent for service of process as required by Subsection 16-17-203(1); or

(d) deliver for filing a statement of a change under Section 16-17-206 within 30 days after a change has occurred in the name or address of the agent.

(2) To revoke a certificate of authority of a foreign limited liability company, the division must prepare, sign, and file a notice of revocation and send a copy to the limited liability company's agent for service of process in this state, or if the limited liability company does not appoint and maintain a proper agent in this state, to the limited liability company's principal office. The notice must state:

(a) the revocation's effective date, which must be at least 60 days after the date the division sends the copy; and

(b) the grounds for revocation under Subsection (1).

(3) The authority of a foreign limited liability company to transact business in this state ceases on the effective date of the notice of revocation unless before that date the limited liability company cures each ground for revocation stated in the notice filed under Subsection (2). If the limited liability company cures each ground, the division shall file a record so stating.

Section ~~{250}~~251. Section **48-3-807** is enacted to read:

### **48-3-807. Cancellation of certificate of authority.**

To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the division for filing a notice of cancellation stating the name of the limited liability company and that the limited liability company desires to cancel its certificate of authority. The certificate is canceled when the notice becomes effective.

Section ~~{251}~~252. Section **48-3-808** is enacted to read:

### **48-3-808. Effect of failure to have certificate of authority.**

(1) A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(2) The failure of a foreign limited liability company to have a certificate of authority

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to transact business in this state does not impair the validity of a contract or act of the limited liability company or prevent the limited liability company from defending an action or proceeding in this state.

(3) A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the limited liability company solely because the limited liability company transacted business in this state without a certificate of authority.

(4) If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, service of process for rights of action arising out of the transaction of business in this state shall be served in accordance with Section 16-17-301.

Section ~~{252}~~253. Section **48-3-809** is enacted to read:

### **48-3-809. Action by attorney general.**

The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this part.

Section ~~{253}~~254. Section **48-3-901** is enacted to read:

### **Part 9. Actions by Members**

#### **48-3-901. Direct action by member.**

(1) Subject to Subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

Section ~~{254}~~255. Section **48-3-902** is enacted to read:

#### **48-3-902. Derivative action.**

A member may maintain a derivative action to enforce a right of a limited liability company if:

(1) the member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the limited liability company to bring an action to enforce the right,

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and the managers or other members do not bring the action within a reasonable time; or

(2) a demand under Subsection (1) would be futile.

Section ~~{255}~~256. Section **48-3-903** is enacted to read:

### **48-3-903. Proper plaintiff.**

(1) Except as otherwise provided in Subsection (2), a derivative action under Section 48-3-902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

(2) If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

Section ~~{256}~~257. Section **48-3-904** is enacted to read:

### **48-3-904. Pleading.**

In a derivative action under Section 48-3-902, the complaint must state with particularity:

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

(2) if a demand has not been made, the reasons a demand under Subsection 48-3-902(1) would be futile.

Section ~~{257}~~258. Section **48-3-905** is enacted to read:

### **48-3-905. Special litigation committee.**

(1) If a limited liability company is named as or made a party in a derivative proceeding, the limited liability company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the limited liability company. If the limited liability company appoints a special litigation committee, on motion by the committee made in the name of the limited liability company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This Subsection (1) does not prevent the court from enforcing a person's right to information under Section 48-3-410 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

(2) A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.



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(3) A special litigation committee may be appointed:

(a) in a member-managed limited liability company:

(i) by the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

(ii) if all members are named as defendants or plaintiffs in the proceeding, by a majority of the members named as defendants; or

(b) in a manager-managed limited liability company:

(i) by a majority of the managers not named as defendants or plaintiffs in the proceeding; and

(ii) if all managers are named as defendants or plaintiffs in the proceeding, by a majority of the managers named as defendants.

(4) After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

(a) continue under the control of the plaintiff;

(b) continue under the control of the committee;

(c) be settled on terms approved by the committee; or

(d) be dismissed.

(5) After making a determination under Subsection (4), a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under Subsection (1) and allow the action to proceed under the direction of the plaintiff.

Section ~~{258}~~259. Section **48-3-906** is enacted to read:

**48-3-906. Proceeds and expenses.**

(1) Except as otherwise provided in Subsection (2):

(a) any proceeds or other benefits of a derivative action under Section 48-3-902,

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whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

(b) if the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the limited liability company.

(2) If a derivative action under Section 48-3-902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

Section ~~{259}~~260. Section **48-3-1001** is enacted to read:

### **Part 10. Merger, Conversion, and Domestication**

#### **48-3-1001. Definitions.**

As used in this part:

(1) "Constituent limited liability company" means a constituent organization that is a limited liability company.

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

(3) "Converted organization" means the organization into which a converting organization converts pursuant to Sections 48-3-1006 through 48-3-1009.

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

(5) "Converting organization" means an organization that converts into another organization pursuant to Section 48-3-1006.

(6) "Domesticated company" means the limited liability company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to Sections 48-3-1010 through 48-3-1013.

(7) "Domesticating company" means the limited liability company that effects a domestication pursuant to Sections 48-3-1010 through 48-3-1013.

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

(9) (a) "Organization" means:

(i) a general partnership, including a limited liability partnership;

(ii) a limited partnership, including a limited liability limited partnership;

(iii) a limited liability company;

(iv) a business trust;

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(v) a corporation; or

(vi) any other person having a governing statute.

(b) "Organization" includes a domestic or foreign organization regardless of whether organized for profit.

(10) "Organizational documents" means:

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

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

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

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

(e) for a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

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

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

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

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

(12) "Surviving organization" means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

Section ~~{260}~~261. Section **48-3-1002** is enacted to read:

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### **48-3-1002. Merger.**

(1) A limited liability company may merge with one or more other constituent organizations pursuant to this section, Sections 48-3-1003 through 48-3-1005, and a plan of merger, if:

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

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

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

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

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

(b) the name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect;

(c) the terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration;

(d) if the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record; and

(e) if the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

Section ~~{261}~~262. Section **48-3-1003** is enacted to read:

### **48-3-1003. Action on plan of merger by constituent limited liability company.**

(1) Subject to Section 48-3-1014, a plan of merger must be consented to by all the members of a constituent limited liability company.

(2) Subject to Section 48-3-1014 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the division for filing under Section 48-3-1004, a constituent limited liability company may amend the plan or abandon the merger:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

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Section ~~{262}~~263. Section **48-3-1004** is enacted to read:

### **48-3-1004. Filings required for merger -- Effective date.**

(1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) each constituent limited liability company, as provided in Subsection 48-3-203(1);

and

(b) each other constituent organization, as provided in its governing statute.

(2) Articles of merger under this section must include:

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

(b) the name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect;

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

(d) if the surviving organization is to be created by the merger:

(i) if it will be a limited liability company, the limited liability company's certificate of organization; or

(ii) if it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record;

(e) if the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

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

(g) if the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that may be used for service of process under Subsection 48-3-1005(2); and

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

(3) Each constituent limited liability company shall deliver the articles of merger for filing in the division.

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(4) A merger becomes effective under this part:

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

(i) compliance with Subsection (3); or

(ii) subject to Subsection 48-3-205(3), as specified in the articles of merger; or

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

Section ~~{263}~~264. Section **48-3-1005** is enacted to read:

### **48-3-1005. Effect of merger.**

(1) When a merger becomes effective:

(a) the surviving organization continues or comes into existence;

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

(c) all property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) all debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

(e) an action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

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

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

(h) except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of Part 7, Dissolution and Winding Up;

(i) if the surviving organization is created by the merger:

(A) if it is a limited liability company, the certificate of organization becomes effective; or

(B) if it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective; and

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(j) if the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of merger under Subsection 48-3-1004(2)(g).

Section ~~{264}~~265. Section **48-3-1006** is enacted to read:

### **48-3-1006. Conversion.**

(1) An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, Sections 48-3-1007 through 48-3-1009, and a plan of conversion, if:

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

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

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

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

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

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

(c) the terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) the organizational documents of the converted organization that are, or are proposed to be, in a record.

Section ~~{265}~~266. Section **48-3-1007** is enacted to read:

### **48-3-1007. Action on plan of conversion by converting limited liability company.**

(1) Subject to Section 48-3-1014, a plan of conversion must be consented to by all the

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members of a converting limited liability company.

(2) Subject to Section 48-3-1014 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the division for filing under Section 48-3-1008, a converting limited liability company may amend the plan or abandon the conversion:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section ~~266~~267. Section **48-3-1008** is enacted to read:

### **48-3-1008. Filings required for conversion -- Effective date.**

(1) After a plan of conversion is approved:

(a) a converting limited liability company shall deliver to the division for filing articles of conversion, which must be signed as provided in Subsection 48-3-203(1) and must include:

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

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

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

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

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

(vi) if the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that may be used for service of process under Subsection 48-3-1009(3); and

(b) if the converting organization is not a converting limited liability company, the converting organization shall deliver to the division for filing a certificate of organization, which must include, in addition to the information required by Subsection 48-3-201(2):

(i) a statement that the converted organization was converted from another organization;

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



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

(2) A conversion becomes effective:

(a) if the converted organization is a limited liability company, when the certificate of organization takes effect; and

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

Section ~~267~~268. Section **48-3-1009** is enacted to read:

### **48-3-1009. Effect of conversion.**

(1) An organization that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting organization remains vested in the converted organization;

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

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

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

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

(f) except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of Part 7, Dissolution and Winding Up.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state may be served with process at the address required in the articles of conversion under

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Subsection 48-3-1008(1)(a)(vi).

Section ~~{268}~~269. Section **48-3-1010** is enacted to read:

### **48-3-1010. Domestication.**

(1) A foreign limited liability company may become a limited liability company pursuant to this section, Sections 48-3-1011 through 48-3-1013, and a plan of domestication, if:

(a) the foreign limited liability company's governing statute authorizes the domestication;

(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the foreign limited liability company complies with its governing statute in effecting the domestication.

(2) A limited liability company may become a foreign limited liability company pursuant to this section, Sections 48-3-1011 through 48-3-1013, and a plan of domestication, if:

(a) the foreign limited liability company's governing statute authorizes the domestication;

(b) the domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) the foreign limited liability company complies with its governing statute in effecting the domestication.

(3) A plan of domestication must be in a record and must include:

(a) the name of the domesticating company before domestication and the jurisdiction of its governing statute;

(b) the name of the domesticated company after domestication and the jurisdiction of its governing statute;

(c) the terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

(d) the organizational documents of the domesticated company that are, or are proposed to be, in a record.

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Section ~~{269}~~270. Section **48-3-1011** is enacted to read:

**48-3-1011. Action on plan of domestication by domesticating limited liability company.**

(1) A plan of domestication must be consented to:

(a) by all the members, subject to Section 48-3-1014, if the domesticating company is a limited liability company; and

(b) as provided in the domesticating company's governing statute, if the limited liability company is a foreign limited liability company.

(2) Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the division for filing under Section 48-3-1012, a domesticating company may amend the plan or abandon the domestication:

(a) as provided in the plan; or

(b) except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

Section ~~{270}~~271. Section **48-3-1012** is enacted to read:

**48-3-1012. Filings required for domestication -- Effective date.**

(1) After a plan of domestication is approved, a domesticating company shall deliver to the division for filing articles of domestication, which must include:

(a) a statement, as the case may be, that the limited liability company has been domesticated from or into another jurisdiction;

(b) the name of the domesticating company and the jurisdiction of its governing statute;

(c) the name of the domesticated company and the jurisdiction of its governing statute;

(d) the date the domestication is effective under the governing statute of the domesticated company;

(e) if the domesticating company was a limited liability company, a statement that the domestication was approved as required by this chapter;

(f) if the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

(g) if the domesticated company was a foreign limited liability company not authorized

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to transact business in this state, the street and mailing addresses of an office that may be used for service of process under Subsection 48-3-1013(2).

(2) A domestication becomes effective:

(a) when the certificate of organization takes effect, if the domesticated company is a limited liability company; and

(b) according to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

Section ~~{271}~~272. Section **48-3-1013** is enacted to read:

### **48-3-1013. Effect of domestication.**

(1) When a domestication takes effect:

(a) the domesticated company is for all purposes the limited liability company that existed before the domestication;

(b) all property owned by the domesticating company remains vested in the domesticated company;

(c) all debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

(d) an action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

(e) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

(f) except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

(g) except as otherwise agreed, the domestication does not dissolve a domesticating company for the purposes of Part 7, Dissolution and Winding Up.

(2) A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state may be served with process at the address required in the articles of domestication under Subsection 48-3-1012(1)(g).

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(3) If a limited liability company has adopted and approved a plan of domestication under Section 48-3-1010 providing for the limited liability company to be domesticated in a foreign jurisdiction, a statement surrendering the limited liability company's certificate of organization must be delivered to the division for filing setting forth:

(a) the name of the limited liability company;

(b) a statement that the certificate of organization is being surrendered in connection with the domestication of the limited liability company in a foreign jurisdiction;

(c) a statement that the domestication was approved as required by this chapter; and

(d) the jurisdiction of formation of the domesticated foreign limited liability company.

Section ~~{272}~~273. Section **48-3-1014** is enacted to read:

### **48-3-1014. Restrictions on approval of mergers, conversions, and domestications.**

(1) If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication are ineffective without the consent of the member, unless:

(a) the limited liability company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members; and

(b) the member has consented to the provision of the operating agreement.

(2) A member does not give the consent required by Subsection (1) merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

Section ~~{273}~~274. Section **48-3-1015** is enacted to read:

### **48-3-1015. Part not exclusive.**

This part does not preclude an entity from being merged, converted, or domesticated under law other than this chapter.

Section ~~{274}~~275. Section **48-3-1101** is enacted to read:

## **Part 11. Professional Services ~~{Company Act~~**

### **~~48-3-1101. Title:~~**

**This part is known as the "Professional Services Company Act."**

**Section ~~275~~. Section 48-3-1102 is enacted to read:**

### **~~48-3-1102}Companies~~**

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### 48-3-1101. Definitions.

As used in this part:

(1) "Professional services" means a personal service provided by:

(a) a public accountant holding a license under Title 58, Chapter 26a, Certified Public Accountant Licensing Act, or a subsequent law regulating the practice of public accounting;

(b) an architect holding a license under Title 58, Chapter 3a, Architects Licensing Act, or a subsequent law regulating the practice of architecture;

(c) an attorney granted the authority to practice law by the:

(i) Utah Supreme Court; or

(ii) one or more of the following that licenses or regulates the authority to practice law in a state or territory of the United States other than Utah:

(A) a supreme court;

(B) a court other than a supreme court;

(C) an agency;

(D) an instrumentality; or

(E) a regulating board;

(d) a chiropractor holding a license under Title 58, Chapter 73, Chiropractic Physician Practice Act, or any subsequent law regulating the practice of chiropractics;

(e) a doctor of dentistry holding a license under Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act, or a subsequent law, regulating the practice of dentistry;

(f) a professional engineer registered under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(g) a naturopath holding a license under Title 58, Chapter 71, Naturopathic Physician Practice Act, or a subsequent law regulating the practice of naturopathy;

(h) a nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 44a, Nurse Midwife Practice Act;

(i) an optometrist holding a license under Title 58, Chapter 16a, Utah Optometry Practice Act, or a subsequent law regulating the practice of optometry;

(j) an osteopathic physician or surgeon holding a license under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or a subsequent law regulating the practice of osteopathy;

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(k) a pharmacist holding a license under Title 58, Chapter 17b, Pharmacy Practice Act, or a subsequent law regulating the practice of pharmacy;

(l) a physician, surgeon, or doctor of medicine holding a license under Title 58, Chapter 67, Utah Medical Practice Act, or a subsequent law regulating the practice of medicine;

(m) a physical therapist holding a license under Title 58, Chapter 24b, Physical Therapy Practice Act, or a subsequent law regulating the practice of physical therapy;

(n) a podiatric physician holding a license under Title 58, Chapter 5a, Podiatric Physician Licensing Act, or a subsequent law regulating the practice of podiatry;

(o) a psychologist holding a license under Title 58, Chapter 61, Psychologist Licensing Act, or any subsequent law regulating the practice of psychology;

(p) a principal broker, associate broker, or sales agent holding a license under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, or a subsequent law 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, or a subsequent law regulating the practice of social work;

(r) a mental health therapist holding a license under Title 58, Chapter 60, Mental Health Professional Practice Act, or a subsequent law regulating the practice of mental health therapy;

(s) a veterinarian holding a license under Title 58, Chapter 28, Veterinary Practice Act, or a subsequent law regulating the practice of veterinary medicine; or

(t) an individual licensed, certified, or registered under Title 61, Chapter 2b, Real Estate Appraiser Licensing and Certification Act, or a subsequent law regulating the practice of appraising real estate.

(2) "Professional services company" means a limited liability company organized under this part to provide professional services.

(3) "Regulating board" means the entity organized pursuant to state law that licenses and regulates the practice of the profession that a limited liability company is organized to provide.

Section 276. Section ~~{48-3-1103}~~48-3-1102 is enacted to read:

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~~{48-3-1103}~~48-3-1102. **Application of this part**~~{-- Application of Part 12}~~.

(1) If a conflict arises between this part and another provision of this chapter, this part controls.

(2) Notwithstanding the other provisions of this part, on and after January 1,

~~{2012}~~2014:

(a) a professional services company may not designate series of ~~{members, managers, or}~~transferable interests; and

(b) a limited liability company may not form a professional services company as a series of the limited liability company.

Section 277. Section ~~{48-3-1104}~~48-3-1103 is enacted to read:

~~{48-3-1104}~~48-3-1103. **Additional requirements for certificate of organization.**

The certificate of organization of a professional services company shall:

(1) comply with Section 48-3-201; and

(2) contain the following:

(a) a name consistent with Section ~~{48-3-1105}~~48-3-1104;

(b) a description of the profession to be practiced through the professional services company; and

(c) notwithstanding Section 48-3-201, the name and street address of each member or manager of the professional services company.

Section 278. Section ~~{48-3-1105}~~48-3-1104 is enacted to read:

~~{48-3-1105}~~48-3-1104. **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 complying with Sections 48-3-108, 48-3-802, and 48-3-805:

(a) may not contain language stating or implying that it is formed for a purpose other than that authorized by:

(i) its certificate of organization; or

(ii) Section ~~{48-3-1106}~~48-3-1105;

(b) must conform with any rule made by the regulating board having jurisdiction over a professional service described in the professional services company's certificate of organization; and



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(c) in lieu of the requirement of Subsection 48-3-108(1), must contain the words "professional limited liability company" or the abbreviations "P.L.L.C." or "PLLC" in:

- (i) its certificate of organization; and
- (ii) a report or document filed with the division.

(2) Notwithstanding 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" if that name complies with Subsection 48-3-108(1).

(3) Sections 48-3-108, 48-3-802, and 48-3-805 do not prevent the use of a name otherwise prohibited by those sections if the name is:

- (a) the personal name of an individual member or individual former member of the professional services company; or
- (b) the name of an individual who was associated with a predecessor of the professional services company.

Section 279. Section ~~{48-3-1106}~~48-3-1105 is enacted to read:

~~48-3-1106~~48-3-1105. **Providing a professional service.**

(1) A professional services company may provide a professional service in this state only through an individual licensed or otherwise authorized in this state to provide the professional service.

(2) Subsection (1) does not:

(a) require an individual employed by a professional services company to be licensed to perform a service for the professional services company if a license is not otherwise required;

(b) prohibit a licensed individual from providing a professional service in the individual's professional capacity although the individual is a member, manager, employee, or agent of a professional services company; or

(c) prohibit an individual licensed in another state from providing a professional service for a professional services company in this state if not prohibited by the regulating board.

(3) A professional services company may not provide a professional service other than the professional service authorized by its certificate of organization.

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Section 280. Section ~~{48-3-1107}~~48-3-1106 is enacted to read:

~~{48-3-1107}~~48-3-1106. **Limit of one profession.**

(1) A professional services company organized to provide a professional service under this chapter may provide only:

- (a) one specific type of professional service; and
- (b) a service ancillary to the professional service described in Subsection (1)(a).

(2) A professional services company organized to provide a professional service under this chapter may not engage in a business other than to provide:

- (a) the professional service that it was organized to provide; and
- (b) services ancillary to the professional service described in Subsection (2)(a).

(3) Notwithstanding Subsection (1) or (2), a professional services company may:

(a) own real and personal property necessary or appropriate for providing the type of professional service it was organized to provide; and

(b) invest the professional services company's money in one or more of the following:

- (i) real estate;
- (ii) mortgages;
- (iii) stocks;
- (iv) bonds; or
- (vi) another type of investment.

Section 281. Section ~~{48-3-1108}~~48-3-1107 is enacted to read:

~~{48-3-1108}~~48-3-1107. **Activity limitations.**

A professional services company may not do anything that an individual licensed to practice the profession that the professional services company is organized to provide is prohibited from doing.

Section 282. Section ~~{48-3-1109}~~48-3-1108 is enacted to read:

~~{48-3-1109}~~48-3-1108. **Part does not limit regulating board.**

This chapter does not restrict the authority or duty of a regulating board to license an individual providing a professional service or the practice of the profession that is within the jurisdiction of the regulating board, notwithstanding that the individual:

- (1) is a member, manager, or employee of a professional services company; and
- (2) provides the professional service or engages in the practice of the profession

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through a professional services company.

Section 283. Section ~~{48-3-1110}~~48-3-1109 is enacted to read:

~~{48-3-1110}~~48-3-1109. **Member or manager of a professional services company.**

A professional services company organized to provide a professional service:

(1) may include a member, manager, or employee who is authorized under the laws of the jurisdiction where the member, manager, or employee resides to provide a similar professional service;

(2) may include a member who is not licensed or registered by the state to provide the professional service to the extent allowed by the applicable licensing or registration act relating to the professional service;

(3) may render a professional service in this state only through a member, manager, or employee who is licensed or registered by this state to render the professional service; and

(4) as a power provided under Section 48-3-105.

Section 284. Section ~~{48-3-1111}~~48-3-1110 is enacted to read:

~~{48-3-1111}~~48-3-1110. **Restriction on transfer by member.**

(1) Except as provided in Subsection (2), a member of a professional services company may sell or transfer the member's interest in the professional services company only to:

(a) the professional services company; or

(b) an individual who is licensed or registered by this state to provide the same type of professional service as the professional service for which the professional services company is organized.

(2) (a) Upon the death or incapacity of a member of a professional services company, the member's interest in the professional services company may be transferred to the personal representative or estate of the deceased or incapacitated member.

(b) The person to whom an interest is transferred under Subsection (2)(a) may continue to hold the interest for a reasonable period, but may not participate in a decision concerning the providing of a professional service.

Section 285. Section ~~{48-3-1112}~~48-3-1111 is enacted to read:

~~{48-3-1112}~~48-3-1111. **Purchase of interest upon death, incapacity, or disqualification of member.**

(1) Subject to this part, one or more of the following may provide for the purchase of a

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member's interest in a professional services company upon the death, incapacity, or disqualification of the member:

(a) the certificate of organization;

(b) the operating agreement; or

(c) a private agreement.

(2) (a) In the absence of a provision described in Subsection (1), a professional services company shall purchase the interest of a member who is deceased, incapacitated, or no longer qualified to own an interest in the professional services company within 90 days after the day on which the professional services company is notified of the death, incapacity, or disqualification.

(b) If a professional services company purchases a member's interest under this Subsection (2), the professional services company shall purchase the interest at a price that is the reasonable fair market value as of the date of death, incapacity, or disqualification.

(3) (a) If a professional services company fails to purchase a member's interest as required by Subsection (2)(a) at the end of the 90-day period described in Subsection (2)(a), one of the following may bring an action in the district court of the county in which the principal office or place of practice of the professional services company is located to enforce Subsection (2):

(i) the personal representative of a deceased member;

(ii) the guardian or conservator of an incapacitated member; or

(iii) the disqualified member.

(b) A court in which an action is brought under this Subsection (3) may:

(i) award the person bringing the action the reasonable fair market value of the interest;

or

(ii) within its jurisdiction, order the liquidation of the professional services company.

(c) If a person described in Subsection (3)(a)(i) through (iii) is successful in an action under this Subsection (3), the court shall award the person reasonable attorney fees and costs.

Section 286. Section ~~{48-3-1113}~~48-3-1112 is enacted to read:

~~48-3-1113~~48-3-1112. **Conversion to nonprofessional company.**

(1) A professional services company subject to this part converts into a limited liability company subject to this chapter, but not subject to this part on the day on which:

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(a) no member of the professional services company is licensed or registered for the professional service for which the professional services company is organized; or

(b) members holding at least two-thirds interest in the profits of the professional services company vote to not be subject to this part.

(2) A professional services company converted as provided in Subsection (1) shall upon the event described in Subsection (1) operate as and be treated as a limited liability company subject to this chapter, but not subject to this part.

(3) A limited liability company converted under this section may reconvert to a professional services company:

(a) upon a member of the professional services company being licensed or registered for the professional service for which the professional services company is organized; or

(b) by the vote of members holding at least two-thirds interests in the profits of the professional services company, if at least one member of the professional services company is licensed or registered for the professional service for which the professional services company is organized.

(4) If a professional services company is converted or reconverted under this section, the professional services company shall file a certificate of amendment to the certificate of organization with the division within a reasonable time after the conversion or reconversion to reflect the changes.

Section 287. Section 48-3-1201 is enacted to read:

**Part 12. Series Limited Liability ~~{Company Series Act}~~ Companies**

**48-3-1201. ~~f~~ Title:**

~~————~~ **This part is known as the "Limited Liability Company Series Act."** **Application of this part.**

**If a conflict arises between this part and another provision of this chapter, this part controls.**

Section 288. Section 48-3-1202 is enacted to read:

**48-3-1202. ~~f~~ Application of this part:**

~~————~~ **If a conflict arises between this part and another provision of this chapter, this part controls.**

~~————~~ **Section 289. Section 48-3-1203 is enacted to read:**

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~~48-3-1203. Series of members, managers, or limited liability company~~ Series of transferable interests.

(1) (a) An operating agreement may establish or provide for the establishment of ~~one or more~~ a designated series of ~~members, managers, or~~ transferable interests ~~in the limited liability company that have~~ having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series set forth in the certificate of organization.

(b) An operating agreement shall identify a separate right, power, or duty of a series described in Subsection (1)(a).

(c) Notwithstanding the other provisions of this part, on and after January 1, ~~2012~~ 2014:

(i) a professional services company may not designate series of ~~members, managers, or~~ transferable interests; and

(ii) a limited liability company may not form a professional services company as a series of the limited liability company.

(2) A series may have a business purpose or investment objective different from the limited liability company.

(3) ~~{(a) If the conditions}~~ Notwithstanding contrary provisions of ~~{Subsection (3)(b) are met}~~ this chapter, a series' debts, liabilities, obligations, and expenses ~~{~~

~~(i) }~~ are enforceable ~~{ only}~~ against the assets of that series ~~{; }~~ only and ~~{~~

~~(ii) }~~ may not be enforced against the assets of the limited liability company generally or another series.

~~{ (b) This Subsection (3) applies if:~~

~~{ (i) }~~ (i) a the operating agreement provides for separate treatment of the series;

~~{ (ii) }~~ (ii) b separate and distinct records are maintained concerning the series;

~~{ (iii) }~~ (iii) c the assets associated with the series are held and accounted for separately from the other assets of the limited liability company and any other series; and

~~{ (iv) }~~ (iv) d notice of the limitation on liability of a series is included in the limited liability

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company's certificate of organization in accordance with Section ~~48-3-1204~~48-3-1203.

(4) A debt, liability, obligation, or expense incurred, contracted for, or otherwise existing with respect to the limited liability company generally or another series may not be enforced against the assets of a series if:

(a) the operating agreement provides for separate treatment of the series;

(b) separate and distinct records are maintained concerning the series;

(c) the assets associated with the series are held and accounted for separately from the other assets of the limited liability company and any other series; and

(d) notice of the limitation on liability of a series is included in the limited liability company's certificate of organization in accordance with Section ~~48-3-1204~~48-3-1203.

(5) A series may contract on its own behalf and in its own name, including through a manager.

(6) Notwithstanding other provisions of this section:

(a) property and assets of a series may not be transferred to the limited liability company generally or another series if the transfer impairs the ability of the series releasing the property or assets to pay its debts existing at the time of the transfer unless fair value is given to the transferring series for the property or assets transferred; and

(b) a tax or other liability of the limited liability company generally or of a series may not be assigned by the series against which the tax or other liability is imposed to the limited liability company generally or to another series within the limited liability company if the assignment impairs a creditor's right and ability to fully collect an amount due when owed.

Section 289. Section 48-3-1203 is enacted to read:

48-3-1203. Notice of series -- Certificate of organization.

(1) Notice in a limited liability company's certificate of organization of the limitation on liabilities of a series, as required by Section 48-3-1202, is sufficient whether or not the limited liability company has established a series at the time the notice is included in the certificate of organization.

(2) The notice required by Section 48-3-1202:

(a) is not required to reference a specific series; and

(b) for a certificate of organization or an amendment to a certificate of organization made to include notice of series that is filed on or after May 11, 2010, notice in a company's

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certificate of organization is sufficient for purposes of Subsection (1) only if the notice of series appears immediately following the provision stating the name of the company.

(3) The filing of the notice required by Section 48-3-1202 with the division constitutes notice of the limitation on liability of a series.

Section 290. Section **48-3-1204** is enacted to read:

**48-3-1204. Notice of series -- Certificate of organization.**

~~—— (1) Notice in a limited liability company's certificate of organization of the limitation on~~ **Agreement to be liable.**

Notwithstanding Section 48-3-304, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of a series, as required by Section 48-3-1203, is sufficient whether or not the limited liability company has established a series at the time the notice is included in the certificate of organization.

~~—— (2) The notice required by Section 48-3-1203:~~

~~—— (a) is not required to reference a specific series; and~~

~~—— (b) for a certificate of organization or an amendment to a certificate of organization made to include notice of series that is filed on or after May 11, 2010, notice in a company's certificate of organization is sufficient for purposes of Subsection (1) only if the notice of series appears immediately following the provision stating the name of the company.~~

~~—— (3) The filing of the notice required by Section 48-3-1203 with the division constitutes notice of the limitation on liability of a }one or more series.~~

Section 291. Section **48-3-1205** is enacted to read:

~~{~~ **48-3-1205. Agreement to be liable.**

~~—— Notwithstanding Section 48-3-304, a member or manager may agree to be obligated personally for any or all of the debts, obligations, and liabilities of one or more series.~~

~~—— Section 292. Section **48-3-1206** is enacted to read:~~

~~‡~~ **48-3-1206****48-3-1205. Series related provisions in operating agreement.**

(1) An operating agreement may provide for classes or groups of members or managers associated with a series with separate rights, powers, or duties as provided in Subsection ~~{48-3-1203}~~48-3-1202(1).

(2) An operating agreement may provide for the future creation of one or more additional classes or groups of members or managers associated with a series that have the



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rights, powers, and duties that as may from time to time be established, including a right, power, or duty that is senior to an existing class or group of members or managers associated with the series.

(3) An operating agreement may provide for the taking of an action without the vote or approval of any member or manager, or class or group of members or managers, including:

(a) an action to create a class or group of a series of interests in the limited liability company that was not previously outstanding; and

(b) amending the operating agreement.

(4) An operating agreement may provide that a member or class or group of members associated with a series has no voting rights.

(5) (a) An operating agreement may on any matter grant to all members or managers, a specific member or manager, or a specific class or group of members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series.

(b) Voting by members or managers associated with a series may be on any basis including:

(i) a per capita basis;

(ii) a number basis;

(iii) on the basis of a financial interest; or

(iv) by class or group.

(6) Except to the extent modified by this part, the provisions of this chapter that are generally applicable to a limited liability company, and its managers, members, and transferees, are applicable to each series with respect to the operations of the series

Section ~~{293}~~292. Section ~~{48-3-1207}~~48-3-1206 is enacted to read:

~~{48-3-1207}~~48-3-1206. **Management of a series.**

~~(1) (a) Unless otherwise provided in an~~ A series is member-managed unless the operating agreement~~{, the management of a series is vested in the members associated with the series in proportion to the percentage or other interest of members in the profits of the series owned by all of the members associated with the series at the time of the management action.~~

~~(b) Unless otherwise provided in an operating agreement, the decision of members who own more than 50% of the percentage or other interest in the profits at the time of the decision~~

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### controls:

~~(2) (a) Notwithstanding Subsection (1), if an operating agreement provides for the management of a series in whole or in part by a manager, the:~~

~~(a) expressly provides that:~~

~~(i) the series is or will be "manager-managed";~~

~~(ii) the series is or will be "managed by managers"; or~~

~~(iii) management of the series is {vested in the manager to the extent provided for in} or will be "vested in managers"; or~~

~~(b) includes words of similar import.~~

~~(2) In a member-managed series, unless modified pursuant to Section 48-3-1205, the following rules apply:~~

~~(a) The management and conduct of the series are vested in the members of the series.~~

~~(b) Each series member has equal rights in the management and conduct of the series' activities.~~

~~(c) A difference arising among series members as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the series members.~~

~~(d) An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.~~

~~(e) The operating agreement may be amended only with the consent of all members of the series.~~

~~(3) In a manager-managed series, the following rules apply:~~

~~(a) Except as otherwise expressly provided in this chapter, any matter relating to the activities of the series is decided exclusively by the managers of the series.~~

~~(b) Each series manager has equal rights in the management and conduct of the activities of the series.~~

~~(c) A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series shall be decided by a majority of the managers of the series.~~

~~(d) Unless modified pursuant to Section 48-3-1205, the consent of all members of the series is required to:~~

~~(i) sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities;~~

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(ii) approve a merger, conversion, or domestication under Part 10, Merger, Conversion, and Domestication;

(iii) undertake any other act outside the ordinary course of the series' activities; and

(iv) amend the operating agreement.

~~(b)e) A manager is to be chosen in the manner provided in the operating agreement.~~

~~(c) A } of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.~~

~~(f) A person need not be a series member to be a manager of a series { holds an office and has the responsibilities vested in the manager under the operating agreement.~~

~~(d) A series may have more than one manager.~~

~~(e) Subject to a manager's resignation, a manager}, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager {with respect to a series as provided in the operating agreement.~~

~~(3) Except as otherwise provided in an operating agreement, an event} of the series, that cessation does not by itself dissociate the person as a member of the series.~~

(g) A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.

(4) An action requiring the consent of members of a series under this chapter {or in an operating agreement that causes a manager to cease to be a manager with respect to} may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or otherwise act for the series member by signing an appointing record, personally or by the series member's agent.

(5) The dissolution of a series does not {, by itself, cause the manager to cease to be a manager of the limited liability company or with respect to another} affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.

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(6) This chapter does not entitle a series member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

Section ~~{294}~~293. Section ~~{48-3-1208}~~48-3-1207 is enacted to read:

~~{48-3-1208}~~48-3-1207. **Distribution concerning a series.**

(1) ~~{Subject to an}~~Except as otherwise provided in the operating agreement, ~~{at the time a member associated with a series is}~~any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except to the extent necessary to comply with any transfer effective under Section 48-3-502 and any charging order in effect under Section 48-3-503.

(2) A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

(3) A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in Subsection 48-3-709(3), a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

(4) If a series member or transferee becomes entitled to receive a distribution ~~{with respect to the series}~~, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution ~~{, the member has:~~

~~—— (a) the status of a creditor; and~~

~~—— (b) a remedy available to a creditor.~~

~~—— (2) An operating agreement may provide for the establishment of a record date for an allocation or distribution concerning a series.~~

~~—— (3) Notwithstanding Section 48-3-405, a limited liability company may make a limited distribution with respect to only a series.~~

~~—— (4) A limited liability company}.~~

(5) A series may not make a distribution ~~{under this section with respect to a series if{,}}~~ after ~~{giving effect to}~~ the distribution:

(a) the series would not be able to pay its debts as ~~{the debts}~~they become due in the ~~{usual and regular}~~ordinary course of the series' ~~{business}~~activities; or

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(b) the ~~value of the~~ series' total assets would be less than the sum of:

~~(i) the series'; its~~ total liabilities; ~~and~~

~~(ii) unless the certificate of organization or the operating agreement permit otherwise;~~

~~plus~~ the amount that would be needed, if the series were to be dissolved ~~and~~, wound up, ~~and terminated~~ at the time of the distribution, to satisfy the preferential rights upon dissolution ~~and~~, winding up, ~~and termination~~ of members whose preferential rights are superior to ~~the rights~~ those of ~~members~~ persons receiving the distribution.

~~(5)6~~ A ~~limited liability company~~ series may base a determination that a distribution is not prohibited under Subsection ~~(4)5~~ on:

~~(a) a~~ financial ~~statement~~ statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; ~~or~~

~~(b)~~ on a fair valuation or other method that is reasonable ~~in~~ under the circumstances.

~~(6)~~ For purposes of this section, the following do not constitute a distribution:

~~(a)~~ 7 Except as otherwise provided in Subsection (9), the effect of a distribution under Subsection (5) is measured:

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

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

(i) the distribution is authorized, if the payment occurs within 120 days after that date;

or

(ii) the payment is made, if the payment occurs more than 120 days after the distribution is authorized.

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

(9) A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of Subsection (5) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a

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distribution, the effect of which is measured on the date the payment is made.

(10) As used in Subsection (5) "distribution" does not include amounts constituting reasonable compensation for present or past services~~{}~~ or~~{}~~

~~— (b) a~~ reasonable ~~{payment}~~ payments made in the ordinary course of business ~~{pursuant to}~~ under a bona fide retirement plan or other ~~{benefit}~~ benefits program.

~~{7} A member who receives a distribution~~ (11) (a) Except as otherwise provided in Subsection (11)(b), if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section ~~{is}~~ and in consenting to the distribution fails to comply with Section 48-3-409, the member or manager is personally liable to the series for the amount of the distribution~~{~~

~~— (8) Subject to~~ that exceeds the amount that could have been distributed without the violation of Section ~~{48-3-406, this section does not affect an obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.~~ 48-3-405.

(b) To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in Subsection (11)(a) applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.

(12) A person that receives a distribution knowing that the distribution to that person was made in violation of Section 48-3-405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under Section 48-3-405.

(13) A person against which an action is commenced because the person is liable under Subsection (11) may:

(a) implead any other person that is subject to liability under Subsection (11) and seek to compel contribution from the person; and

(b) implead any person that received a distribution in violation of Subsection (12) and seek to compel contribution from the person in the amount the person received in violation of Subsection (12).

(14) An action under this section is barred if not commenced within two years after the

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### distribution.

Section 294. Section **48-3-1208** is enacted to read:

#### **48-3-1208. Events causing dissociation from a series.**

(1) Unless otherwise provided in the operating agreement, a member ceases to be associated with a series and to have the power to exercise a right or power of a member with respect to the series upon the assignment of all of the member's interest in the limited liability company with respect to the series.

(2) Unless otherwise provided in an operating agreement, an event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:

(a) cause the member to cease to be associated with another series;

(b) terminate the continued membership of a member in the limited liability company;

or

(c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.

Section 295. Section **48-3-1209** is enacted to read:

#### **48-3-1209. ~~f~~ Member removal from a series -- Effect.**

##### **~~(1) Unless;~~ Termination of a series.**

(1) Except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company.

(2) The termination of a series does not affect the limitation on liabilities of the series under Section 48-3-1202.

(3) A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under Section 48-3-701 or upon the occurrence of any of the events described in Section 48-3-701, as applied to the series.

(4) Notwithstanding Section 48-3-703, unless otherwise provided in the operating agreement, ~~f~~a member ceases to be any of the following persons may wind up the affairs of a series:

(a) a manager associated with a series ~~f~~and to have the power to exercise a right or power of a member; who has not wrongfully terminated the series;

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(b) if there is no manager of a series, the members associated with the series or a person approved by the members associated with the series; or

(c) if there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than 50% of the transferable interests of the series owned by all of the members associated with the series or by the members of each class or group associated with the series.

(5) The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series ~~upon the assignment of all of the member's interest in the~~ as are permitted under Section 48-3-703 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in Section 48-3-709 for a limited liability company ~~with respect to the series.~~

~~— (2) Unless otherwise provided in an operating agreement, an event under this chapter or the operating agreement that causes a member to cease to be associated with a series does not, by itself:~~

~~— (a) cause the member to cease to be associated with another series;~~

~~— (b) terminate the continued membership of a member in the ~~and distribute the assets of the series as provided in Section 48-3-709 for a limited liability company~~; or~~

~~— (c) cause the termination of the series, regardless of whether the member is the last remaining member associated with the series.~~ An action taken pursuant to this Subsection (5) may not affect the liability of a member and may not impose liability on a liquidating trustee.

Section 296. Section **48-3-1210** is enacted to read:

~~{~~ **48-3-1210. Termination of series.**

~~— (1) Subject to Section 48-3-701, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company.~~

~~— (2) The termination of a series does not affect the limitation on liabilities of the series under Section 48-3-1203.~~

~~— (3) A series is terminated and its affairs shall be wound up:~~

~~— (a) upon the dissolution of the limited liability company under Section 48-3-701; or~~

~~— (b) upon the first to occur of the following:~~



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- ~~—— (i) the time specified in the operating agreement;~~
- ~~—— (ii) the happening of an event specified in the operating agreement;~~
- ~~—— (iii) unless otherwise provided in the operating agreement, the affirmative vote or written consent of:~~
  - ~~—— (A) the members of the limited liability company associated with the series, or if there is more than one class or group of members associated with the series, by each class or group of members associated with the series; and~~
  - ~~—— (B) members associated with the series who own more than two-thirds of the percentage or other interest in the profits of the series owned by all of the members associated with the series at the time of the vote or consent, or the members in each class or group of the series, as appropriate; or~~
- ~~—— (iv) the termination of the series under Section 48-3-1211.~~
- ~~—— Section 297. Section 48-3-1211 is enacted to read:~~
- ~~—— **48-3-1211. Court-decreed termination of series.**~~
- ~~—— On application by or for a member or manager associated with a series, the district court may order that a series terminates if the court finds that it is not reasonably practicable to carry on the business of the series in conformity with an operating agreement.~~
- ~~—— Section 298. Section 48-3-1212 is enacted to read:~~
- ~~—— **48-3-1212. Participation in winding up.**~~
- ~~—— (1) Notwithstanding Section 48-3-702, unless otherwise provided in the operating agreement, the series' affairs may be wound up by the following:~~
  - ~~—— (a) a manager associated with a series who has not wrongfully terminated the series; or~~
  - ~~—— (b) if there is no manager under Subsection (1)(a):~~
    - ~~—— (i) (A) the members associated with the series who own more than 50% of the percentage or other interest in the profits of the series owned by all of the members associated with the series at the time of dissolution; or~~
    - ~~—— (B) a person approved by the members described in Subsection (1)(b)(i)(A); or~~
    - ~~—— (ii) if there is more than one class or group of members associated with the series, each class or group of members associated with the series that own more than 50% of the percentage or other interest in the profits of the series owned by all of the members in each class or group associated with the series at the time of dissolution.~~

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- ~~(2) (a) The district court may wind up the affairs of the series upon:~~
- ~~(i) cause shown; and~~
  - ~~(ii) application of:~~
    - ~~(A) a member associated with the series;~~
    - ~~(B) the member's personal representative; or~~
    - ~~(C) the member's assignee.~~
- ~~(b) If the district court winds up the affairs of a series under Subsection (2)(a), the district court may appoint a liquidating trustee.~~
- ~~(3) (a) A person winding up the affairs of a series may, in the name of the limited liability company and on behalf of the limited liability company and the series, take an action with respect to the series that is allowed by Part 7, Dissolution and Winding Up.~~
- ~~(b) A person winding up the affairs of a series shall comply with Part 7, Dissolution and Winding Up.~~
- ~~(c) The winding up the affairs of a series in accordance with this section does not:~~
- ~~(i) affect the liability of members; or~~
  - ~~(ii) impose liability on a liquidating trustee.~~
- ~~Section 299. Section 48-3-1213 is enacted to read:~~

~~†~~ ~~{48-3-1213}~~48-3-1210. **Foreign limited liability company -- Series.**

(1) ~~{If a}~~A foreign limited liability company that is ~~{registering}~~authorized to do business in ~~{the}~~this state ~~that~~ is governed by an operating agreement ~~{establishing}~~that establishes or ~~{providing}~~provides for the establishment of a series, the foreign limited liability company shall ~~{state}~~indicate that fact on the application for a certificate of authority ~~{to transact business in the state}~~as a foreign limited liability company.

(2) (a) A foreign limited liability company shall ~~{identify}~~state on ~~{an}~~the application for a certificate of authority ~~{to transact business in the state}~~as a foreign limited liability company which of the protections for the series and foreign limited liability company found in Section ~~{48-3-1203}~~48-3-1202 apply to a series.

(b) If different protections found in Section ~~{48-3-1203}~~48-3-1202 apply to different series of a foreign limited liability company, the application for authority to transact business in the state shall ~~{identify}~~state:

- (i) the protections that apply to each existing series; and

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(ii) the protections that will apply to any series after registering to do business.

Section ~~{300}~~297. Section 48-3-1301 is enacted to read:

### Part 13. Low-profit Limited Liability ~~{Company Act}~~Companies

#### ~~48-3-1301.~~ Title.

~~This part is known as the "Low-profit Limited Liability Company Act."~~

~~Section 301.~~ Section 48-3-1302 is enacted to read:

#### ~~48-3-1302.~~ Application of this part.

If a conflict arises between this part and another provision of this chapter, this part controls.

Section ~~{302}~~298. Section ~~{48-3-1303}~~48-3-1302 is enacted to read:

#### ~~{48-3-1303}~~48-3-1302. Requirements.

(1) To be a low-profit limited liability company, a limited liability company shall:

(a) contain in its name the abbreviation "L3C" or "l3c";

(b) state in its certificate of organization that it is a low-profit limited liability company;

(c) organize under this chapter; and

(d) be organized for a business purpose that satisfies, and at all times operates to satisfy each of the requirements under Subsection (2).

(2) A low-profit limited liability company:

(a) shall significantly further the accomplishment of one or more charitable or educational purposes within the meaning of Section 170(c)(2)(B), Internal Revenue Code;

(b) shall demonstrate that it would not be formed but for the limited liability company's relationship to the accomplishment of a charitable or educational purpose;

(c) subject to Subsection (3), may not have as a significant purpose the production of income or the appreciation of property; and

(d) may not have as a purpose to accomplish one or more political or legislative purposes within the meaning of Section 170(c)(2)(D), Internal Revenue Code.

(3) Notwithstanding Subsection (2), if a low-profit limited liability company produces significant income or capital appreciation, in the absence of other factors, the fact that the low-profit limited liability company produces significant income or capital appreciation is not conclusive evidence of a significant purpose involving the production of income or the

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appreciation of property.

Section ~~{303}~~299. Section ~~{48-3-1304}~~48-3-1303 is enacted to read:

~~{48-3-1304}~~48-3-1303. **Ceasing to be a low-profit limited liability company.**

(1) If a company that is a low-profit limited liability company at its formation at any time ceases to meet a requirement to be a low-profit limited liability company under Section ~~48-3-1303~~48-3-1302, the limited liability company:

(a) ceases to be a low-profit limited liability company on the day on which the limited liability company no longer meets the requirement; and

(b) if it continues to meet the requirements of this chapter to be a limited liability company, continues to exist as a limited liability company that is not a low-profit limited liability company.

(2) A low-profit limited liability company's failure to meet a requirement of Section ~~48-3-1303~~48-3-1302 may be:

(a) voluntary, in order to convert to a limited liability company that is not a low-profit limited liability company; or

(b) involuntary.

(3) If a low-profit limited liability company ceases to be a low-profit limited liability company in accordance with this section, the limited liability company shall:

(a) change its name to conform with Section 48-3-108; and

(b) amend its articles of organization in accordance with Section 48-3-202.

Section ~~{304}~~300. Section ~~{48-3-1305}~~48-3-1304 is enacted to read:

~~{48-3-1305}~~48-3-1304. **Conversion or merger of a low-profit limited liability company.**

A low-profit limited liability company may engage in the following to the same extent as a limited liability company that is not a low-profit limited liability company may do so under Part 10, Merger, Conversion, and Domestication:

(1) convert to another subject entity;

(2) convert from another subject entity; or

(3) participate in a merger.

Section ~~{305}~~301. Section **48-3-1401** is enacted to read:

### Part 14. Miscellaneous Provisions

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### **48-3-1401. Uniformity of application and construction.**

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact the uniform act.

Section ~~{306}~~302. Section **48-3-1402** is enacted to read:

### **48-3-1402. Relation to Electronic Signatures in Global and National Commerce Act.**

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ~~{}~~Sec.~~{}~~ 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. ~~{}~~Sec.~~{}~~ 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. ~~{}~~Sec.~~{}~~ 7003(b).

Section ~~{307}~~303. Section **48-3-1403** is enacted to read:

### **48-3-1403. Severability clause.**

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

Section ~~{308}~~304. Section **48-3-1404** is enacted to read:

### **48-3-1404. Savings clause.**

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

Section ~~{309}~~305. Section **48-3-1405** is enacted to read:

### **48-3-1405. Application to existing relationships.**

(1) Before January 1, ~~{2012}~~2014, this chapter governs only:

(a) a limited liability company formed on or after ~~{January}~~July 1, ~~{2011}~~2012; and

(b) ~~{except as otherwise provided in}~~subject to Subsection (3), a limited liability company formed before ~~{January}~~July 1, ~~{2011}~~2012, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

(2) ~~{Except as otherwise provided in}~~Subject to Subsection (3), on and after January 1,

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~~2012~~2014, this chapter governs all limited liability companies.

(3) For the purposes of applying this chapter to a limited liability company formed before ~~January~~July 1, ~~2011~~2012:

(a) the limited liability company's ~~certificates~~articles of organization are deemed to be the company's certificate of organization; ~~and~~

(b) for the purposes of applying Subsection 48-3-102(10) and subject to Subsection 48-3-112(4), language in the company's certificates of organization designating the limited liability company's management structure operates as if that language were in the operating agreement; and

(c) the limited liability company has a perpetual duration unless otherwise stated in the limited liability company's articles of organization.

Section ~~310~~306. 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 Title 53C, Chapter 3, Deposit and Allocation of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

(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 provided in this Subsection (3).

(b) (i) 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 63G-2-305, for as long as is necessary to evaluate the proposal.

(ii) The administration shall return the proposal to the party who submitted the proposal, and incur no further duties under Title 63G, Chapter 2, Government Records Access and Management Act, if the administration determines not to proceed with the proposal.

(iii) The administration shall classify the proposal pursuant to law if it decides to proceed with the proposal.

(iv) Section 63G-2-403 does not apply during the review period.

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(c) The director shall make rules in compliance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, except that the administration is not subject to Subsections 63G-3-301(6) and (7), and 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:

(i) the changes in business opportunities affecting the assets of the trust;

(ii) the specific business opportunity arising out of those changes which may be lost without the rule or changes to the rule;

(iii) the reasons the normal procedures under Section 63G-3-301 cannot be met without causing the loss of the specific opportunity;

(iv) approval by at least five board members; and

(v) 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 63G-3-301(10).

(d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel Management Act, except as provided in this Subsection (3)(d).

(ii) 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 executive director of the Department of Human Resource Management prior to making such a recommendation.

(iii) The positions of director, deputy director, associate director, assistant director, legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

(iv) Salaries for exempted positions, except for the director, shall be set by the director, after consultation with the executive 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.

(v) 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.

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(e) The administration shall comply with Title 63G, Chapter 6, Utah Procurement Code, except where the board approves, upon recommendation of the director, exemption from the Utah Procurement Code, and simultaneous adoption of rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for procurement, which enable the administration to efficiently fulfill its responsibilities under the law.

(f) (i) The board and director shall review the exceptions under this Subsection (3) 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. The director may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement policies provided by the board regarding Native American remains.

(6) In connection with joint ventures for the development of trust lands and minerals approved by the board under Sections 53C-1-303 and 53C-2-401, the administration may become a member of a limited liability company under Title 48, Chapter ~~[2c]3~~, Utah Revised ~~{1}~~ ~~{3}~~ Uniform Limited Liability Company Act, and is considered a person under Section ~~[48-2c-102]~~ 48-3-102.

Section ~~{311}~~ 307. Section **61-2b-25** is amended to read:

### **61-2b-25. Other law unaffected.**

This chapter may not be considered to prohibit a person approved, licensed, certified, or registered under this chapter from engaging in the practice of real estate appraising as a professional corporation or a limited liability company in accordance with:



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- (1) Title 16, Chapter 11, Professional Corporation Act; or
- (2) Title 48, Chapter ~~[2c]3~~, Utah Revised ~~{;} {3,}~~Uniform Limited Liability Company Act.

Section ~~{312}~~308. Section **61-2f-401** is amended to read:

### **61-2f-401. Grounds for disciplinary action.**

The following acts are unlawful for a person required to be licensed under this chapter:

- (1) (a) making a substantial misrepresentation;
- (b) making an intentional misrepresentation;
- (c) pursuing a continued and flagrant course of misrepresentation;
- (d) making a false representation or promise through an agent, sales agent, advertising, or otherwise; or
- (e) making a false representation or promise of a character likely to influence, persuade, or induce;
- (2) acting for more than one party in a transaction without the informed consent of all parties;
- (3) (a) acting as an associate broker or sales agent while not affiliated with a principal broker;
- (b) representing or attempting to represent a principal broker other than the principal broker with whom the person is affiliated; or
- (c) representing as sales agent or having a contractual relationship similar to that of sales agent with a person other than a principal broker;
- (4) (a) failing, within a reasonable time, to account for or to remit money that belongs to another and comes into the person's possession;
- (b) commingling money described in Subsection (4)(a) with the person's own money; or
- (c) diverting money described in Subsection (4)(a) from the purpose for which the money is received;
- (5) paying or offering to pay valuable consideration, as defined by the commission, to a person not licensed under this chapter, except that valuable consideration may be shared:
  - (a) with a principal broker of another jurisdiction; or
  - (b) as provided under:

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- (i) Title 16, Chapter 10a, Utah Revised Business Corporation Act;
- (ii) Title 16, Chapter 11, Professional Corporation Act; or
- (iii) Title 48, Chapter ~~[2c]~~13, Utah Revised ~~[1]~~ ~~[2]~~ Uniform Limited Liability

Company Act;

(6) being incompetent to act as a principal broker, associate broker, or sales agent in such manner as to safeguard the interests of the public;

(7) failing to voluntarily furnish a copy of a document to all parties before and after the execution of a document;

(8) failing to keep and make available for inspection by the division a record of each transaction, including:

- (a) the names of buyers and sellers or lessees and lessors;
- (b) the identification of real estate;
- (c) the sale or rental price;
- (d) money received in trust;
- (e) agreements or instructions from buyers and sellers or lessees and lessors; and
- (f) any other information required by rule;

(9) failing to disclose, in writing, in the purchase, sale, or rental of real estate, whether the purchase, sale, or rental is made for that person or for an undisclosed principal;

(10) being convicted of a criminal offense involving moral turpitude within five years of the most recent application:

- (a) regardless of whether the criminal offense is related to real estate; and
- (b) including:
  - (i) a conviction based upon a plea of nolo contendere; or
  - (ii) a plea held in abeyance to a criminal offense involving moral turpitude;

(11) advertising the availability of real estate or the services of a licensee in a false, misleading, or deceptive manner;

(12) in the case of a principal broker or a licensee who is a branch manager, failing to exercise reasonable supervision over the activities of the principal broker's or branch manager's licensed or unlicensed staff;

(13) violating or disregarding:

- (a) this chapter;

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- (b) an order of the commission; or
- (c) the rules adopted by the commission and the division;
- (14) breaching a fiduciary duty owed by a licensee to the licensee's principal in a real estate transaction;
- (15) any other conduct which constitutes dishonest dealing;
- (16) unprofessional conduct as defined by statute or rule;
- (17) having one of the following suspended, revoked, surrendered, or cancelled on the basis of misconduct in a professional capacity that relates to character, honesty, integrity, or truthfulness:
  - (a) a real estate license, registration, or certificate issued by another jurisdiction; or
  - (b) another license, registration, or certificate to engage in an occupation or profession issued by this state or another jurisdiction;
- (18) failing to respond to a request by the division in an investigation authorized under this chapter, including:
  - (a) failing to respond to a subpoena;
  - (b) withholding evidence; or
  - (c) failing to produce documents or records;
- (19) in the case of a dual licensed title licensee as defined in Section 31A-2-402:
  - (a) providing a title insurance product or service without the approval required by Section 31A-2-405; or
  - (b) knowingly providing false or misleading information in the statement required by Subsection 31A-2-405(2);
- (20) violating an independent contractor agreement between a principal broker and a sales agent or associate broker as evidenced by a final judgment of a court;
- (21) (a) engaging in a foreclosure rescue if not licensed under this chapter;
- (b) engaging in an act of loan modification assistance that requires licensure as a mortgage officer under Chapter 2c, Utah Residential Mortgage Practices and Licensing Act, without being licensed under that chapter;
- (c) requesting or requiring a person to pay a fee if:
  - (i) the person is required to pay the fee before entering into a written agreement specifying what one or more acts of foreclosure rescue will be completed if the fee is paid; or

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(ii) in a case when the financing that is the subject of the foreclosure rescue is foreclosed within one year from the day on which the person enters into a written agreement, the person is required to forfeit the fee for any reason;

(d) inducing a person who is at risk of foreclosure to hire the licensee to engage in an act of foreclosure rescue by:

(i) suggesting to the person that the licensee has a special relationship with the person's lender or loan servicer; or

(ii) falsely representing or advertising that the licensee is acting on behalf of:

(A) a government agency;

(B) the person's lender or loan servicer; or

(C) a nonprofit or charitable institution; or

(e) recommending or participating in a foreclosure rescue that requires a person to:

(i) transfer title to real property to the licensee or to a third party with whom the licensee has a business relationship or financial interest;

(ii) make a mortgage payment to a person other than the person's loan servicer; or

(iii) refrain from contacting the person's:

(A) lender;

(B) loan servicer;

(C) attorney;

(D) credit counselor; or

(E) housing counselor; or

(22) for an agreement for foreclosure rescue entered into on or after May 11, 2010, engaging in an act of foreclosure rescue without offering in writing to the person entering into the agreement for foreclosure rescue a right to cancel the agreement within three business days after the day on which the person enters the agreement.

Section ~~313~~309. Section **75-7-1011** is amended to read:

### **75-7-1011. Interest as general partner.**

(1) Except as otherwise provided in Subsection (3) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in

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a statement previously filed pursuant to Title 48, Chapter [~~2a, Utah Revised~~] 2d, Utah Uniform Limited Partnership Act.

(2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

(3) The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse of any of them.

(4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

Section ~~314~~310. Repealer.

This bill repeals:

Section **48-1-1, Definition of terms.**

Section **48-1-2, Interpretation of knowledge and notice.**

Section **48-1-3, "Partnership" defined.**

Section **48-1-3.1, Joint venture defined -- Application of chapter.**

Section **48-1-4, Rules for determining the existence of a partnership.**

Section **48-1-5, Partnership property.**

Section **48-1-6, Partner agent of partnership as to partnership business.**

Section **48-1-7, Conveyance of real property of partnership.**

Section **48-1-8, Partnership bound by admission of partner.**

Section **48-1-9, Partnership charged with knowledge of or notice to partner.**

Section **48-1-10, Partnership bound by partner's wrongful act.**

Section **48-1-11, Partnership bound by partner's breach of trust.**

Section **48-1-12, Nature of partner's liability.**

Section **48-1-13, Partner by estoppel.**

Section **48-1-14, Liability of incoming partner.**

Section **48-1-15, Rules determining rights and duties of partners.**

Section **48-1-16, Partnership books.**

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Section 48-1-17, **Duty of partners to render information.**

Section 48-1-18, **Partner accountable as a fiduciary.**

Section 48-1-19, **Right to an account.**

Section 48-1-20, **Continuation of partnership beyond fixed term.**

Section 48-1-21, **Extent of property rights of a partner.**

Section 48-1-22, **Nature of a partner's right in specific partnership property.**

Section 48-1-23, **Nature of partner's interest in the partnership.**

Section 48-1-24, **Assignment of partner's interest.**

Section 48-1-25, **Partner's interest subject to charging order.**

Section 48-1-26, **"Dissolution" defined.**

Section 48-1-27, **Partnership not terminated by dissolution.**

Section 48-1-28, **Causes of dissolution.**

Section 48-1-29, **Dissolution by decree of court.**

Section 48-1-30, **General effect of dissolution on authority of partner.**

Section 48-1-31, **Right of partner to contribution from copartners after dissolution.**

Section 48-1-32, **Power of partner to bind partnership to third persons after dissolution.**

Section 48-1-33, **Effect of dissolution on partner's existing liability.**

Section 48-1-34, **Right to wind up.**

Section 48-1-35, **Rights of partners to application of partnership property.**

Section 48-1-36, **Rights where partnership is dissolved for fraud or misrepresentation.**

Section 48-1-37, **Rules for distribution.**

Section 48-1-38, **Liability of persons continuing the business in certain cases.**

Section 48-1-39, **Rights of retiring or estate of deceased partner when the business is continued.**

Section 48-1-40, **Accrual of actions.**

Section 48-1-41, **Title.**

Section 48-1-42, **Registration of limited liability partnerships.**

Section 48-1-43, **Scope of chapter -- Choice of law.**

Section 48-1-44, **Foreign limited liability partnerships.**

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Section **48-1-45, Name of registered limited liability partnership.**

Section **48-1-46, Professional relationship -- Personal liability.**

Section **48-1-47, Regulatory agency or board authority -- Prohibitions on individuals apply.**

Section **48-1-48, Limited liability partnerships providing professional services.**

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

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- Section **48-2a-303, Liability to third parties.**
- Section **48-2a-304, Person erroneously believing himself to be a limited partner.**
- Section **48-2a-305, Inspection of records -- Right to information.**
- Section **48-2a-401, Admission of additional general partners.**
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- Section **48-2a-403, General powers and liabilities.**
- Section **48-2a-404, Contributions by general partners.**
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- Section **48-2a-501, Form of contribution.**
- Section **48-2a-502, Liability for contribution.**
- Section **48-2a-503, Sharing of profits and losses.**
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- Section **48-2c-702, Initial members.**
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**Section 48-2c-1404, Approval of conversion.**

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**Section 48-2c-1407, Merger.**

**Section 48-2c-1408, Approval of merger.**

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**Section 48-2c-1410, Effect of merger.**

**Section 48-2c-1411, Conversion or merger of a low-profit limited liability company.**

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Section 48-2c-1901, Legislative intent -- Freedom of contract.

Section 48-2c-1902, Transitional provisions.

Section ~~{315}~~311. Effective date.

This bill takes effect on ~~{January}~~July 1, 2012.

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### Legislative Review Note

\_\_\_\_\_ as of ~~1-24-11~~ 3:36 PM

\_\_\_\_\_ ~~Office of Legislative Research and General Counsel~~