
SUBSTITUTE SENATE BILL 5030

State of Washington**64th Legislature****2015 Regular Session**

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

1 AN ACT Relating to the limited liability company act; amending
2 RCW 23B.11.080, 23B.11.090, 23B.11.110, 25.05.375, 25.05.380,
3 25.05.385, 25.05.390, 25.05.425, 25.10.781, 30A.08.025, 32.08.025,
4 and 82.32.145; adding new sections to chapter 25.15 RCW; repealing
5 RCW 25.15.005, 25.15.007, 25.15.010, 25.15.015, 25.15.020, 25.15.025,
6 25.15.030, 25.15.035, 25.15.040, 25.15.045, 25.15.050, 25.15.055,
7 25.15.060, 25.15.070, 25.15.075, 25.15.085, 25.15.090, 25.15.095,
8 25.15.100, 25.15.105, 25.15.115, 25.15.120, 25.15.125, 25.15.130,
9 25.15.135, 25.15.140, 25.15.150, 25.15.155, 25.15.160, 25.15.165,
10 25.15.170, 25.15.175, 25.15.180, 25.15.185, 25.15.190, 25.15.195,
11 25.15.200, 25.15.205, 25.15.215, 25.15.220, 25.15.225, 25.15.230,
12 25.15.235, 25.15.245, 25.15.250, 25.15.255, 25.15.260, 25.15.270,
13 25.15.273, 25.15.275, 25.15.280, 25.15.285, 25.15.290, 25.15.293,
14 25.15.295, 25.15.298, 25.15.300, 25.15.303, 25.15.310, 25.15.315,
15 25.15.320, 25.15.325, 25.15.330, 25.15.335, 25.15.340, 25.15.345,
16 25.15.350, 25.15.355, 25.15.360, 25.15.365, 25.15.366, 25.15.370,
17 25.15.375, 25.15.380, 25.15.385, 25.15.390, 25.15.395, 25.15.400,
18 25.15.405, 25.15.410, 25.15.415, 25.15.417, 25.15.419, 25.15.420,
19 25.15.422, 25.15.423, 25.15.425, 25.15.430, 25.15.435, 25.15.440,
20 25.15.445, 25.15.450, 25.15.455, 25.15.460, 25.15.465, 25.15.470,
21 25.15.475, 25.15.480, 25.15.800, 25.15.805, 25.15.810, 25.15.900,
22 25.15.901, and 25.15.902; and providing an effective date.

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

2 **ARTICLE I. GENERAL PROVISIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (15) "Professional service" means the same as defined under RCW
22 18.100.030.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (e) A foreign limited liability company whose name reservation is
17 effective may thereafter register as a foreign limited liability
18 company under the reserved name, or consent in writing to the use of
19 that name by a domestic limited liability company, domestic
20 corporation, domestic limited partnership, or domestic limited
21 liability partnership thereafter formed, or by another foreign
22 limited liability company, foreign corporation, foreign limited
23 partnership, or foreign limited liability partnership thereafter
24 authorized to transact business in this state. The name reservation
25 terminates when the domestic limited liability company is formed, the
26 domestic corporation is incorporated, the domestic limited liability
27 partnership is formed, or the domestic limited partnership is formed,
28 or the foreign limited liability company registers or consents to the
29 registration of another foreign limited liability company,
30 corporation, limited partnership, or limited liability partnership
31 under the reserved name.

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

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

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

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

4 (3) A limited liability company agreement may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (b) A registered agent that may be:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25 (1) The internal affairs of a limited liability company; and
26 (2) The liability of a member as member and a manager as manager
27 for the debts, obligations, or other liabilities of a limited
28 liability company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (3) For purposes of this section:

6 (a) "Expenses" include counsel fees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 a certificate of authorization for a foreign limited liability
2 company.

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

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

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

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

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

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

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

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

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

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

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

37 (b) The amendment to the certificate of formation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (c) The address of its principal office;

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

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

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

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

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

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

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

14 **ARTICLE III. MEMBERS**

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

- 19 (a) The formation of the limited liability company; or
20 (b) The time provided in the limited liability company agreement
21 or, if the limited liability company agreement does not so provide or
22 does not exist, when the person's admission is reflected in the
23 records of the limited liability company.

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

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

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

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

4 (c) In the case of a person being admitted as a member of a
5 surviving or resulting limited liability company pursuant to a merger
6 or conversion approved in accordance with this chapter, as provided
7 in the limited liability company agreement of the surviving or
8 resulting limited liability company or in the agreement of merger or
9 plan of merger or conversion, and in the event of any inconsistency,
10 the terms of the agreement of merger or plan of merger or conversion
11 control; and in the case of a person being admitted as a member of a
12 limited liability company pursuant to a merger or conversion in which
13 such limited liability company is not the surviving or resulting
14 limited liability company in the merger or conversion, as provided in
15 the limited liability company agreement of such limited liability
16 company.

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

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

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

24 (b) Amend the limited liability company agreement;

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

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

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

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

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

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

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

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

12 (k) Dissolve the limited liability company as provided in section
13 51(3) of this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (f) Unless all other members otherwise agree at the time, the
16 member (i) makes a general assignment for the benefit of creditors;

17 (ii) files a voluntary petition in bankruptcy; (iii) becomes the
18 subject of an order for relief in bankruptcy proceedings; (iv) files
19 a petition or answer seeking for the member any reorganization,
20 arrangement, composition, readjustment, liquidation, dissolution, or
21 similar relief under any statute, law, or regulation; (v) files an
22 answer or other pleading admitting or failing to contest the material
23 allegations of a petition filed against the member in any proceeding
24 of the nature described in (f)(i) through (iv) of this subsection; or
25 (vi) seeks, consents to, or acquiesces in the appointment of a
26 trustee, receiver, or liquidator of the member or of all or any
27 substantial part of the member's properties;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (c) Accounting records of the limited liability company.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **ARTICLE IV. MANAGEMENT AND MANAGERS**

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

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

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

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

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

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

21 (b) Each manager of the limited liability company:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 **ARTICLE V. CONTRIBUTIONS**

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

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

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

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

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

30 **ARTICLE VI. DISTRIBUTIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **ARTICLE VII. ASSIGNMENT OF LIMITED LIABILITY COMPANY INTERESTS**

2 NEW SECTION. **Sec. 47.** (1) Except as otherwise provided in
3 subsection (2) of this section, a member of a member-managed limited
4 liability company or manager of a manager-managed limited liability
5 company that consents to a distribution made in violation of section
6 46 of this act is personally liable to the limited liability company
7 for the amount of the distribution that exceeds the amount that could
8 have been distributed without the violation of section 46 of this act
9 if it is established that in consenting to the distribution the
10 members or managers failed to comply with the duty of care.

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

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

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

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

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

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

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

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

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

9 (a) Is permissible; and

10 (b) Does not, as against the members or the limited liability
11 company, entitle the transferee to participate in the management of
12 the limited liability company's activities, to require access to
13 information concerning the limited liability company's transactions
14 except as provided in subsection (5) of this section or in section
15 29(11) of this act, or to obtain access to information to which a
16 member is otherwise entitled pursuant to section 29 of this act or
17 the limited liability company's other records.

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

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

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

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

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

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

1 (6) For the purposes of this chapter:

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

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

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

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

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

33 (a) By the judgment debtor;

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

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

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

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

7 **ARTICLE VIII. DISSOLUTION**

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

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

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

18 (3) The written consent of all members;

19 (4) Ninety days following an event of dissociation of the last
20 remaining member, unless those having the rights of transferees in
21 the limited liability company under section 28(1) of this act have,
22 by the ninetieth day, voted to admit one or more members, voting as
23 though they were members, and in the manner set forth in section
24 26(1) of this act;

25 (5) The entry of a decree of judicial dissolution under section
26 53 of this act; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 **ARTICLE IX. FOREIGN LIMITED LIABILITY COMPANIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) File the endorsed application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (2) The certificate of cancellation must set forth:
18 (a) The name of the foreign limited liability company;
19 (b) The date of filing of its certificate of registration;
20 (c) The reason for filing the certificate of cancellation;
21 (d) The future effective date, not later than the ninetieth day
22 after the date it is filed, of cancellation if it is not to be
23 effective upon filing of the certificate;
24 (e) The address to which service of process may be forwarded; and
25 (f) Any other information the person filing the certificate of
26 cancellation desires.

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

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

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

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

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

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

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

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

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

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

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

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

38 (e) Selling through independent contractors;

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

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

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

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

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

14 (k) Transacting business in interstate commerce;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **ARTICLE X. DERIVATIVE ACTIONS**

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

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

22 (2) A demand would be futile.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (a) As provided in the plan; and

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

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

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

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

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

31 (2) The articles of merger must include:

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

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

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

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

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

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

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

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

14 (4) The effective time of a merger is:

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

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

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

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

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

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

34 (a) The surviving organization continues;

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

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

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

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

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

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

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

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

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

22 (3) A surviving organization that is a foreign organization
23 consents to the jurisdiction of the courts of this state to enforce
24 any obligation owed by a constituent organization, if before the
25 merger the constituent organization was subject to suit in this state
26 on the obligation. A surviving organization that is a foreign
27 organization and not authorized to transact business in this state
28 appoints the secretary of state as its agent for service of process
29 for the purposes of enforcing an obligation under this subsection.
30 Service on the secretary of state under this subsection is made in
31 the same manner and with the same consequences as in section 7(3) of
32 this act.

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

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

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

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

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

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

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

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

15 (d) The organizational documents of the converted organization.

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

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

23 (a) As provided in the plan; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (2) When a conversion takes effect:

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

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

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

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

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

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

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

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

36 **ARTICLE XII. DISSENTERS' RIGHTS**

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

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

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

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

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

19 NEW SECTION. **Sec. 90.** (1) Except as provided in section 92 or
20 94(2) of this act, or in a written limited liability company
21 agreement, a member of a limited liability company is entitled to
22 dissent from, and obtain payment of, the fair value of the member's
23 interest in a limited liability company in the event of consummation
24 of a plan of merger to which the limited liability company is a party
25 as permitted by section 80 of this act.

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

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

37 (a) The proposed merger is abandoned or rescinded;

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

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

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

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

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

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

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

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

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

32 (c) Supply a form for demanding payment;

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

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

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

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

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

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

21 (2) The payment must be accompanied by:

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

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

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

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

30 (e) A copy of this article.

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 99.** (1) If a demand for payment under section
25 94 of this act remains unsettled, the limited liability company must
26 commence a proceeding within sixty days after receiving the payment
27 demand and petition the court to determine the fair value of the
28 dissenting member's interest in the limited liability company, and
29 accrued interest. If the limited liability company does not commence
30 the proceeding within the sixty-day period, it must pay each
31 dissenter whose demand remains unsettled the amount demanded.

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

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

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

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

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

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

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

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

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

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

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

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

10

ARTICLE XIII. MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 NEW SECTION. **Sec. 106.** This chapter does not affect an action
25 commended, proceeding brought, or right accrued before January 1,
26 2016.

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

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

31 (1) RCW 25.15.005 (Definitions) and 2010 c 196 s 1, 2008 c 198 s
32 4, 2002 c 296 s 3, 2000 c 169 s 1, 1995 c 337 s 13, & 1994 c 211 s
33 101;

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

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

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

8 (5) RCW 25.15.020 (Registered office—Registered agent) and 2009 c
9 202 s 5, 2002 c 74 s 16, 1996 c 231 s 6, & 1994 c 211 s 104;

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

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

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

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

18 (10) RCW 25.15.045 (Professional limited liability companies) and
19 2001 c 251 s 32, 1999 c 128 s 2, 1998 c 293 s 5, & 1997 c 390 s 4;

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

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

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

24 (14) RCW 25.15.070 (Certificate of formation) and 2010 c 196 s 2
25 & 1994 c 211 s 201;

26 (15) RCW 25.15.075 (Amendment to certificate of formation) and
27 1994 c 211 s 202;

28 (16) RCW 25.15.085 (Execution) and 2014 c 83 s 7, 2010 c 196 s 3,
29 2002 c 74 s 17, 2001 c 307 s 3, 1995 c 337 s 16, & 1994 c 211 s 204;

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

32 (18) RCW 25.15.095 (Filing) and 2010 c 196 s 4, 2002 c 74 s 18,
33 2001 c 307 s 4, & 1994 c 211 s 206;

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

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

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

38 (22) RCW 25.15.120 (Voting and classes of membership) and 1994 c
39 211 s 302;

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

3 (24) RCW 25.15.130 (Events of dissociation) and 2000 c 169 s 2,
4 1995 c 337 s 17, & 1994 c 211 s 304;

5 (25) RCW 25.15.135 (Records and information) and 1994 c 211 s
6 305;

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

9 (27) RCW 25.15.150 (Management) and 1996 c 231 s 8 & 1994 c 211 s
10 401;

11 (28) RCW 25.15.155 (Liability of managers and members) and 1994 c
12 211 s 402;

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

15 (30) RCW 25.15.165 (Voting and classes of managers) and 1994 c
16 211 s 404;

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

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

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

22 (34) RCW 25.15.185 (Loss of sole remaining manager) and 2000 c
23 169 s 3;

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

25 (36) RCW 25.15.195 (Liability for contribution) and 1994 c 211 s
26 502;

27 (37) RCW 25.15.200 (Allocation of profits and losses) and 1994 c
28 211 s 503;

29 (38) RCW 25.15.205 (Allocation of distributions) and 1994 c 211 s
30 504;

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

32 (40) RCW 25.15.220 (Distribution on event of dissociation) and
33 1995 c 337 s 18 & 1994 c 211 s 602;

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

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

36 (43) RCW 25.15.235 (Limitations on distribution) and 1994 c 211 s
37 605;

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

1 (45) RCW 25.15.250 (Assignment of limited liability company
2 interest) and 1995 c 337 s 19 & 1994 c 211 s 702;
3 (46) RCW 25.15.255 (Rights of judgment creditor) and 1994 c 211 s
4 703;
5 (47) RCW 25.15.260 (Right of assignee to become member) and 1994
6 c 211 s 704;
7 (48) RCW 25.15.270 (Dissolution) and 2010 c 196 s 5, 2009 c 437 s
8 1, 2006 c 48 s 4, 2000 c 169 s 4, 1997 c 21 s 1, 1996 c 231 s 9, &
9 1994 c 211 s 801;
10 (49) RCW 25.15.273 (After dissolution under RCW 25.15.270) and
11 2010 c 196 s 6;
12 (50) RCW 25.15.275 (Judicial dissolution) and 1994 c 211 s 802;
13 (51) RCW 25.15.280 (Administrative dissolution—Commencement of
14 proceeding) and 1995 c 337 s 20 & 1994 c 211 s 803;
15 (52) RCW 25.15.285 (Administrative dissolution—Notice—
16 Opportunity to correct deficiencies) and 1994 c 211 s 804;
17 (53) RCW 25.15.290 (Administrative dissolution—Reinstatement—
18 Application—When effective) and 2010 c 196 s 7, 2009 c 437 s 2, &
19 1994 c 211 s 805;
20 (54) RCW 25.15.293 (Dissolution under RCW 25.15.270—Revocation—
21 Approval required—When effective) and 2010 c 196 s 8 & 2009 c 437 s
22 3;
23 (55) RCW 25.15.295 (Winding up) and 2010 c 196 s 9 & 1994 c 211 s
24 806;
25 (56) RCW 25.15.298 (Disposing of known claims—Definition) and
26 2010 c 196 s 10;
27 (57) RCW 25.15.300 (Distribution of assets) and 1994 c 211 s 807;
28 (58) RCW 25.15.303 (Remedies available after dissolution) and
29 2010 c 196 s 11 & 2006 c 325 s 1;
30 (59) RCW 25.15.310 (Law governing) and 1995 c 337 s 21 & 1994 c
31 211 s 901;
32 (60) RCW 25.15.315 (Registration required—Application) and 1994 c
33 211 s 902;
34 (61) RCW 25.15.320 (Issuance of registration) and 1994 c 211 s
35 903;
36 (62) RCW 25.15.325 (Name—Registered office—Registered agent) and
37 2009 c 188 s 1411, 2002 c 74 s 19, 1998 c 102 s 10, 1996 c 231 s 10,
38 & 1994 c 211 s 904;

1 (63) RCW 25.15.330 (Amendments to application) and 1994 c 211 s
2 905;

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (77) RCW 25.15.395 (Merger—Plan—Effective date) and 1998 c 103 s
26 1319 & 1994 c 211 s 1101;

27 (78) RCW 25.15.400 (Merger—Plan—Approval) and 2009 c 188 s 1412,
28 1998 c 103 s 1320, & 1994 c 211 s 1102;

29 (79) RCW 25.15.405 (Articles of merger—Filing) and 2009 c 188 s
30 1413, 1998 c 103 s 1321, & 1994 c 211 s 1103;

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

33 (81) RCW 25.15.415 (Merger—Foreign and domestic) and 2009 c 188 s
34 1415, 1998 c 103 s 1323, & 1994 c 211 s 1105;

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

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

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

1 (85) RCW 25.15.422 (Effect of conversion) and 2014 c 83 s 5;
2 (86) RCW 25.15.423 (Restrictions on approval of conversions) and
3 2014 c 83 s 6;
4 (87) RCW 25.15.425 (Definitions) and 1994 c 211 s 1201;
5 (88) RCW 25.15.430 (Member—Dissent—Payment of fair value) and
6 2009 c 188 s 1416 & 1994 c 211 s 1202;
7 (89) RCW 25.15.435 (Dissenters' rights—Notice—Timing) and 1994 c
8 211 s 1203;
9 (90) RCW 25.15.440 (Member—Dissent—Voting restriction) and 1994
10 c 211 s 1204;
11 (91) RCW 25.15.445 (Members—Dissenters' notice—Requirements) and
12 1994 c 211 s 1205;
13 (92) RCW 25.15.450 (Member—Payment demand—Entitlement) and 1994
14 c 211 s 1206;
15 (93) RCW 25.15.455 (Member's interests—Transfer restriction) and
16 1994 c 211 s 1207;
17 (94) RCW 25.15.460 (Payment of fair value—Requirements for
18 compliance) and 1994 c 211 s 1208;
19 (95) RCW 25.15.465 (Merger—Not effective within sixty days—
20 Transfer restrictions) and 1994 c 211 s 1209;
21 (96) RCW 25.15.470 (Dissenter's estimate of fair value—Notice)
22 and 1994 c 211 s 1210;
23 (97) RCW 25.15.475 (Unsettled demand for payment—Proceeding—
24 Parties—Appraisers) and 1994 c 211 s 1211;
25 (98) RCW 25.15.480 (Unsettled demand for payment—Costs—Fees and
26 expenses of counsel) and 1994 c 211 s 1212;
27 (99) RCW 25.15.800 (Construction and application of chapter and
28 limited liability company agreement) and 1994 c 211 s 1301;
29 (100) RCW 25.15.805 (Establishment of filing fees and
30 miscellaneous charges) and 2010 c 196 s 13 & 1994 c 211 s 1302;
31 (101) RCW 25.15.810 (Authority to adopt rules) and 1994 c 211 s
32 1303;
33 (102) RCW 25.15.900 (Effective date—1994 c 211) and 1994 c 211 s
34 1312;
35 (103) RCW 25.15.901 (Short title) and 1994 c 211 s 1313; and
36 (104) RCW 25.15.902 (Severability—1994 c 211) and 1994 c 211 s
37 1314.

1 obligations, or securities of any other limited partnership, in whole
2 or in part.

3 (3) The plan of merger may set forth:

4 (a) Amendments to the articles of incorporation of the surviving
5 corporation;

6 (b) Amendments to the certificate of limited partnership of the
7 surviving limited partnership; and

8 (c) Other provisions relating to the merger.

9 **Sec. 111.** RCW 23B.11.090 and 2009 c 188 s 1402 are each amended
10 to read as follows:

11 After a plan of merger for one or more corporations and one or
12 more limited partnerships, one or more partnerships, or one or more
13 limited liability companies is approved by the shareholders of each
14 corporation (or adopted by the board of directors of any corporation
15 for which shareholder approval is not required), is approved by the
16 partners for each limited partnership as required by RCW 25.10.781,
17 is approved by the partners of each partnership as required by RCW
18 25.05.380, or is approved by the members of each limited liability
19 company as required by ((~~RCW 25.15.400~~)) section 81 of this act, the
20 surviving entity must:

21 (1) If the surviving entity is a corporation, file with the
22 secretary of state articles of merger setting forth:

23 (a) The plan of merger;

24 (b) A statement that the merger was duly approved by the
25 shareholders of each corporation pursuant to RCW 23B.11.030 (or a
26 statement that shareholder approval was not required for a merging
27 corporation); and

28 (c) A statement that the merger was duly approved by the partners
29 of each limited partnership pursuant to RCW 25.10.781.

30 (2) If the surviving entity is a limited partnership, comply with
31 the requirements in RCW 25.10.786.

32 (3) If the surviving entity is a partnership, comply with the
33 requirements in RCW 25.05.380.

34 (4) If the surviving entity is a limited liability company,
35 comply with the requirements in ((~~RCW 25.15.405~~)) section 82 of this
36 act.

37 **Sec. 112.** RCW 23B.11.110 and 2009 c 188 s 1403 are each amended
38 to read as follows:

1 (1) One or more foreign limited partnerships, foreign
2 corporations, foreign partnerships, and foreign limited liability
3 companies may merge with one or more domestic partnerships, domestic
4 limited liability companies, domestic limited partnerships, or
5 domestic corporations, provided that:

6 (a) The merger is permitted by the law of the jurisdiction under
7 which each foreign limited partnership was organized and the law of
8 the state or country under which each foreign corporation was
9 incorporated and each foreign limited partnership or foreign
10 corporation complies with that law in effecting the merger;

11 (b) If the surviving entity is a foreign or domestic corporation,
12 that corporation complies with RCW 23B.11.090;

13 (c) If the surviving entity is a foreign or domestic limited
14 partnership, that limited partnership complies with RCW 25.10.786;

15 (d) Each domestic corporation complies with RCW 23B.11.080;

16 (e) Each domestic limited partnership complies with RCW
17 25.10.781;

18 (f) Each domestic limited liability company complies with ((RCW
19 ~~25.15.400~~) section 81 of this act; and

20 (g) Each domestic partnership complies with RCW 25.05.375.

21 (2) Upon the merger taking effect, a surviving foreign
22 corporation, foreign limited partnership, foreign limited liability
23 corporation, or foreign partnership is deemed:

24 (a) To appoint the secretary of state as its agent for service of
25 process in a proceeding to enforce any obligation or the rights of
26 dissenting shareholders or partners of each domestic corporation,
27 domestic limited partnership, domestic limited liability company, or
28 domestic partnership party to the merger; and

29 (b) To agree that it will promptly pay to the dissenting
30 shareholders or partners of each domestic corporation, domestic
31 limited partnership, domestic limited liability company, or domestic
32 partnership party to the merger the amount, if any, to which they are
33 entitled under chapter 23B.13 RCW, in the case of dissenting
34 shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the
35 case of dissenting partners.

36 **Sec. 113.** RCW 25.05.375 and 2009 c 188 s 1406 are each amended
37 to read as follows:

1 (1) Unless otherwise provided in the partnership agreement,
2 approval of a plan of merger by a domestic partnership party to the
3 merger shall occur when the plan is approved by all of the partners.

4 (2) If a domestic limited partnership is a party to the merger,
5 the plan of merger shall be adopted and approved as provided in RCW
6 25.10.781.

7 (3) If a domestic limited liability company is a party to the
8 merger, the plan of merger shall be adopted and approved as provided
9 in ((~~RCW 25.15.400~~)) section 81 of this act.

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

13 **Sec. 114.** RCW 25.05.380 and 1998 c 103 s 907 are each amended to
14 read as follows:

15 (1) Except as otherwise provided in subsection (2) of this
16 section, after a plan of merger is approved or adopted, the surviving
17 partnership, limited liability company, limited partnership, or
18 corporation shall deliver to the secretary of state for filing
19 articles of merger setting forth:

20 (a) The plan of merger;

21 (b) If the approval of any partners, members, or shareholders of
22 one or more partnerships, limited liability companies, limited
23 partnerships, or corporations party to the merger was not required, a
24 statement to that effect; or

25 (c) If the approval of any partners, members, or shareholders of
26 one or more of the partnerships, limited liability companies, limited
27 partnerships, or corporations party to the merger was required, a
28 statement that the merger was duly approved by such members,
29 partners, and shareholders pursuant to ((~~RCW 25.15.400~~)) section 81
30 of this act, RCW 25.05.375, or chapter 23B.11 RCW.

31 (2) If the merger involves only two or more partnerships and one
32 or more of such partnerships has filed a statement of partnership
33 authority with the secretary of state, the surviving partnership
34 shall file articles of merger as provided in subsection (1) of this
35 section.

36 **Sec. 115.** RCW 25.05.385 and 2009 c 188 s 1407 are each amended
37 to read as follows:

38 (1) When a merger takes effect:

1 (a) Every other partnership, limited liability company, limited
2 partnership, or corporation that is party to the merger merges into
3 the surviving partnership, limited liability company, limited
4 partnership, or corporation and the separate existence of every
5 partnership, limited liability company, limited partnership, or
6 corporation except the surviving partnership, limited liability
7 company, limited partnership, or corporation ceases;

8 (b) The title to all real estate and other property owned by each
9 partnership, limited liability company, limited partnership, and
10 corporation party to the merger is vested in the surviving
11 partnership, limited liability company, limited partnership, or
12 corporation without reversion or impairment;

13 (c) The surviving partnership, limited liability company, limited
14 partnership, or corporation has all liabilities of each partnership,
15 limited liability company, limited partnership, and corporation that
16 is party to the merger;

17 (d) A proceeding pending against any partnership, limited
18 liability company, limited partnership, or corporation that is party
19 to the merger may be continued as if the merger did not occur or the
20 surviving partnership, limited liability company, limited
21 partnership, or corporation may be substituted in the proceeding for
22 the partnership, limited liability company, limited partnership, or
23 corporation whose existence ceased;

24 (e) The certificate of formation of the surviving limited
25 liability company is amended to the extent provided in the plan of
26 merger;

27 (f) The partnership agreement of the surviving limited
28 partnership is amended to the extent provided in the plan of merger;

29 (g) The articles of incorporation of the surviving corporation
30 are amended to the extent provided in the plan of merger; and

31 (h) The former members of every limited liability company party
32 to the merger, the former holders of the partnership interests of
33 every domestic partnership or limited partnership that is party to
34 the merger, and the former holders of the shares of every domestic
35 corporation that is party to the merger are entitled only to the
36 rights provided in the plan of merger, or to their rights under this
37 article, to their rights under RCW 25.10.831 through 25.10.886, or to
38 their rights under chapter 23B.13 RCW.

39 (2) Unless otherwise agreed, a merger of a domestic partnership,
40 including a domestic partnership which is not the surviving entity in

1 the merger, shall not require the domestic partnership to wind up its
2 affairs under article 8 of this chapter.

3 (3) Unless otherwise agreed, a merger of a domestic limited
4 partnership, including a domestic limited partnership which is not
5 the surviving entity in the merger, shall not require the domestic
6 limited partnership to wind up its affairs under RCW 25.10.581 or pay
7 its liabilities and distribute its assets under RCW 25.10.621.

8 (4) Unless otherwise agreed, a merger of a domestic limited
9 liability company, including a domestic limited liability company
10 which is not the surviving entity in the merger, shall not require
11 the domestic limited liability company to wind up its affairs under
12 (~~RCW 25.15.295~~) section 58 of this act or pay its liabilities and
13 distribute its assets under (~~RCW 25.15.300~~) section 60 of this act.

14 **Sec. 116.** RCW 25.05.390 and 2009 c 188 s 1408 are each amended
15 to read as follows:

16 (1) One or more foreign partnerships, foreign limited liability
17 companies, foreign limited partnerships, and foreign corporations may
18 merge with one or more domestic partnerships, domestic limited
19 liability companies, domestic limited partnerships, or domestic
20 corporations if:

21 (a) The merger is permitted by the law of the jurisdiction under
22 which each foreign partnership was organized, each foreign limited
23 liability company was formed, each foreign limited partnership was
24 organized, and each foreign corporation was incorporated, and each
25 foreign partnership, foreign limited liability company, foreign
26 limited partnership, and foreign corporation complies with that law
27 in effecting the merger;

28 (b) The surviving entity complies with RCW 25.05.380;

29 (c) Each domestic limited liability company complies with (~~RCW~~
30 ~~25.15.400~~) section 81 of this act;

31 (d) Each domestic limited partnership complies with RCW
32 25.10.781; and

33 (e) Each domestic corporation complies with RCW 23B.11.080.

34 (2) Upon the merger taking effect, a surviving foreign limited
35 liability company, limited partnership, or corporation is deemed to
36 appoint the secretary of state as its agent for service of process in
37 a proceeding to enforce any obligation or the rights of dissenting
38 members, partners, or shareholders of each domestic limited liability

1 company, domestic limited partnership, or domestic corporation party
2 to the merger.

3 **Sec. 117.** RCW 25.05.425 and 2009 c 188 s 1409 are each amended
4 to read as follows:

5 (1) Except as provided in RCW 25.05.435 or 25.05.445(2), a
6 partner in a domestic partnership is entitled to dissent from, and
7 obtain payment of the fair value of the partner's interest in a
8 partnership in the event of consummation of a plan of merger to which
9 the partnership is a party as permitted by RCW 25.05.370 or
10 25.05.390.

11 (2) A partner entitled to dissent and obtain payment for the
12 partner's interest in a partnership under this article may not
13 challenge the merger creating the partner's entitlement unless the
14 merger fails to comply with the procedural requirements imposed by
15 this title, Title 23B RCW, RCW 25.10.776 through 25.10.796, or
16 (~~25.15.430~~) section 90 of this act, as applicable, or the
17 partnership agreement, or is fraudulent with respect to the partner
18 or the partnership.

19 (3) The right of a dissenting partner in a partnership to obtain
20 payment of the fair value of the partner's interest in the
21 partnership shall terminate upon the occurrence of any one of the
22 following events:

23 (a) The proposed merger is abandoned or rescinded;

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

26 (c) The partner's demand for payment is withdrawn with the
27 written consent of the partnership.

28 **Sec. 118.** RCW 25.10.781 and 2009 c 188 s 1107 are each amended
29 to read as follows:

30 (1) Subject to RCW 25.10.796, a plan of merger must be consented
31 to by all the partners of a constituent limited partnership.

32 (2) Subject to RCW 25.10.796 and any contractual rights, after a
33 merger is approved, and at any time before a filing is made under RCW
34 25.10.786, a constituent limited partnership may amend the plan or
35 abandon the planned merger:

36 (a) As provided in the plan; and

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

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

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

6 (5) If a domestic limited liability company is a party to the
7 merger, the plan of merger shall be approved as provided in ((RCW
8 ~~25.15.400~~) section 81 of this act).

9 **Sec. 119.** RCW 30A.08.025 and 2014 c 37 s 152 are each amended to
10 read as follows:

11 (1) Notwithstanding any other provision of this title, if the
12 conditions of this section are met, a bank or a holding company of a
13 bank may be organized as, or convert to, a limited liability company
14 under the Washington limited liability company act, chapter 25.15
15 RCW. As used in this section, "bank" includes an applicant to become
16 a bank or holding company of a bank and "holding company" means a
17 holding company of a bank.

18 (2)(a) Before a bank or holding company may organize as, or
19 convert to, a limited liability company, the bank or holding company
20 must obtain approval of the director.

21 (b)(i) To obtain approval under this section from the director,
22 the bank or holding company must file a request for approval with the
23 director at least ninety days before the day on which the bank or
24 holding company becomes a limited liability company.

25 (ii) If the director does not disapprove the request for approval
26 within ninety days from the day on which the director receives the
27 request, the request is considered approved.

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

30 (A) Approve the request;

31 (B) Approve the request subject to terms and conditions the
32 director considers necessary; or

33 (C) Disapprove the request.

34 (3) To approve a request for approval, the director must find
35 that the bank or holding company:

36 (a) Will operate in a safe and sound manner; and

37 (b) Has the following characteristics:

1 (i) The certificate of formation and limited liability company
2 require or set forth that the duration of the limited liability
3 company is perpetual;

4 (ii) The bank or holding company is not otherwise subject to
5 automatic termination, dissolution, or suspension upon the happening
6 of some event other than the passage of time;

7 (iii) The exclusive authority to manage the bank, trust company,
8 or holding company is vested in a board of managers or directors
9 that:

10 (A) Is elected or appointed by the owners;

11 (B) Is not required to have owners of the bank, trust company, or
12 holding company included on the board;

13 (C) Possesses adequate independence and authority to supervise
14 the operation of the bank, trust company, or holding company; and

15 (D) Operates with substantially the same rights, powers,
16 privileges, duties, and responsibilities as the board of directors of
17 a corporation;

18 (iv) Neither state law, nor the bank's or holding company's
19 operating agreement, bylaws, or other organizational documents
20 provide that an owner of the bank or holding company is liable for
21 the debts, liabilities, and obligations of the bank or holding
22 company in excess of the amount of the owner's investment;

23 (v) Neither state law, nor the bank's or holding company's
24 operating agreement, bylaws, or other organizational documents
25 require the consent of any other owner of the bank or holding company
26 in order for any owner to transfer an ownership interest in the bank
27 or holding company, including voting rights;

28 (vi) The bank or holding company is able to obtain new investment
29 funding if needed to maintain adequate capital;

30 (vii) The bank or holding company is able to comply with all
31 legal and regulatory requirements for a federally insured depository
32 bank or holding company of a federally insured depository bank, under
33 applicable federal and state law; and

34 (viii) A bank or holding company that is organized as a limited
35 liability company shall maintain the characteristics listed in this
36 subsection (3)(b) during such time as it is authorized to conduct
37 business under this title as a limited liability company.

38 (4)(a) All rights, privileges, powers, duties, and obligations of
39 a bank or holding company, that is organized as a limited liability

1 company, and its members and managers are governed by the Washington
2 limited liability company act, chapter 25.15 RCW, except:

3 (i) To the extent chapter 25.15 RCW is in conflict with federal
4 law or regulation respecting the organization of a federally insured
5 depository institution as a limited liability company, such federal
6 law or regulation supersedes the conflicting provisions contained in
7 chapter 25.15 RCW in relation to a bank or holding company organized
8 as a limited liability company pursuant to this section; and

9 (ii) Without limitation, the following are inapplicable to a bank
10 or holding company organized as a limited liability company:

11 (A) Permitting automatic dissolution or suspension of a limited
12 liability company as set forth in (~~RCW 25.15.270(1)~~) section 51(1)
13 of this act, pursuant to a statement of limited duration which,
14 though impermissible under subsection (3)(b)(i) of this section, has
15 been provided for in a certificate of formation;

16 (B) Permitting automatic dissolution or suspension of a limited
17 liability company, pursuant to the limited liability company
18 agreement, as set forth in (~~RCW 25.15.270(2)~~) section 51(2) of this
19 act;

20 (C) Permitting dissolution of the limited liability company
21 agreement based upon agreement of all the members, as set forth in
22 (~~RCW 25.15.270(3)~~) section 51(3) of this act;

23 (D) Permitting dissociation of all the members of the limited
24 liability company, as set forth in (~~RCW 25.15.270(4)~~) section 51(4)
25 of this act; and

26 (E) Permitting automatic dissolution or suspension of a limited
27 liability company, pursuant to operation of law, as otherwise set
28 forth in chapter 25.15 RCW.

29 (b) Notwithstanding (a) of this subsection:

30 (i) For purposes of transferring a member's interests in the bank
31 or holding company, a member's interest in the bank or holding
32 company is treated like a share of stock in a corporation; and

33 (ii) If a member's interest in the bank or holding company is
34 transferred voluntarily or involuntarily to another person, the
35 person who receives the member's interest obtains the member's entire
36 rights associated with the member's interest in the bank or holding
37 company including all economic rights and all voting rights.

38 (c) A bank or holding company may not by agreement or otherwise
39 change the application of (a) of this subsection to the bank or
40 holding company.

1 (5)(a) Notwithstanding any provision of chapter 25.15 RCW or this
2 section to the contrary, all voting members remain liable and
3 responsible as fiduciaries of a bank or holding company organized as
4 a limited liability company, regardless of resignation, dissociation,
5 or disqualification, to the same extent that directors of a bank or
6 holding company organized as a corporation would be or remain liable
7 or responsible to the department and applicable federal banking
8 regulators; and

9 (b) If death, incapacity, or disqualification of all members of
10 the limited liability company would result in a complete dissociation
11 of all members, then the bank, holding company, or both, as
12 applicable is deemed nonetheless to remain in existence for purposes
13 of the department or an applicable federal regulator, or both, having
14 standing under RCW 30A.44.270 or applicable federal law, or both, to
15 exercise the powers and authorities of a receiver for the bank or
16 holding company.

17 (6) For the purposes of this section, and unless the context
18 clearly requires otherwise, for the purpose of applying chapter 25.15
19 RCW to a bank or holding company organized as a limited liability
20 company:

21 (a) "Articles of incorporation" includes a limited liability
22 company's certificate of formation, as that term is used in ((RCW
23 ~~25.15.005(1)~~ and ~~25.15.070~~)) sections 1 and 18 of this act, and a
24 limited liability company agreement as that term is used in ((RCW
25 ~~25.15.005(5)~~)) section 1 of this act;

26 (b) "Board of directors" includes one or more persons who have,
27 with respect to a bank or holding company described in subsection (1)
28 of this section, authority that is substantially similar to that of a
29 board of directors of a corporation;

30 (c) "Bylaws" includes a limited liability company agreement as
31 that term is defined in ((RCW ~~25.15.005(5)~~)) section 1 of this act;

32 (d) "Corporation" includes a limited liability company organized
33 under chapter 25.15 RCW;

34 (e) "Director" includes any of the following of a limited
35 liability company:

36 (i) A manager;

37 (ii) A director; or

38 (iii) Other person who has, with respect to the bank or holding
39 company described in subsection (1) of this section, authority
40 substantially similar to that of a director of a corporation;

1 (f) "Dividend" includes distributions made by a limited liability
2 company under (~~RCW 25.15.215~~) section 42 of this act;

3 (g) "Incorporator" includes the person or persons executing the
4 certificate of formation as provided in (~~RCW 25.15.085(1)~~) section
5 21 of this act;

6 (h) "Officer" includes any of the following of a bank or holding
7 company:

8 (i) An officer; or

9 (ii) Other person who has, with respect to the bank or holding
10 company, authority substantially similar to that of an officer of a
11 corporation;

12 (i) "Security," "shares," or "stock" of a corporation includes a
13 membership interest in a limited liability company and any
14 certificate or other evidence of an ownership interest in a limited
15 liability company; and

16 (j) "Stockholder" or "shareholder" includes an owner of an equity
17 interest in a bank or holding company, including a member as defined
18 in (~~RCW 25.15.005(8) and 25.15.115~~) sections 1 and 25 of this act.

19 **Sec. 120.** RCW 32.08.025 and 2006 c 48 s 3 are each amended to
20 read as follows:

21 (1) Notwithstanding any other provision of this title, if the
22 conditions of this section are met, a savings bank, or a holding
23 company of a savings bank, may be organized as, or convert to, a
24 limited liability company under the Washington limited liability
25 company act, chapter 25.15 RCW. As used in this section, "savings
26 bank" includes an applicant to become a savings bank or holding
27 company of a savings bank, and "holding company" means a holding
28 company of a savings bank.

29 (2)(a) Before a savings bank or holding company may organize as,
30 or convert to, a limited liability company, the savings bank or
31 holding company must obtain approval of the director.

32 (b)(i) To obtain approval under this section from the director,
33 the savings bank or holding company must file a request for approval
34 with the director at least ninety days before the day on which the
35 savings bank or holding company becomes a limited liability company.

36 (ii) If the director does not disapprove the request for approval
37 within ninety days from the day on which the director receives the
38 request, the request is considered approved.

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

3 (A) Approve the request;

4 (B) Approve the request subject to terms and conditions the
5 director considers necessary; or

6 (C) Disapprove the request.

7 (3) To approve a request for approval, the director must find
8 that the savings bank or holding company:

9 (a) Will operate in a safe and sound manner; and

10 (b) Has the following characteristics:

11 (i) The certificate of formation and limited liability company
12 require or set forth that the duration of the limited liability
13 company is perpetual;

14 (ii) The savings bank or holding company is not otherwise subject
15 to automatic termination, dissolution, or suspension upon the
16 happening of some event other than the passage of time;

17 (iii) The exclusive authority to manage the savings bank or
18 holding company is vested in a board of managers or directors that:

19 (A) Is elected or appointed by the owners;

20 (B) Is not required to have owners of the savings bank or holding
21 company included on the board;

22 (C) Possesses adequate independence and authority to supervise
23 the operation of the savings bank or holding company; and

24 (D) Operates with substantially the same rights, powers,
25 privileges, duties, and responsibilities as the board of directors of
26 a corporation;

27 (iv) Neither state law, nor the savings bank's or holding
28 company's operating agreement, bylaws, or other organizational
29 documents provide that an owner of the savings bank or holding
30 company is liable for the debts, liabilities, and obligations of the
31 savings bank or holding company in excess of the amount of the
32 owner's investment;

33 (v) Neither state law, nor the savings bank's or holding
34 company's operating agreement, bylaws, or other organizational
35 documents require the consent of any other owner of the savings bank
36 or holding company in order for any owner to transfer an ownership
37 interest in the savings bank or holding company, including voting
38 rights;

39 (vi) The savings bank or holding company is able to obtain new
40 investment funding if needed to maintain adequate capital;

1 (vii) The savings bank or holding company is able to comply with
2 all legal and regulatory requirements for a federally insured
3 depository bank, or holding company of a federally insured depository
4 bank, under applicable federal and state law; and

5 (viii) A savings bank or holding company that is organized as a
6 limited liability company shall maintain the characteristics listed
7 in this subsection (3)(b) during such time as it is authorized to
8 conduct business under this title as a limited liability company.

9 (4)(a) All rights, privileges, powers, duties, and obligations of
10 a savings bank or holding company, that is organized as a limited
11 liability company, and its members and managers are governed by the
12 Washington limited liability company act, chapter 25.15 RCW, except:

13 (i) To the extent chapter 25.15 RCW is in conflict with federal
14 law or regulation respecting the organization of a federally insured
15 depository institution as a limited liability company, such federal
16 law or regulation supersedes the conflicting provisions contained in
17 chapter 25.15 RCW in relation to a savings bank or holding company
18 organized as a limited liability company pursuant to this section;
19 and

20 (ii) Without limitation, the following are inapplicable to a
21 savings bank or holding company organized as a limited liability
22 company:

23 (A) Permitting automatic dissolution or suspension of a limited
24 liability company as set forth in (~~RCW 25.15.270(1)~~) section 51(1)
25 of this act, pursuant to a statement of limited duration which,
26 though impermissible under subsection (3)(b)(i) of this section, has
27 been provided for in a certificate of formation;

28 (B) Permitting automatic dissolution or suspension of a limited
29 liability company, pursuant to the limited liability company
30 agreement, as set forth in (~~RCW 25.15.270(2)~~) section 51(2) of this
31 act;

32 (C) Permitting dissolution of the limited liability company
33 agreement based upon agreement of all the members, as set forth in
34 (~~RCW 25.15.270(3)~~) section 51(3) of this act;

35 (D) Permitting dissociation of all the members of the limited
36 liability company, as set forth in (~~RCW 25.15.270(4)~~) section 51(4)
37 of this act; and

38 (E) Permitting automatic dissolution or suspension of a limited
39 liability company, pursuant to operation of law, as otherwise set
40 forth in chapter 25.15 RCW.

1 (b) Notwithstanding (a) of this subsection:

2 (i) For purposes of transferring a member's interests in the
3 savings bank or holding company, a member's interest in the savings
4 bank or holding company is treated like a share of stock in a
5 corporation; and

6 (ii) If a member's interest in the savings bank or holding
7 company is transferred voluntarily or involuntarily to another
8 person, the person who receives the member's interest obtains the
9 member's entire rights associated with the member's interest in the
10 savings bank or holding company including((~~7~~)) all economic rights
11 and all voting rights.

12 (c) A savings bank or holding company may not by agreement or
13 otherwise change the application of (a) of this subsection to the
14 savings bank or holding company.

15 (5)(a) Notwithstanding any provision of chapter 25.15 RCW or this
16 section to the contrary, all voting members remain liable and
17 responsible as fiduciaries of a savings bank or holding company
18 organized as a limited liability company, regardless of resignation,
19 dissociation, or disqualification, to the same extent that directors
20 of a savings bank or holding company organized as a corporation would
21 be or remain liable or responsible to the department and applicable
22 federal banking regulators; and

23 (b) If death, incapacity, or disqualification of all members of
24 the limited liability company would result in a complete dissociation
25 of all members, then the savings bank or holding company, or both, as
26 applicable is deemed nonetheless to remain in existence for purposes
27 of the department or an applicable federal regulator, or both, having
28 standing under RCW 32.24.090 or applicable federal law, or both, to
29 exercise the powers and authorities of a receiver for the savings
30 bank or holding company.

31 (6) For the purposes of this section, and unless the context
32 clearly requires otherwise, for the purpose of applying chapter 25.15
33 RCW to a savings bank or holding company organized as a limited
34 liability company:

35 (a) "Articles of incorporation" includes a limited liability
36 company's certificate of formation, as that term is used in ((RCW
37 ~~25.15.005(1)~~ and ~~25.15.070~~)) sections 1 and 18 of this act, and a
38 limited liability company agreement as that term is used in ((RCW
39 ~~25.15.005(5)~~)) section 1 of this act;

1 (b) "Board of directors" includes one or more persons who have,
2 with respect to a savings bank or holding company described in
3 subsection (1) of this section, authority that is substantially
4 similar to that of a board of directors of a corporation;

5 (c) "Bylaws" includes a limited liability company agreement as
6 that term is defined in (~~RCW 25.15.005(5)~~) section 1 of this act;

7 (d) "Corporation" includes a limited liability company organized
8 under chapter 25.15 RCW;

9 (e) "Director" includes any of the following of a limited
10 liability company:

11 (i) A manager;

12 (ii) A director; or

13 (iii) Other person who has, with respect to the savings bank or
14 holding company described in subsection (1) of this section,
15 authority substantially similar to that of a director of a
16 corporation;

17 (f) "Dividend" includes distributions made by a limited liability
18 company under (~~RCW 25.15.215~~) section 42 of this act;

19 (g) "Incorporator" includes the person or persons executing the
20 certificate of formation as provided in (~~RCW 25.15.085(1)~~) section
21 21 of this act;

22 (h) "Officer" includes any of the following of a savings bank or
23 holding company:

24 (i) An officer; or

25 (ii) Other person who has, with respect to the savings bank or
26 holding company, authority substantially similar to that of an
27 officer of a corporation;

28 (i) "Security," "shares," or "stock" of a corporation includes a
29 membership interest in a limited liability company and any
30 certificate or other evidence of an ownership interest in a limited
31 liability company; and

32 (j) "Stockholder" or "shareholder" includes an owner of an equity
33 interest in a savings bank or holding company, including a member as
34 defined in (~~RCW 25.15.005(8) and 25.15.115~~) sections 1 and 25 of
35 this act.

36 **Sec. 121.** RCW 82.32.145 and 2012 c 39 s 8 are each amended to
37 read as follows:

38 (1) Whenever the department has issued a warrant under RCW
39 82.32.210 for the collection of unpaid trust fund taxes from a

1 limited liability business entity and that business entity has been
2 terminated, dissolved, or abandoned, or is insolvent, the department
3 may pursue collection of the entity's unpaid trust fund taxes,
4 including penalties and interest on those taxes, against any or all
5 of the responsible individuals. For purposes of this subsection,
6 "insolvent" means the condition that results when the sum of the
7 entity's debts exceeds the fair market value of its assets. The
8 department may presume that an entity is insolvent if the entity
9 refuses to disclose to the department the nature of its assets and
10 liabilities.

11 (2) Personal liability under this section may be imposed for
12 state and local trust fund taxes.

13 (3)(a) For a responsible individual who is the current or a
14 former chief executive or chief financial officer, liability under
15 this section applies regardless of fault or whether the individual
16 was or should have been aware of the unpaid trust fund tax liability
17 of the limited liability business entity.

18 (b) For any other responsible individual, liability under this
19 section applies only if he or she willfully fails to pay or to cause
20 to be paid to the department the trust fund taxes due from the
21 limited liability business entity.

22 (4)(a) Except as provided in this subsection (4)(a), a
23 responsible individual who is the current or a former chief executive
24 or chief financial officer is liable under this section only for
25 trust fund tax liability accrued during the period that he or she was
26 the chief executive or chief financial officer. However, if the
27 responsible individual had the responsibility or duty to remit
28 payment of the limited liability business entity's trust fund taxes
29 to the department during any period of time that the person was not
30 the chief executive or chief financial officer, that individual is
31 also liable for trust fund tax liability that became due during the
32 period that he or she had the duty to remit payment of the limited
33 liability business entity's taxes to the department but was not the
34 chief executive or chief financial officer.

35 (b) All other responsible individuals are liable under this
36 section only for trust fund tax liability that became due during the
37 period he or she had the responsibility or duty to remit payment of
38 the limited liability business entity's taxes to the department.

39 (5) Persons described in subsection (3)(b) of this section are
40 exempt from liability under this section in situations where

1 nonpayment of the limited liability business entity's trust fund
2 taxes is due to reasons beyond their control as determined by the
3 department by rule.

4 (6) Any person having been issued a notice of assessment under
5 this section is entitled to the appeal procedures under RCW
6 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

7 (7) This section does not relieve the limited liability business
8 entity of its trust fund tax liability or otherwise impair other tax
9 collection remedies afforded by law.

10 (8) Collection authority and procedures prescribed in this
11 chapter apply to collections under this section.

12 (9) The definitions in this subsection apply throughout this
13 section unless the context clearly requires otherwise.

14 (a) "Chief executive" means: The president of a corporation; or
15 for other entities or organizations other than corporations or if the
16 corporation does not have a president as one of its officers, the
17 highest ranking executive manager or administrator in charge of the
18 management of the company or organization.

19 (b) "Chief financial officer" means: The treasurer of a
20 corporation; or for entities or organizations other than corporations
21 or if a corporation does not have a treasurer as one of its officers,
22 the highest senior manager who is responsible for overseeing the
23 financial activities of the entire company or organization.

24 (c) "Limited liability business entity" means a type of business
25 entity that generally shields its owners from personal liability for
26 the debts, obligations, and liabilities of the entity, or a business
27 entity that is managed or owned in whole or in part by an entity that
28 generally shields its owners from personal liability for the debts,
29 obligations, and liabilities of the entity. Limited liability
30 business entities include corporations, limited liability companies,
31 limited liability partnerships, trusts, general partnerships and
32 joint ventures in which one or more of the partners or parties are
33 also limited liability business entities, and limited partnerships in
34 which one or more of the general partners are also limited liability
35 business entities.

36 (d) "Manager" has the same meaning as in ((~~RCW 25.15.005~~))
37 section 1 of this act.

38 (e) "Member" has the same meaning as in ((~~RCW 25.15.005~~)) section
39 1 of this act, except that the term only includes members of member-
40 managed limited liability companies.

1 (f) "Officer" means any officer or assistant officer of a
2 corporation, including the president, vice president, secretary, and
3 treasurer.

4 (g)(i) "Responsible individual" includes any current or former
5 officer, manager, member, partner, or trustee of a limited liability
6 business entity with an unpaid tax warrant issued by the department.

7 (ii) "Responsible individual" also includes any current or former
8 employee or other individual, but only if the individual had the
9 responsibility or duty to remit payment of the limited liability
10 business entity's unpaid trust fund tax liability reflected in a tax
11 warrant issued by the department.

12 (iii) Whenever any taxpayer has one or more limited liability
13 business entities as a member, manager, or partner, "responsible
14 individual" also includes any current and former officers, members,
15 or managers of the limited liability business entity or entities or
16 of any other limited liability business entity involved directly in
17 the management of the taxpayer. For purposes of this subsection
18 (9)(g)(iii), "taxpayer" means a limited liability business entity
19 with an unpaid tax warrant issued against it by the department.

20 (h) "Trust fund taxes" means taxes collected from purchasers and
21 held in trust under RCW 82.08.050, including taxes imposed under RCW
22 82.08.020 and 82.08.150.

23 (i) "Willfully fails to pay or to cause to be paid" means that
24 the failure was the result of an intentional, conscious, and
25 voluntary course of action.

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