LIMITED LIABILITY COMPANIES

490A.100 Short title.

This chapter is entitled and may be cited as the *"Iowa Limited Liability Company Act."*

92 Acts, ch 1151, § 8

490A.101 Reservation of power to amend or repeal.

The general assembly has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

92 Acts, ch 1151, § 9

490A.102 Definitions.

In this chapter, unless the context otherwise requires:

1. *"Articles of organization"* means documents filed under section 490A.301 for the purpose of forming a limited liability company and includes amended and restated articles of organization, and articles of merger.

2. *"Bankruptcy"* means, with respect to any person, being the subject of an order for relief under Title 11 of the United States Code.

3. *"Capital contribution"* means any cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of a member.

4. *"Constituent entity"* means each limited liability company, limited partnership, corporation, or domestic cooperative which is party to a plan of merger pursuant to subchapter XII.

5. *"Corporation"* means a domestic corporation formed under the law of this state or subject to the law of this state, or a foreign corporation as defined in this chapter.

6. *"Court"* includes every court having jurisdiction of the case.

7. *"Distribution"* means a direct or indirect transfer of money or other property, or incurrence of indebtedness by a limited liability company to or for the benefit of its members in respect of their interests.

8. *"Domestic cooperative"* means a cooperative organized under chapter 497, 498, 499, 501, or 501A.

9. *"Entity"* includes corporation and foreign corporation; nonprofit corporation; profit and nonprofit unincorporated association; business trust, estate, partnership, limited liability company, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

10. *"Foreign corporation"* means a corporation for profit incorporated under a law other than the law of this state.

11. *"Foreign limited liability company"* means a limited liability company organized under a law other than the law of this state.

12. *"Foreign limited partnership"* means a limited partnership organized under a law other than the law of

this state.

13. *"Individual"* includes the estate of an incompetent, a ward, or a deceased individual.

14. *"Limited liability company"* or *"domestic limited liability company"* means an unincorporated association having one or more members, and organized under or subject to this chapter.

15. *"Limited partnership"* means a limited partnership organized under the law of this state or a foreign limited partnership as defined in this section.

16. *"Manager"* or *"managers"* means a person or persons designated by the members of a limited liability company to manage the limited liability company as provided in the articles of organization or an operating agreement.

17. *"Member"* means a person with a membership interest in a limited liability company under this chapter or, with respect to a foreign limited liability company, under the laws of the state, foreign country, or other foreign jurisdiction under which such company is organized.

18. *"Membership interest"* or *"interest"* means a member's share of the profits and the losses of the limited liability company and the right to receive distributions of the limited liability company's assets, and any right to vote or participate in management.

19. *"Operating agreement"* means any agreement, written or oral, of the members as to the affairs of a limited liability company and the conduct of its business.

20. *"Person"* has the same meaning as specified in section 4.1, subsection 20.

21. *"Principal office"* means the office, in or out of this state, where the principal executive offices of a domestic or foreign limited liability company are located.

22. *"Secretary of state"* means the Iowa secretary of state.

23. *"State"*, when referring to a part of the United States, includes a state, commonwealth, and their agencies and governmental subdivisions; and a territory or insular possession, and their agencies and governmental subdivisions, of the United States.

24. *"Surviving entity"* means the constituent entity surviving the merger, as identified in the articles of merger provided for in subchapter XII.

25. *"United States"* includes a district, authority, bureau, commission, department, and any other agency of the United States.

92 Acts, ch 1151, § 10; 97 Acts, ch 188, § 53; 2005 Acts, ch 135, §107, 108

490A.120 Filing requirements.

1. A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing.

2. The document must be one that this chapter requires or permits to be filed with the secretary of state.

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

4. The document must be typewritten or printed. The typewritten or printed portion shall be in black. Manually signed photocopies, or other reproduced copies, including facsimiles and other electronically or computer-generated copies of typewritten or printed documents may be filed.

5. The document must be in the English language. A limited liability company name need not be in English if written in English letters or Arabic or Roman numerals. The articles of organization, duly authenticated by the official having custody of the applicable records in the state or country under whose law the limited liability company is formed, which are required of foreign limited liability companies, need not be in English if accompanied by a reasonably authenticated English translation.

6. The document must be executed by one of the following persons:

a. A manager, or if no managers have been selected, by any member of the limited liability company.

b. If the limited liability company has not been formed, by the person forming the limited liability company.

c. If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, that fiduciary.

7. The person executing the document shall sign it and state beneath or opposite the person's signature the person's name and the capacity in which the person signs.

8. If, pursuant to any provision of this chapter, the secretary of state has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

9. The document must be delivered to the secretary of state for filing and must be accompanied by the correct filing fee.

92 Acts, ch 1151, § 11

490A.121 Filing duty of secretary of state.

1. If a document delivered to the office of the secretary of state for filing satisfies the requirements of section 490A.120, the secretary of state shall file it and issue any necessary certificate.

2. The secretary of state files a document by recording it as "filed" and acknowledging the date and time of its receipt. After filing a document, and except as provided in section 490A.503, the secretary of state shall deliver a copy of the filed document with an acknowledgment of the date and time of filing to the domestic or foreign limited liability company or its representative.

3. If the secretary of state refuses to file a document, the secretary of state shall return it to the domestic or foreign limited liability company or its representative together with a brief, written explanation of the reason for the refusal.

4. The secretary of state's duty to file documents under this section is ministerial. Filing or refusing to file a document does not:

a. Affect the validity or invalidity of the document in whole or part.

b. Relate to the correctness or incorrectness of information contained in the document.

c. Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

92 Acts, ch 1151, § 12; 2006 Acts, ch 1089, §17

490A.122 Effective time and date of documents.

1. Except as provided in subsection 2 and section 490A.123, subsection 3, a document accepted for filing is effective at the later of the following times:

a. At the time of filing on the date it is filed, as evidenced by the secretary of state's date and time endorsement on the original document.

b. At the time specified in the document as its effective time on the date it is filed.

2. A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

92 Acts, ch 1151, § 13

490A.123 Correcting filed documents.

1. A domestic or foreign limited liability company may correct a document filed by the secretary of state if the document satisfies one or both of the following requirements:

a. Contains an incorrect statement.

b. Was defectively executed, attested, sealed, verified, or acknowledged.

2. A document is corrected by complying with both of the following:

a. By preparing articles of correction that satisfy all of the following requirements:

(1) Describe the document, including its filing date, or attach a copy of it to the articles.

(2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective.

(3) Correct the incorrect statement or defective execution.

b. By delivering the articles to the secretary of state for filing.

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

92 Acts, ch 1151, § 14

490A.124 Fees.

1. The secretary of state shall collect the following fees when documents described in this subsection are delivered to the secretary's office for filing:

a. Articles of organization ..... $ 50

b. Application for use of indistinguishable name ..... $ 10

c. Application for reserved name ..... $ 10

d. Notice of transfer of reserved name $ 10

e. Application for registered name per month or part thereof ..... No fee

f. Application for renewal of registered name ..... No fee

g. Statement of change of registered agent or registered office or both ..... No fee

h. Agent's statement of change of registered office for each affected limited liability company ..... No fee

i. Agent's statement of resignation No fee

j. Amendment of articles of organization ..... $ 50

k. Restatement of articles of organization with amendment of articles ..... $ 50

l. Articles of merger ..... $ 50

m. Articles of dissolution ..... $ 5

n. Articles of revocation of dissolution $ 5

o. Certificate of administrative dissolution ..... No fee

p. Application for reinstatement following administrative dissolution ..... $ 5

q. Certificate of reinstatement ..... No fee

r. Certificate of judicial dissolution No fee

s. Application for certificate of authority $100

t. Application for amended certificate of authority $100

u. Application for certificate of cancellation ..... $ 10

v. Certificate of revocation of authority to transact business ..... No fee

w. Articles of correction ..... $ 5

x. Application for certificate of existence or authorization ..... $ 5

y. Any other document required or permitted to be filed by this chapter ..... $ 5

2. The secretary of state shall collect a fee of five dollars each time process is served on the secretary under this chapter. The party to a proceeding causing service of process is entitled to recover this fee as costs if the party prevails in the proceeding.

3. The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

a. One dollar a page for copying.

b. Five dollars for the certificate.

92 Acts, ch 1151, § 15; 93 Acts, ch 39, § 21; 2006 Acts, ch 1089, §18

490A.125 Forms.

1. The secretary of state may prescribe and furnish on request forms including but not limited to the following:

a. An application for a certificate of existence.

b. A foreign limited liability company's application for a certificate of authority to transact business in this state.

c. A foreign limited liability company's application for a certificate of withdrawal.

If the secretary of state so requires, use of these listed forms prescribed by the secretary of state is mandatory.

2. The secretary of state may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

92 Acts, ch 1151, § 16

490A.126 Appeal from secretary of state's refusal to file document.

1. If the secretary of state refuses to file a document delivered to the secretary's office for filing, the domestic or foreign limited liability company may appeal the refusal, within thirty days after the return of the document, to the district court for the county in which the limited liability company's principal office or, if none in this state, its registered office is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the secretary of state's explanation of the refusal to file.

2. The court may summarily order the secretary of state to file the document or take other action the court considers appropriate.

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

92 Acts, ch 1151, § 17

490A.127 Evidentiary effect of copy of filed document.

A certificate attached to a copy of a document filed by the secretary of state, bearing the secretary of state's signature, which may be in facsimile, and the seal of the secretary of state, is conclusive evidence that the original document is on file with the secretary of state.

92 Acts, ch 1151, § 18

490A.128 Certificate of existence.

1. Anyone may apply to the secretary of state to furnish a certificate of existence for a domestic limited liability company or a certificate of authorization for a foreign limited liability company.

2. A certificate of existence or authorization must set forth all of the following:

a. The domestic limited liability company's name or the foreign limited liability company's name used in this state.

b. That one of the following applies:

(1) If it is a domestic limited liability company, that it is duly organized under the law of this state, the date of its organization, and the period of its duration.

(2) If it is a foreign limited liability company, that it is authorized to transact business in this state.

c. That all fees required by this chapter have been paid.

d. That articles of dissolution have not been filed.

e. Other facts of record in the office of the secretary of state that may be requested by the applicant.

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

92 Acts, ch 1151, § 19

490A.129 Penalty for signing false document.

1. A person commits an offense if that person signs a document the person knows is false in any material respect with intent that the document be delivered to the secretary of state for filing.

2. An offense under this section is a serious misdemeanor punishable by a fine of not to exceed one thousand dollars.

92 Acts, ch 1151, § 20

490A.130 Secretary of state powers.

The secretary of state has the power reasonably necessary to perform the duties required of the secretary of state by this chapter.

92 Acts, ch 1151, § 21

490A.131 Biennial report for secretary of state.

1. A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that states all of the following:

a. The name of the limited liability company or foreign limited liability company.

b. The street address of its registered office and the name and street address of its registered agent.

c. The street and mailing address of its principal office.

d. In the case of a foreign limited liability company, the state or other jurisdiction under whose law the foreign limited liability company is formed.

2. Information in a biennial report must be current as of the date the biennial report is delivered to the secretary of state for filing.

3. If a biennial report does not contain the information required in subsection 1, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection 1 and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely delivered.

4. If a filed biennial report contains an address of a registered office or the name or address of a registered agent which differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the biennial report is considered a statement of change under section 490A.502.

2005 Acts, ch 135, §109; 2005 Acts, ch 179, §27; 2006 Acts, ch 1089, §1921

490A.201 Purposes.

1. A limited liability company organized under this chapter has the purpose of engaging in any lawful activity unless a more limited purpose is set forth in the articles of organization.

2. A limited liability company engaging in an activity that is subject to regulation under another statute of this state may organize under this chapter only if permitted by, and subject to all limitations of, the other statute.

92 Acts, ch 1151, § 22; 2006 Acts, ch 1089, §22

490A.202 Powers.

Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation power to do all of the following:

1. Sue and be sued, complain, and defend in its name.

2. Transact its business, carry on its operations, and have and exercise the powers granted by this chapter in any state and in any foreign country.

3. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located.

4. Sell, convey, transfer, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property.

5. Purchase, receive, subscribe for, or otherwise acquire and hold, to sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with, shares or other interests in, or obligations of any other person.

6. Make contracts and guaranties, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited

liability company, and secure any of its obligations by mortgage, deed of trust, or pledge of any of its property, franchises, or income.

7. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment.

8. Elect and appoint managers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

9. Pay pensions and establish pension plans, pension trusts, profit sharing plans, and benefit and incentive plans for all or any of its current or former members, managers, employees, and agents.

10. Make donations for the public welfare or for religious, charitable, scientific, or educational purposes.

11. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the limited liability company.

12. Cease its activities and dissolve.

13. Be a promoter, stockholder, partner, member, associate, agent, or manager of any corporation, partnership, limited liability company, joint venture, trust, or other entity.

14. Make and amend operating agreements, not inconsistent with its articles of organization or with the law of this state, for the administration and regulation of its affairs.

15. Transact any lawful business that a corporation, partnership, or other entity may conduct under the law of this state subject, however, to any and all laws and restrictions that govern or limit the conduct of such activity by such corporation, partnership, or other entity.

16. Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the limited liability company is organized.

17. Indemnify and hold harmless a member, manager, or other person against a claim, liability, or other demand, as provided in an operating agreement.

92 Acts, ch 1151, § 23; 93 Acts, ch 39, § 22; 95 Acts, ch 138, §1; 97 Acts, ch 188, § 54

490A.301 Formation.

One or more persons may form a limited liability company by executing and delivering articles of organization to the secretary of state for filing. Such person or persons need not be members of the limited liability company after formation has occurred.

92 Acts, ch 1151, § 24

490A.302 Liability.

All persons purporting to act as or on behalf of a limited liability company, knowing there is no organization under this chapter, are jointly and severally liable for all liabilities created while so acting.

92 Acts, ch 1151, § 25

490A.303 Articles of organization.

1. The articles of organization must set forth all of the following:

a. A name for the limited liability company that satisfies the requirements of section 490A.401.

b. The street address of the limited liability company's initial registered office and the name of its initial registered agent at that office.

c. The street address of the principal office of the limited liability company, which may be the same as the registered office, but need not be within this state.

d. The period of its duration, which may be perpetual.

2. The articles of organization may set forth any other provision not inconsistent with law, including, but not limited to, a statement of whether there are limitations on the authority of members to bind the limited liability company.

3. The articles of organization need not set forth any of the powers enumerated in this chapter.

4. The articles of organization or an operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and may also provide for assignment or transfer of any membership interest represented by such a certificate and make other provisions with respect to such a certificate.

92 Acts, ch 1151, § 26; 97 Acts, ch 188, § 55

490A.304 Conversion of certain entities to a limited liability company.

1. As used in this section, the term *"other entity"* means a corporation, business trust or association, real estate investment trust, common-law trust, or any other unincorporated business, including any partnership, whether general or limited, or a foreign limited liability company.

2. Any other entity may convert to a domestic limited liability company by complying with subsection 8 and filing in the office of the secretary of state both of the following:

a. Articles of conversion to a limited liability company executed by one or more authorized persons.

b. Articles of organization executed by one or more authorized persons.

3. The articles of conversion to a limited liability company shall state all of the following:

a. The date on which, and jurisdiction where, the converting entity was first created, formed, incorporated, or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a domestic limited liability company.

b. The name of the converting entity immediately prior to the filing of the articles of conversion to a limited liability company.

c. The name of the limited liability company.

d. The future effective date or time certain of the conversion to a limited liability company if it is not to be effective upon the filing of the articles of conversion and the articles of organization.

4. Upon the filing in the office of the secretary of state of the articles of conversion and the articles of

organization or upon the future effective date or time of the articles of conversion and the articles of organization, the converting entity shall be converted into a domestic limited liability company and the limited liability company, from that date or time, is subject to this chapter, except that the existence of the limited liability company is deemed to have commenced on the date the converting entity commenced its existence in the jurisdiction in which the converting entity was first created, formed, incorporated, or otherwise came into being.

5. The conversion of an entity into a domestic limited liability company does not affect any obligations or liabilities of the other entity incurred prior to its conversion to a domestic limited liability company, or the personal liability of any person incurred prior to such conversion.

6. When a conversion is effective, for all purposes of the laws of this state, all of the rights, privileges, and powers of the converting entity, and all property, real, personal, and mixed, and all debts due to the converting entity, as well as all other things and causes of action belonging to such entity, are vested in the domestic limited liability company and are the property of the domestic limited liability company as they were of the converting entity. The title to any real property vested by deed or otherwise in the converting entity shall not revert or be in any way impaired by reason of this chapter, and all rights of creditors and all liens upon any property of such other entity are preserved unimpaired, and all debts, liabilities, and duties of the converting entity shall attach to the domestic limited liability company, and may be enforced against it to the same extent as if the debts, liabilities, and duties had been incurred or contracted by the domestic limited liability company.

7. Unless otherwise agreed, or as required under the laws of a jurisdiction other than this state, the converting entity is not required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion does not constitute a dissolution of the converting entity.

8. Prior to filing the articles of conversion to a limited liability company with the office of the secretary of state, an operating agreement must be approved in the manner provided for by the documents, instrument, agreement, or other writing, as the case may be, governing the internal affairs of the converting entity and the conduct of its business or by applicable law, as appropriate.

9. This section shall not be construed to limit the ability to change the law governing, or the domicile of, a converting entity to this state by any other means provided for in an operating agreement or as otherwise permitted by law, including by the amendment of an operating agreement.

97 Acts, ch 188, §56

490A.305 Series of members, managers, or membership interests.

1. An operating agreement may establish or provide for the establishment of designated series of members, managers, or membership interests having separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations, and, to the extent provided in the operating agreement, any such series may have a separate business purpose or investment objective.

2. Notwithstanding contrary provisions of this chapter, the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series shall be enforceable against the assets of that series only, and not against the assets of the limited liability company generally, if all of the following apply:

a. The operating agreement creates one or more series.

b. Separate and distinct records are maintained for that series and separate and distinct records account for the

assets associated with that series. The assets associated with a series must be accounted for separately from the other assets of the limited liability company, including another series.

c. The operating agreement provides for such limitation on liabilities.

d. Notice of the limitation on liabilities of a series is set forth in the articles of organization of the limited liability company. Filing of articles of organization containing a notice of the limitation on liabilities of a series in the office of the secretary of state constitutes notice of the limitation on liabilities of such series.

3. Notwithstanding section 490A.601, or a contrary provision in an operating agreement, a member or manager may agree to be obligated personally for any or all of the debts, obligations, or liabilities of one or more series.

4. An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as the operating agreement may provide. The operating agreement may provide for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members or managers associated with the series. An operating agreement may provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of any member or manager or class or group of members or managers, including all action to create under the provisions of the operating agreement a class or group of the series of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members associated with a series have no voting rights.

5. An operating agreement may grant to all or certain identified members or managers or a specified class or group of the members or managers associated with a series the right to vote on any matter separately or with all or any class or group of the members or managers associated with the series. Voting by members or managers associated with a series may be on a per capita, number, financial interest, class, group, or other basis.

6. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series in proportion to the then-current percentage or other interest of members in the profits of the series owned by all of the members associated with such series. The decision of members owning more than fifty percent of the series or other interest in the profits shall control. However, if an operating agreement provides for the management of the series, in whole or in part, by a manager, the management of the series, to the extent so provided, is vested in the manager who shall be chosen as provided in the operating agreement. The manager of the series shall also hold the offices and have the responsibilities accorded to managers as set forth in the operating agreement. A series may have more than one manager. A manager shall cease to be a manager with respect to a series as provided in the operating agreement. Except as otherwise provided in the operating agreement, an event under this chapter or identified in an operating agreement that causes a manager to cease to be a manager with respect to a series, by itself, shall not cause the manager to cease to be a manager of the limited liability company or with respect to any other series of the limited liability company.

7. Notwithstanding any other provision of this chapter, except subsections 8 and 11 and unless otherwise provided in an operating agreement, at the time a member associated with a series that has been established pursuant to subsection 1 becomes entitled to receive a distribution with respect to such series, the member has the status of, and is entitled to, all remedies available to a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions with respect to a series.

8. Notwithstanding any other provision of this chapter, a limited liability company may make a distribution

with respect to a series that has been established pursuant to subsection 1. However, a limited liability company shall not make a distribution with respect to a series that has been established pursuant to subsection 1 to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of such series, other than liabilities to members on account of their membership interests with respect to such series and liabilities for which the recourse of creditors is limited to specified property of such series, exceed the fair value of the assets associated with such series. However, the fair value of an asset of the series that is subject to a liability for which the recourse of creditors is limited shall be included in the assets associated with such series only to the extent that the fair value of that asset exceeds that liability. A member who receives a distribution in violation of this subsection, and who knew at the time of the distribution that the distribution violated this subsection, is liable for the amount of the distribution. Subject to section 490A.807, which applies to any distribution made with respect to a series under this subsection, this subsection shall not affect any obligation or liability of a member under an agreement or other applicable law for the amount of a distribution.

9. Unless otherwise provided in the operating agreement, a member shall cease to be associated with a series and to have the power to exercise any rights or powers of a member with respect to such series upon the assignment of all of the member's membership interest with respect to such series. Except as otherwise provided in an operating agreement, an event under this chapter or identified in an operating agreement that causes a member to cease to be associated with a series, by itself, shall not cause such member to cease to be associated with any other series or terminate the continued membership of a member in the limited liability company.

10. Subject to section 490A.1301, except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established pursuant to subsection 1 shall not affect the limitation on liabilities of such series provided by subsection 2. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 490A.1301 or otherwise upon the first to occur of the following:

a. At the time specified in the operating agreement.

b. Upon the happening of events specified in the operating agreement.

c. Unless otherwise provided in the operating agreement, upon the written consent of all members associated with such series.

d. The termination of such series under subsection 10.

11. Notwithstanding section 490A.1303, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of the series:

a. A manager associated with a series who has not wrongfully terminated the series.

b. If there is no manager of a series, the members associated with the series or a person approved by the members associated with the series.

c. If there is more than one class or group of members associated with the series, then by each class or group of members associated with the series, in either case, by members who own more than fifty percent of the then-current percentage or other interest in the profits of the series owned by all of the members associated with the series or by the members of each class or group associated with the series.

However, if the series has been established pursuant to subsection 1, the district court of the county in which the limited liability company has its principal place of business, upon cause shown, may wind up the affairs

of the series upon application of any member associated with the series or the member's legal representative or assignee, and in connection with such winding up, may appoint a liquidating trustee. The persons winding up the affairs of a series, in the name of the limited liability company and for and on behalf of the limited liability company and such series, may take all actions with respect to the series as are permitted under section 490A.1303. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 490A.1304 and distribute the assets of the series as provided in section 490A.1304. Actions taken pursuant to this subsection shall not affect the liability of members and shall not impose liability on a liquidating trustee.

12. On application by or for a member or manager associated with a series established pursuant to subsection 1, the district court in the county in which the limited liability company has its principal place of business may enter an order for dissolution of such series if it is not reasonably practicable to carry on the business of the series in conformity with the operating agreement.

13. A foreign limited liability company that is authorized to do business in this state under subchapter XIV which is governed by an operating agreement that establishes or provides for the establishment of designated series of members, managers, or membership interests having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company, or profits and losses associated with the specified property or obligations, shall indicate that fact on the application for a certificate of authority as a foreign limited liability company. In addition, the foreign limited liability company shall state on the application whether the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series, if any, are enforceable against the assets of such series only, and not against the assets of the foreign limited liability company generally.

97 Acts, ch 188, §57; 2006 Acts, ch 1089, §23, 24

490A.306 Admission of members.

1. In connection with the formation of a limited liability company, a person is admitted as a member of the limited liability company upon the later to occur of the following:

a. The formation of the limited liability company.

b. The time provided in, and upon compliance with, the operating agreement or, if the operating agreement does not so provide, when the person's admission is reflected in the records of the limited liability company.

2. After the formation of a limited liability company, a person is admitted as a member of the limited liability company as follows:

a. In the case of a person who is not an assignee of a membership interest, including a person acquiring a membership interest directly from the limited liability company and a person to be admitted as a member of the limited liability company without acquiring a membership interest in the limited liability company, at the time provided in and upon compliance with the operating agreement or, if the operating agreement does not so provide, upon the consent of all members and the person's admission being reflected in the records of the limited liability company.

b. In the case of an assignee of a membership interest, as provided in section 490A.903 and at the time provided in and upon compliance with the operating agreement, or if the operating agreement does not so provide, when any such person's permitted admission is reflected in the records of the limited liability company.

c. Unless otherwise provided in an agreement of merger, in the case of a person acquiring a membership interest in a surviving or resulting limited liability company pursuant to a merger approved pursuant to

section 490A.1203, at the time provided in and upon compliance with the operating agreement of the surviving or resulting limited liability company.

3. A person may be admitted to a limited liability company as a member of the limited liability company and may receive a membership interest in the limited liability company without making a contribution or being obligated to make a contribution to the limited liability company. Unless otherwise provided in an operating agreement, a person may be admitted to a limited liability company as a member of the limited liability company without acquiring a membership interest in the limited liability company.

97 Acts, ch 188, §58

490A.307 Classes and voting.

1. An operating agreement may provide for classes or groups of members and the relative rights, powers, and duties of such members, and may provide for the future creation of additional classes or groups of members having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of members. An operating agreement may provide for taking action, including the amendment of the operating agreement, without the vote or approval of any member or class or group of members, including an action to create a class or group of membership interests that was not previously outstanding. An operating agreement may provide that any member or class or group of members has no voting rights.

2. An operating agreement may grant to all or certain identified members or a specified class or group of the members the right to vote separately or with all or any class or group of members or managers on any matter. Voting by members may be on a per capita, number, financial interest, class, group, or any other basis.

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

97 Acts, ch 188, §59

490A.401 Name.

1. A limited liability company name must contain the words "Limited Company" or "Limited Liability Company" or the abbreviation "L.C." or "L.L.C." or words or abbreviations of like import in another language.

2. A limited liability company name shall not contain any of the following:

a. The words "Corporation", "Incorporated", "Limited Partnership" or the abbreviations "Corp.", "Inc." or "L.P." or words or abbreviations of like import in another language.

b. Any word or phrase the use of which is prohibited by law for such a limited liability company.

3. Except as authorized by subsections 4 and 5, a limited liability company name must be distinguishable upon the records of the secretary of state from all of the following:

a. The name of a limited liability company, limited partnership, or corporation organized under the law of this state or registered as a foreign limited liability company, foreign limited partnership, or foreign corporation in this state.

b. A name reserved, registered, or protected as follows:

(1) For a limited liability partnership, section 486A.1001 or 486A.1002.

(2) For a limited partnership, section 488.108, 488.109, or 488.810.

(3) For a business corporation, section 490.401, 490.402, 490.403, or 490.1422.

(4) For a limited liability company, this section or section 490A.402 or 490A.1322.

(5) For a nonprofit corporation, section 504.401, 504.402, 504.403, or 504.1423.

c. The fictitious name adopted by a foreign corporation, foreign limited partnership, or foreign limited liability company authorized to transact business in this state, because its real name is unavailable.

d. The corporate name of a nonprofit corporation incorporated or authorized to transact business in this state.

4. A limited liability company may apply to the secretary of state for authorization to use a name that is not distinguishable upon the secretary's records from one or more of the names described in subsection 3. The secretary of state shall authorize use of the name applied for if one of the following conditions applies:

a. The other entity consents to the use in writing and submits an undertaking in form satisfactory to the secretary of state to change its name to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

b. The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

5. A limited liability company may use the name, including the fictitious name, of another entity that is used in this state if the other entity is formed under the law of this state or is authorized to transact business in this state and the proposed user limited liability company meets one of the following conditions:

a. Has merged with the other entity.

b. Has been formed by reorganization of the other entity.

c. Has acquired all or substantially all of the assets, including the name, of the other entity.

6. This chapter does not control the use of fictitious names; however, if a limited liability company uses a fictitious name in this state it shall deliver to the secretary of state for filing a certified copy of the resolution filed and executed according to section 490A.120 adopting the fictitious name.

92 Acts, ch 1151, § 27; 95 Acts, ch 138, §2; 2006 Acts, ch 1089, §25, 26

490A.402 Reserved name.

1. A person may reserve the exclusive use of a limited liability company name, including a fictitious name for a foreign limited liability company whose limited liability company name is not available, by delivering an application to the secretary of state for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the secretary of state finds that the limited liability company name applied for is available, the secretary of state shall reserve the name for the applicant's exclusive use for a nonrenewable one hundred twenty-day period.

2. The owner of a reserved limited liability company name may transfer the reservation to another person by delivering to the secretary of state a signed notice of the transfer that states the name and address of the transferee.

92 Acts, ch 1151, § 28

490A.501 Registered office and registered agent.

Each limited liability company must continuously maintain in this state each of the following:

1. A registered office that may be the same as any of its places of business.

2. A registered agent who may be any of the following:

a. An individual who is a resident of this state and whose business office is identical with the registered office.

b. A domestic corporation, domestic limited liability company, or not-for-profit domestic corporation whose business office is identical with the registered office.

c. A foreign corporation, foreign limited liability company, or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical with the registered office.

92 Acts, ch 1151, § 29

490A.502 Change of registered office or registered agent.

1. Each limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth the following:

a. The name of the limited liability company or foreign limited liability company.

b. If the current registered office is to be changed, the street address of the new registered office.

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

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

2. A statement of change shall forthwith be filed in the office of the secretary of state by a limited liability company whenever its registered agent dies, resigns, or ceases to satisfy the requirements of section 490A.501.

3. If a registered agent changes the registered agent's business address to another place, the registered agent may change the business address and the address of the registered agent by filing a statement as required in subsection 1 for each limited liability company, or a single statement for all limited liability companies named in the notice, except that it need be signed only by the registered agent or agents and need not be responsive to subsection 1, paragraph *"c"*, and must recite that a copy of the statement has been mailed to each limited liability company named in the notice.

4. The change of address of a registered office or the change of registered agent becomes effective upon the filing of such statement by the secretary of state.

92 Acts, ch 1151, § 30; 97 Acts, ch 107, § 7, 8

490A.503 Resignation of registered agent discontinuance of registered office statement.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing an original statement of resignation. The statement may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation to the registered office, if not discontinued, and to the limited liability company at its principal office. The agent shall certify to the secretary of state that the copy has been sent to the limited liability company, including the date the copy was sent.

2. The agency appointment is terminated, and the registered office discontinued if so provided, on the date on which the statement is filed by the secretary of state.

92 Acts, ch 1151, § 31; 97 Acts, ch 107, § 9

490A.504 Service on limited liability company.

1. A domestic or foreign limited liability company's registered agent is the limited liability company's agent for service of process, notice, or demand required or permitted by law to be served on the limited liability company.

2. If a limited liability company has no registered agent, or the agent cannot with reasonable diligence be served, the limited liability company may be served by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office. Service is perfected under this subsection at the earliest of:

a. The date the limited liability company receives the mail.

b. The date shown on the return receipt, if signed on behalf of the limited liability company.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

3. This section does not prescribe the only means, or necessarily the required means, of serving a domestic or foreign limited liability company.

92 Acts, ch 1151, § 32

490A.601 Liability to third parties.

Except as otherwise provided by this chapter or as expressly provided in the articles of organization, no member or manager of a limited liability company is personally liable for the acts or debts of the limited liability company.

92 Acts, ch 1151, § 33

490A.602 Parties to actions.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company, except where either of the following applies:

1. The object is to enforce a member's right against or liability to the limited liability company.

2. As provided in subchapter X.

92 Acts, ch 1151, § 34

490A.603 Liability of members.

1. Except as otherwise provided in this chapter or by written agreement of a member, a member or manager of a limited liability company is not personally liable solely by reason of being a member or manager of the limited liability company under any judgment, or in any other manner, for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise.

2. A member of a limited liability company is personally liable under a judgment or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation, except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that the members have personal liability for any debt, obligation, or liability of the limited liability company.

3. Nothing in this section shall be construed to affect the liability of a member of a limited liability company to third parties for the member's participation in tortious conduct.

97 Acts, ch 188, §60

490A.701 Voting rights of members.

1. Unless otherwise provided in the articles of organization or an operating agreement, the members of a limited liability company shall vote in proportion to their capital contributions to the limited liability company, as adjusted from time to time to reflect any additional contributions or withdrawals.

2. Unless otherwise provided in the articles of organization or an operating agreement, a majority vote shall be required to approve the following matters:

a. The dissolution and winding up of the limited liability company.

b. The sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited liability company other than in the ordinary course of business.

c. Merger of the limited liability company with another entity.

3. Unless otherwise provided in the articles of organization or an operating agreement, a unanimous vote shall be required to approve an amendment to the articles of organization or operating agreement.

92 Acts, ch 1151, § 35; 93 Acts, ch 39, § 23, 24

490A.702 Management of limited liability company.

1. Unless the articles of organization or an operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company shall be vested in its members.

2. Unless otherwise provided in the articles of organization and except as provided in subsection 3, every

member is an agent of the limited liability company for the purpose of its business or affairs. The act of any member, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

3. If the articles of organization provide that management of the limited liability company is vested in a manager or managers the following apply:

a. A member, acting solely in the capacity as a member, is not an agent of the limited liability company.

b. Every manager is an agent of the limited liability company for the purpose of its business or affairs, unless otherwise provided in the articles of organization or an operating agreement. The act of any manager with agency authority, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the ordinary course the business or affairs of the limited liability company shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

4. Except as provided in subsection 5, the validity of an act of a limited liability company is not challengeable on the ground that the limited liability company lacks or lacked the power or authority to act.

5. A limited liability company's power to act may be challenged in the following proceedings:

a. In an action by a member against the limited liability company to enjoin an unauthorized act.

b. In an action by the limited liability company against an incumbent or former manager, employee, or agent of the limited liability company, either directly, derivatively, or through a receiver, trustee, or other legal representative.

c. By the attorney general under section 490A.1409.

6. In a member's proceeding under subsection 5, paragraph *"a"*, to enjoin an unauthorized act, the court may enjoin or set aside the act if equitable and if all affected persons are parties to the proceeding. The court may award damages, other than anticipated profits, for loss suffered by the limited liability company or another party as a result of the unauthorized act being enjoined.

7. An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

92 Acts, ch 1151, § 36; 93 Acts, ch 39, § 25; 95 Acts, ch 138, §3, 4; 97 Acts, ch 188, § 61, 62; 2000 Acts, ch 1041, §1

490A.703 Operating agreement.

1. The members of a limited liability company may enter into an operating agreement to establish or regulate the affairs of the limited liability company, the conduct of its business and the relations of its members. An operating agreement may contain any provisions regarding the affairs of a limited liability company and the conduct of its business to the extent that such provisions are not inconsistent with law or the articles of organization.

2. An operating agreement must initially be agreed to by all of the members. Unless the articles of

organization specifically permit otherwise, an operating agreement shall be in writing.

3. *a.* A written operating agreement or other writing may provide for a person to be admitted as a member of a limited liability company, or to become an assignee of a limited liability company membership interest or other rights or powers of a member, to the extent that either of the following occurs:

(1) If the person, or a representative authorized by the person orally, in writing, or by other action such as payment for a limited liability company interest, executes the operating agreement or any other writing evidencing the intent of such person to become a member or assignee.

(2) Without execution of the operating agreement or similar writing, if the person or such authorized representative of the person complies with the conditions for becoming a member or assignee as set forth in the operating agreement or any other writing and requests orally, in writing, or by other action such as payment for a limited liability company interest, that the records of the limited liability company reflect such admission or assignment.

b. A written operating agreement or another written agreement or writing is not unenforceable by reason of its not having been signed by a person being admitted as a member or becoming an assignee, or the member's or assignee's representative, as provided in paragraph *"a"*.

4. A court may enforce an operating agreement by injunction or by other relief that the court determines to be fair and appropriate in the circumstances. As an alternative to injunctive or other equitable relief, when the provisions of section 490A.1302 are applicable, the court may order dissolution of the limited liability company.

92 Acts, ch 1151, § 37; 97 Acts, ch 188, § 63

490A.704 Withdrawal of member.

A member may withdraw from a limited liability company at the time or upon the happening of events specified in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not specify in writing the time or the events upon the happening of which a member may withdraw, a member may withdraw upon not less than six months' prior written notice to each member at the member's address on the books of the limited liability company. The articles of organization or an operating agreement may prohibit withdrawal by a member.

92 Acts, ch 1151, § 38; 93 Acts, ch 39, § 26

490A.704A Resignation or withdrawal of member.

1. *a.* This section applies to a limited liability company whose original articles of organization are filed with the secretary of state on or after July 1, 1997.

b. This section applies to a limited liability company whose original articles of organization are filed with the secretary of state and effective on or prior to June 30, 1997, if such company's operating agreement provides that it is subject to this section.

c. If no provision is made in the operating agreement, a limited liability company whose original articles of organization were filed with the secretary of state and effective on or prior to June 30, 1997, is subject to section 490A.704.

2. A member may resign or withdraw from a limited liability company only at the time or upon the happening of an event specified in an operating agreement and pursuant to the operating agreement.

3. Unless an operating agreement provides otherwise, a member may not resign or withdraw from a limited liability company prior to the dissolution and winding up of the limited liability company. However, if the articles of organization or an operating agreement do not specify the time or the events upon the happening of which a member may resign or withdraw, a member may resign or withdraw from the limited liability company in the event any amendment to the articles of organization or operating agreement that is adopted over the member's written dissent adversely affects the rights or preferences of the dissenting member's membership interest in any of the ways described in paragraphs *"a"* through *"e"*. A resignation or withdrawal in the event of such dissent and adverse effect is deemed to have occurred as of the effective date of the amendment, if the member gives notice to the limited liability company not more than sixty days after the date of the amendment. In valuing the member's distribution pursuant to this subsection, any depreciation in anticipation of the amendment shall be excluded. An amendment that does any of the following is subject to this subsection:

a. Alters or abolishes a member's right to receive a distribution.

b. Alters or abolishes a member's right to voluntarily withdraw or resign.

c. Alters or abolishes a member's right to vote on any matter, except as the rights may be altered or abolished through the acceptance of contributions or the making of contribution agreements.

d. Alters or abolishes a member's preemptive right to make contributions.

e. Establishes or changes the conditions for or consequences of expulsion.

4. A member withdrawing under this section is not liable for damages for the breach of any agreement not to withdraw.

5. An operating agreement may provide that a membership interest may be assigned prior to the dissolution and winding up of the limited liability company.

97 Acts, ch 188, §64

490A.705 Management of a limited liability company by a manager or managers.

1. The articles of organization or an operating agreement of a limited liability company may apportion responsibility for managing a limited liability company among one or more managers who may be, but need not be, members.

2. The articles of organization or an operating agreement may prescribe qualifications for managers.

3. The number of managers shall be fixed by or in the manner provided in the articles of organization or an operating agreement. The number of managers may be increased or decreased by amendment to, or in the manner provided in, the articles of organization or an operating agreement.

4. Unless otherwise provided in the articles of organization or an operating agreement, managers shall be elected by the majority vote of the members.

5. Unless otherwise provided in the articles of organization or an operating agreement, any vacancy occurring in the office of manager shall be filled by a majority vote of the members.

6. All managers or any lesser number may be removed in the manner provided in the articles of organization or an operating agreement. If the articles of organization or an operating agreement does not provide for the removal of managers, then all managers or any lesser number may be removed with or without cause by a

majority vote of the members.

7. Unless otherwise provided in the articles of organization or an operating agreement, if the limited liability company has more than one manager, all decisions of the managers shall be by majority vote of the managers.

8. Unless the articles of organization or an operating agreement require a different number, a quorum for a meeting of managers consists of a majority of the managers.

92 Acts, ch 1151, § 39

490A.705A Classes of managers and voting.

1. An operating agreement may provide for classes or groups of managers having such relative rights, powers, and duties as the operating agreement may provide, and may make provision for the future creation of additional classes or groups of managers having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior to existing classes and groups of managers. An operating agreement may provide for taking action, including the amendment of the operating agreement, without the vote or approval of any manager or class or group of managers, including an action to create a class or group of membership interests that was not previously outstanding.

2. An operating agreement may grant to all or certain identified managers or a specified class or group of managers the right to vote on any matter, separately or with all or any class or group of managers or members. Voting by managers may be on a per capita, number, financial interest, class, group, or any other basis.

3. An operating agreement which grants a right to vote may set forth provisions relating to notice of the time, place, or purpose of any meeting at which any matter is to be voted on by any manager or class or group of managers, waiver of any such notice, action by consent without a meeting, the establishment of a record date, quorum requirements, voting in person or by proxy, or any other matter with respect to the exercise of any such right to vote.

97 Acts, ch 188, §65

490A.706 General standards of conduct for managers.

1. A manager shall discharge that manager's duties as a manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager believes to be in the best interests of the limited liability company.

2. In discharging the manager's duties, a manager is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by any of the following:

a. One or more managers or employees of the limited liability company whom the manager reasonably believes to be reliable and competent in the matters presented.

b. Legal counsel, public accountants, or other persons as to matters the manager reasonably believes are within the person's professional or expert competence.

c. A committee of managers of which the manager is not a member if the manager reasonably believes the committee merits confidence.

3. A manager is not acting in good faith if the manager has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection 2 unwarranted.

4. A manager is not liable for any action taken as a manager or any failure to take any action, if the manager performed the duties of the manager's office in compliance with this section, or if, and to the extent that, liability for any such action or failure to act has been limited by the articles of organization pursuant to section 490A.707.

92 Acts, ch 1151, § 40

490A.707 Limitation of liability of managers.

The articles of organization may contain a provision eliminating or limiting the personal liability of a manager to the limited liability company or to its members or of the members with whom the management of the limited liability company is vested pursuant to section 490A.702, to the limited liability company or to its members for money damages for any action taken, or any failure to take action, as a manager or a member with whom management of the limited liability company is vested, except for liability for any of the following:

1. The amount of a financial benefit received by a manager or member to which the manager or member is not entitled.

2. An intentional infliction of harm on the limited liability company or its members.

3. A violation of section 490A.807.

4. An intentional violation of criminal law.

A provision shall not eliminate or limit the liability of a manager or member with whom management of the limited liability company is vested for an act or omission occurring prior to the date when the provision in the articles of organization becomes effective.

92 Acts, ch 1151, § 41; 93 Acts, ch 39, § 27; 2003 Acts, ch 66, §4

490A.708 Business transactions of managers with the limited liability company.

1. A conflict of interest transaction is a transaction with the limited liability company in which a manager of the limited liability company has a direct or indirect interest. A conflict of interest transaction is not voidable by the limited liability company solely because of the manager's interest in the transaction if any one of the following is true:

a. The material facts of the transaction and the manager's interest were disclosed or known to the managers or a committee of managers and the managers or a committee of managers authorized, approved, or ratified the transaction.

b. The material facts of the transaction and the manager's interest were disclosed or known to the members entitled to vote and they authorized, approved, or ratified the transaction.

c. The transaction was fair to the limited liability company.

2. For purposes of this section, a manager of the limited liability company has an indirect interest in a transaction if either:

a. Another entity in which the manager has a material financial interest or in which the manager is a general partner is a party to the transaction.

b. Another entity of which the manager is a director, officer, manager, or trustee is a party to the transaction and the transaction is or should be considered by the limited liability company.

3. For purposes of subsection 1, paragraph *"a"*, a conflict of interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the managers or of the committee of managers, who have no direct or indirect interest in the transaction, but a transaction may not be authorized, approved, or ratified under this section by a single manager. If a majority of the managers who have no direct or indirect interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a manager with a direct or indirect interest in the transaction does not affect the validity of any action taken under subsection 1, paragraph *"a"*, if the transaction is otherwise authorized, approved, or ratified as provided in that subsection.

4. For purposes of subsection 1, paragraph *"b"*, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the members entitled to vote under this subsection. Interests owned by or voted under the control of a manager who has a direct or indirect interest in the transaction, and interests owned by or voted under the control of an entity described in subsection 2, paragraph *"a"*, shall not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under subsection 1, paragraph *"b"*. The vote of those members, however, is counted in determining whether the transaction is approved under other sections of this chapter. Members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitute a quorum for the purpose of taking action under this section.

92 Acts, ch 1151, § 42

490A.709 Information and records.

1. Each limited liability company shall keep at its principal office the following:

a. A current list of the full name and last known business address of each member and manager.

b. A copy of the articles of organization and all articles of amendment thereto.

c. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years.

d. Copies of any then-effective written operating agreement and of any financial statements of the limited liability company for the three most recent years.

e. Unless contained in a written operating agreement, a writing setting out:

(1) The amount of cash and a description and statement of the agreed value of the other property or services contributed by each member and which each member has agreed to contribute.

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

(3) Any right of a member to receive, or of the limited liability company to make, distributions to a member which include a return of all or any part of the member's contribution.

(4) Any events upon the happening of which the limited liability company is to dissolve and its affairs be

wound up.

2. Each member has the right for any purpose reasonably related to the member's interest as a member of the limited liability company, upon reasonable request and subject to reasonable standards as may be set forth in an operating agreement, to do any of the following:

a. Inspect and copy any of the limited liability company records required to be maintained by this section; and

b. Obtain from the manager or managers, or if the limited liability company has no manager or managers, from any member or other person with access to such information, from time to time upon reasonable demand any of the following:

(1) True and full information regarding the state of the business and financial condition of the limited liability company.

(2) Promptly after it becomes available, a copy of the limited liability company's federal, state, and local income tax returns for each year.

(3) Other information regarding the affairs of the limited liability company as is just and reasonable.

92 Acts, ch 1151, § 43; 97 Acts, ch 188, § 66

490A.710 Delegation of rights and powers to manage.

Unless otherwise provided in the operating agreement, a member or manager of a limited liability company may delegate to one or more other persons the member's or manager's rights and powers to manage and control the business and affairs of the limited liability company, including to agents and employees of a member or manager of the limited liability company, and to delegate by a management agreement or another agreement with other persons. Unless otherwise provided in the operating agreement, such delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.

97 Acts, ch 188, §67

490A.711 Contractual appraisal rights.

An operating agreement or an agreement of merger may provide that contractual appraisal rights with respect to a membership interest or another interest in a limited liability company are available for any class or group of members or membership interests in connection with an amendment of an operating agreement, a merger in which the limited liability company is a constituent party to the merger, or the sale of all or substantially all of the limited liability company's assets. The district court of the county in which the limited liability company has its principal place of business has jurisdiction to hear and determine any matter relating to such appraisal rights.

97 Acts, ch 188, §68

490A.712 Cessation of membership.

A person ceases to be a member of a limited liability company upon the occurrence of any of the following events:

1. The person withdraws or resigns from the limited liability company.

2. The person is removed as a member pursuant to the operating agreement.

3. Unless otherwise provided in the operating agreement or with the consent of all other members, the person does any of the following:

a. Makes an assignment for the benefit of creditors.

b. Files a voluntary petition in bankruptcy.

c. Is adjudged bankrupt or insolvent or has entered against the person an order for relief in any bankruptcy or insolvency proceeding.

d. Files a petition or answer seeking for that person any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute or rule.

e. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator for the member or for all or any substantial part of the member's properties.

f. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the person in any proceeding described in this subsection.

4. Unless otherwise provided in the operating agreement, or with the consent of all other members, the continuation of any proceeding against the person seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute or rule for one hundred twenty days after the commencement of such proceeding, or the appointment of a trustee, receiver, or liquidator for the member or for all or any substantial part of the member's properties without the member's agreement or acquiescence, which appointment is not vacated or stayed for one hundred twenty days or, if the appointment is stayed, for one hundred twenty days after the expiration of the stay during which period the appointment is not vacated.

5. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member who is an individual, the individual's death or adjudication by a court of competent jurisdiction as incompetent to manage the individual's person or property.

6. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member who is acting as a member by virtue of being a trustee of a trust, the termination of the trust.

7. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is a partnership or another limited liability company, the dissolution and commencement of winding up of the partnership or limited liability company.

8. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is a corporation, the dissolution of the corporation or the revocation of its articles of incorporation.

9. Unless otherwise provided in the operating agreement or with the consent of all other members, in the case of a member that is an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.

97 Acts, ch 188, §69

490A.801 Contributions penalties.

1. The contributions of a member to a limited liability company may be in cash, property, or services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services.

2. Unless otherwise provided in the articles of organization or an operating agreement, a member is obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or any other reason. If a member does not make the contribution, the member is obligated at the option of the limited liability company to contribute cash equal to that portion of the value of the contribution that has not been made as stated in the limited liability company records required to be kept by section 490A.709. A promise by a member to contribute to a limited liability company is not enforceable unless set out in a writing signed by the member.

3. Unless otherwise provided in the articles of organization or an operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all the members. Notwithstanding the compromise, a creditor of a limited liability company who extends credit or otherwise acts in reliance on the original obligation may enforce the original obligation.

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

92 Acts, ch 1151, § 44; 97 Acts, ch 188, § 70

490A.802 Sharing of profits and losses.

The profits and losses of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, profits and losses shall be allocated on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.

92 Acts, ch 1151, § 45

490A.803 Sharing of distributions.

Distributions of cash or other assets of a limited liability company shall be allocated among the members, and among classes of members, in the manner provided in writing in the articles of organization or an operating agreement. If the articles of organization or an operating agreement do not so provide in writing, distributions shall be made on the basis of their respective capital contributions, as adjusted from time to time to reflect any additional contributions or withdrawals.

92 Acts, ch 1151, § 46

490A.804 Interim distributions.

Except as otherwise provided in this chapter, a member is entitled to receive distributions from a limited

liability company before the member's withdrawal from the limited liability company and before the dissolution and winding up of the company to the extent and at the times or upon the happening of the events specified in the articles of organization or an operating agreement.

92 Acts, ch 1151, § 47

490A.805 Distribution upon withdrawal.

Except as otherwise provided in this chapter, upon withdrawal, a withdrawing member is entitled to receive any distribution to which the member is entitled under the articles of organization or an operating agreement. If not otherwise provided in the articles of organization or an operating agreement, the member is entitled to receive, within a reasonable time after withdrawal, the fair value of the member's membership interest as of the date of withdrawal, based on the member's right to share in distributions from the limited liability company.

92 Acts, ch 1151, § 48

490A.806 Distribution in kind.

Unless otherwise provided in the articles of organization or an operating agreement, a member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. Unless otherwise provided in the articles of organization or an operating agreement, a member shall not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent that the percentage of the asset distributed to the member exceeds the percentage of the member's membership interest in the limited liability company.

92 Acts, ch 1151, § 49

490A.807 Restrictions on making distribution.

1. A distribution shall not be made if, after giving it effect, either of the following would result:

a. The limited liability company would not be able to pay its debts as they became due in the usual course of business.

b. The limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or an operating agreement permit otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of members whose preferential rights are superior to the rights of members receiving the distribution.

2. The limited liability company may base a determination that a distribution is not prohibited under subsection 1 of this section on either of the following:

a. Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances.

b. A fair valuation or other method that is reasonable in the circumstances.

3. The effect of a distribution under subsection 1 of this section is measured as of one of the following:

a. The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization.

b. The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

4. A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.

92 Acts, ch 1151, § 50

490A.808 Liability upon wrongful distribution.

If a member has received a distribution in violation of the articles of organization or an operating agreement or in violation of section 490A.807 of this chapter, then the member is liable to the limited liability company for a period of five years thereafter for the amount of the distribution wrongfully made.

92 Acts, ch 1151, § 51

490A.809 Right to distribution.

Subject to sections 490A.807 and 490A.1304, and unless otherwise provided in an operating agreement, at the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. An operating agreement may provide for the establishment of a record date with respect to allocations and distributions by a limited liability company.

97 Acts, ch 188, §71

490A.901 Nature of interest in limited liability company.

A membership interest in a limited liability company is personal property.

92 Acts, ch 1151, § 52

490A.902 Assignment of interest.

Unless otherwise provided in the articles of organization or an operating agreement, a membership interest in a limited liability company is assignable in whole or in part. An assignment of an interest in a limited liability company does not dissolve the limited liability company. Except as provided in the articles of organization or an operating agreement, an assignment does not entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member. Except as provided in the articles of organization or an operating agreement, an assignment entitles the assignee to receive, to the extent assigned, only the distribution to which the assignor would be entitled. Except as provided in the articles of organization or an operating agreement, a member ceases to be a member upon assignment of the member's entire membership interest.

Unless otherwise provided in the articles of organization or an operating agreement, the pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the membership interest of a member shall not cause the member to cease to be a member and shall not deprive the member of the power to exercise any rights or powers of a member.

Unless otherwise provided in the articles of organization or an operating agreement and except to the extent assumed by agreement, until an assignee of a membership interest becomes a member, the assignee shall have no liability as a member as a result of the assignment except for liability for a wrongful distribution to

the assignee described in section 490A.808.

92 Acts, ch 1151, § 53; 97 Acts, ch 188, § 72

490A.903 Right of assignee to become member.

1. Unless otherwise provided in the articles of organization or an operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent. The consent of a member may be evidenced in any manner specified in the articles of organization or an operating agreement. In the absence of such specification consent shall be evidenced by a written instrument, dated and signed by the requisite number of members, or evidenced by a vote taken at a meeting of members called for that purpose.

2. An assignee who has become a member has, to the extent assigned, the rights and powers, and is subject to the restrictions and liabilities, of a member under the articles of organization, an operating agreement, and this chapter. An assignee who becomes a member is liable for any obligations of the member's assignor to make and return contributions as provided in subchapters VII and VIII. However, an assignee who becomes a member is not obligated for liabilities of the assignor unknown to the assignee at the time the assignee became a member, and which could not be ascertained from the articles of organization or an operating agreement.

3. If an assignee of an interest in a limited liability company becomes a member, the assignor is not released from liability to the limited liability company under sections 490A.801 and 490A.808.

92 Acts, ch 1151, § 54

490A.904 Rights of creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the interest of the member in the limited liability company with payment of the unsatisfied amount of the judgment with interest. To the extent of the amounts so charged, the judgment creditor has only the rights of an assignee of the interest in the limited liability company. This chapter does not deprive any member of the benefit of any exemption laws applicable to the member's interest in the limited liability company.

92 Acts, ch 1151, § 55

490A.905 Powers of estate of a deceased or incompetent member.

If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent, the member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power under the articles of organization or an operating agreement of an assignee to become a member. If a member is a corporation, trust, or other entity and is dissolved or terminated, the powers of that member may be exercised by its legal representative or successor.

92 Acts, ch 1151, § 56

490A.1001 Right of member to bring derivative action.

A member may bring an action in the right of the limited liability company to recover a judgment in its favor if all of the following conditions are met:

1. Either management of the limited liability company is vested in a manager or managers who have the sole

authority to cause the limited liability company to sue in its own right or management of the limited liability company is reserved to the members but the plaintiff does not have the authority to cause the limited liability company to sue in its own right under the provisions of the articles of organization or an operating agreement.

2. The plaintiff has made demand on those managers or those members with such authority requesting that such managers or such members cause the limited liability company to sue in its own right.

3. The members or managers with such authority have wrongfully refused to bring the action or, after adequate time to consider the demand, have failed to respond to the demand.

4. The plaintiff is a member of the limited liability company at the time of bringing the action and was a member of the limited liability company at the time of the transaction of which the plaintiff complains, or the plaintiff's status as a member of the limited liability company thereafter devolved upon the plaintiff pursuant to the terms of the articles of organization or an operating agreement from a person who was a member at such time.

5. The plaintiff fairly and adequately represents the interests of the members in enforcing the right of the limited liability company.

92 Acts, ch 1151, § 57

490A.1101 Amendment of articles of organization.

1. A limited liability company may amend its articles of organization at any time to add or change a provision that is required or permitted in the articles of organization or to delete a provision not required in the articles of organization by delivering articles of amendment to the secretary of state for filing. Whether a provision is required or permitted for the articles of organization is determined as of the effective date of the amendment.

2. To amend its articles of organization, a limited liability company shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the limited liability company.

b. The text of each amendment adopted.

c. The date of each amendment's adoption.

d. A statement that the amendment was adopted by a vote of the members in accordance with this chapter.

92 Acts, ch 1151, § 58

490A.1102 Restated articles of organization.

1. A limited liability company may restate its articles of organization at any time.

2. The restatement may include one or more amendments to the articles. The restatement must be adopted by a vote of the members as provided by this chapter.

3. A limited liability company restating its articles of organization shall deliver to the secretary of state for filing articles of restatement setting forth the name of the limited liability company and the text of the restated articles of organization together with a certificate setting forth the information required by section 490A.1101, subsection 2.

4. Duly adopted restated articles of organization supersede the original articles of organization and all amendments to them.

5. The secretary of state may certify restated articles of organization, as the articles of organization currently in effect, without including the certificate information required by subsection 3.

92 Acts, ch 1151, § 59

490A.1103 Amendment pursuant to reorganization.

1. A limited liability company's articles of organization may be amended without action by the members to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of organization after amendment contain only provisions required or permitted by section 490A.303.

2. The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth all of the following:

a. The name of the limited liability company.

b. The text of each amendment approved by the court.

c. The date of the court's order or decree approving the articles of amendment.

d. The title of the reorganization proceeding in which the order or decree was entered.

e. A statement that the court had jurisdiction of the proceeding under federal statute.

3. This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

92 Acts, ch 1151, § 60

490A.1104 Effect of amendment.

An amendment to articles of organization does not affect a cause of action existing against or in favor of the limited liability company, a proceeding to which the limited liability company is a party, or the existing rights of persons other than members of the limited liability company. An amendment changing a limited liability company's name does not abate a proceeding brought by or against the limited liability company in its former name.

92 Acts, ch 1151, § 61

490A.1201 Constituent entity.

Unless the context otherwise requires, *"constituent entity"*, as used in sections 490A.1202, 490A.1204, 490A.1205, and 490A.1207, includes a domestic cooperative. However, as used in section 490A.1203, *"constituent entity"* does not include a domestic cooperative.

92 Acts, ch 1151, § 62; 2005 Acts, ch 135, §110; 2006 Acts, ch 1010, §127

490A.1201A Merger.

With or without a business purpose, a limited liability company may merge with any of the following:

1. Another domestic limited liability company pursuant to a plan of merger approved in the manner provided in sections 490A.1202 through 490A.1205.

2. A domestic corporation under a plan of merger approved in the manner provided in sections 490A.1202 through 490A.1205, and in chapter 490.

3. A domestic limited partnership pursuant to a plan of merger approved in the manner provided in sections 490A.1202 through 490A.1207, and in chapter 488.*

4. One or more cooperatives organized under chapter 497, 498, 499, 501, or 501A, in the manner provided by and subject to the limitations in section 490A.1207.

5. A foreign corporation, foreign limited liability company, or foreign limited partnership pursuant to a plan of merger approved in the manner provided in section 490A.1206.

2004 Acts, ch 1021, §119; 2005 Acts, ch 135, §111

*Internal reference to chapter 488 was substituted for reference to chapter 487 pursuant to Code editor directive; chapter 488, effective January 1, 2005, is the successor to chapter 487, repealed effective January 1, 2006; 2004 Acts, ch 1021, §119

490A.1202 Plan of merger.

1. As used in this section, *"interests"* includes but is not limited to membership interests in a domestic cooperative.

2. Each constituent entity must enter into a written plan of merger, which must be approved in accordance with section 490A.1203.

3. The plan of merger must set forth all of the following:

a. The name of each constituent entity in the merger and the name of the surviving entity into which each other constituent entity proposes to merge.

b. The terms and conditions of the proposed merger.

c. The manner and basis of converting the interests in each constituent entity in the merger into interests, shares, or other securities or obligations of the surviving entity, or of any other entity, or, in whole or in part, into cash or other property.

d. Such amendments to the articles of organization of a limited liability company, articles or certificate of incorporation of a corporation, or certificate of limited partnership of a limited partnership, as the case may be, of the surviving entity as are desired to be effected by the merger, or that no such changes are desired.

e. Other provisions relating to the proposed merger as are deemed necessary or desirable.

92 Acts, ch 1151, § 63; 2005 Acts, ch 135, §112

490A.1203 Action on plan.

1. A proposed plan of merger complying with the requirements of section 490A.1202 shall be approved in the manner provided by this section:

a. A limited liability company which is a party to a proposed merger shall have the plan of merger authorized and approved as required by section 490A.701.

b. A corporation which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by chapter 490.

c. A limited partnership which is a party to a proposed merger shall have the plan of merger authorized and approved in the manner and by the vote required by its partnership agreement and in accordance with chapter 488.

2. After a merger is authorized, unless the plan of merger provides otherwise, and at any time before articles of merger as provided for in section 490A.1204 are filed, the plan of merger may be abandoned subject to any contractual rights, in accordance with the procedure set forth in the plan of merger or, if none is set forth, in one of the following ways:

a. By the majority consent of the members of each limited liability company that is a constituent entity, unless the articles of organization or an operating agreement of any such limited liability company provides otherwise.

b. In the manner determined by the board of directors of any corporation that is a constituent entity.

c. By the limited partners of any limited partnership that is a constituent entity by the vote, if any, required by its limited partnership agreement and in accordance with the law of this state.

92 Acts, ch 1151, § 64; 93 Acts, ch 39, § 28; 2004 Acts, ch 1021, §115, 117, 118

490A.1204 Articles of merger.

1. After a plan of merger is approved as provided in section 490A.1203, the surviving entity shall deliver to the secretary of state for filing articles of merger duly executed by each constituent entity setting forth all of the following:

a. The name of each constituent entity.

b. The plan of merger.

c. The effective date of the merger if later than the date of filing of the articles of merger.

d. The name of the surviving entity.

e. A statement that the plan of merger was duly authorized and approved by each constituent entity in accordance with section 490A.1203.

2. A merger takes effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the plan of merger.

92 Acts, ch 1151, § 65

490A.1205 Effect of merger.

When a merger takes effect all of the following apply:

1. Every other constituent entity merges into the surviving entity and the separate existence of every constituent entity except the surviving entity ceases.

2. The title to all real estate and other property owned by each constituent entity is vested in the surviving entity without reversion or impairment.

3. The surviving entity has all liabilities of each constituent entity.

4. A proceeding pending against any constituent entity may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the constituent entity whose existence ceased.

5. The articles or limited partnership agreement of the surviving entity are amended to the extent provided in the plan of merger.

6. The shares or interests of each constituent entity that are to be converted into shares, obligations, or other securities of the surviving or any other entity or into cash or other property are converted, and the former holders of the shares or interests are entitled only to the rights provided in the articles of merger except for dissenters' rights provided by law.

92 Acts, ch 1151, § 66

490A.1206 Merger with foreign entity.

1. Any one or more limited liability companies of this state may merge with or into one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships, or any one or more foreign limited liability companies, foreign corporations, or foreign limited partnerships may merge with or into any one or more limited liability companies of this state, if all of the following apply:

a. The merger is permitted by the law of the state or jurisdiction under whose law each foreign constituent entity is organized or formed and each foreign constituent entity complies with that law in effecting the merger.

b. The foreign constituent entity complies with section 490A.1204 of this division if it is the surviving entity.

c. Each domestic constituent entity complies with the applicable provisions of sections 490A.1202 and 490A.1203 and, if it is the surviving entity, with section 490A.1204.

2. Upon a merger involving one or more domestic limited liability companies taking effect, if the surviving entity is to be governed by the law of any state other than this state or of any foreign country, then the surviving entity shall agree to both of the following:

a. That it may be served with process in this state in any proceeding for enforcement of any obligation of any constituent entity, who was a party to the merger, that was organized under the law of this state, as well as for enforcement of any obligation of the surviving entity arising from the merger.

b. To irrevocably appoint the secretary of state as its agent for service of process in any such proceeding, and the surviving entity shall specify the address to which a copy of the process shall be mailed to it by the secretary of state.

3. The effect of the merger shall be as provided in section 490A.1205, if the surviving entity is to be governed by the law of this state. If the surviving entity is to be governed by the law of any jurisdiction other

than this state, the effect of the merger shall be the same as provided in subsection 2 of this section, except insofar as the law of the other jurisdiction provides otherwise.

92 Acts, ch 1151, § 67; 93 Acts, ch 39, § 29

490A.1207 Merger of domestic cooperative into a domestic limited liability company.

1. A limited liability company may merge with a domestic cooperative only as provided by this section. A limited liability company may merge with one or more domestic cooperatives if all of the following apply:

a. Only one limited liability company and one or more domestic cooperatives are parties to the merger.

b. When the merger becomes effective, the separate existence of each domestic cooperative ceases and the limited liability company is the surviving entity per organization.

c. As to each domestic cooperative, the plan of merger is initiated and adopted, and the merger is effectuated, as provided in section 501A.1101.

d. As to the limited liability company, the plan of merger complies with section 490A.1202, the plan of merger is approved as provided in section 490A.1203, and the articles of merger are prepared, signed, and filed as provided in section 490A.1204.

e. Notwithstanding section 490A.1202, 490A.1205, or 490A.1206, the surviving organization must be the limited liability company.

2. Section 501A.1103 governs the abandonment by a domestic cooperative of a merger authorized by this section. Section 490A.1203, subsection 2, governs the abandonment by a limited liability company of a merger authorized by this section, except that for the purposes of a merger authorized by this section, the requirements stated in section 490A.1203, subsection 2, paragraphs *"b"* and *"c"*, do not apply and instead the abandonment must have been approved by the domestic cooperative.

2005 Acts, ch 135, §113

490A.1301 Dissolution general provisions.

A limited liability company organized under this chapter is dissolved and its affairs shall be wound up upon the happening of the first to occur of the following events:

1. At the time or on the happening of an event specified in this chapter or in the articles of organization or an operating agreement to cause dissolution.

2. Upon the unanimous written consent of the members.

3. The entry of a decree of judicial dissolution under section 490A.1302.

4. The administrative dissolution of the limited liability company under section 490A.1321.

92 Acts, ch 1151, § 68; 93 Acts, ch 39, § 30, 31; 95 Acts, ch 138, §5; 96 Acts, ch 1170, § 22; 97 Acts, ch 188, § 73; 2006 Acts, ch 1089, §27

490A.1302 Judicial dissolution.

On application by or for a member, the district court of the county in which the registered office of the

limited liability company is located may decree dissolution of a limited liability company if it is not reasonably practicable to carry on the business in conformity with the articles of organization and any operating agreement.

92 Acts, ch 1151, § 69

490A.1303 Winding up.

Unless otherwise provided in the articles of organization or an operating agreement, members who have not wrongfully dissolved a limited liability company may wind up the limited liability company's affairs; but the district court of the county in which the registered office of the limited liability company is located, on cause shown, may wind up the limited liability company's affairs on application of any member, member's legal representative, or member's assignee.

92 Acts, ch 1151, § 70

490A.1304 Distribution of assets upon dissolution.

Upon the winding up of a limited liability company, the assets of the limited liability company shall be distributed in the order as follows:

1. To creditors, including members who are creditors, to the extent permitted by law, in satisfaction of liabilities of the limited liability company other than for distributions to members under section 490A.803 or section 490A.805.

2. Unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under section 490A.803 or section 490A.805.

3. Unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their capital contributions and second with respect to their interests in the limited liability company, in the proportions in which the members share in distributions.

92 Acts, ch 1151, § 71

490A.1305 Articles of dissolution.

1. Upon the completion of winding up of the limited liability company, articles of dissolution shall be delivered to the secretary of state for filing. The winding up of a limited liability company shall be completed when all debts, liabilities, and obligations of the limited liability company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the limited liability company have been distributed to the members. The articles of dissolution shall set forth all of the following:

a. The name of the limited liability company.

b. The date of filing of the articles of organization and each amendment thereto.

c. The reason for filing the articles of dissolution.

d. The effective date of dissolution if it is not to be effective on the filing of the articles of dissolution.

e. Any other information the members or managers determine to include.

2. The limited liability company is dissolved upon the effective date of its articles of dissolution.

92 Acts, ch 1151, § 72

490A.1306 Known claims against dissolved limited liability companies.

A dissolved limited liability company may dispose of the known claims against it in accordance with this section.

1. The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must do all of the following:

a. Describe information that must be included in a claim.

b. Provide a mailing address where a claim may be sent.

c. State the deadline, which may not be fewer than one hundred twenty days from the effective date of the written notice, by which the dissolved limited liability company must receive the claim.

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

2. A claim against the dissolved limited liability company is barred if either of the following occurs:

a. A claimant who was given written notice under subsection 1 does not deliver the claim to the dissolved limited liability company by the deadline.

b. A claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

3. For purposes of this section, *"claim"* does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

92 Acts, ch 1151, § 73

490A.1307 Unknown claims against dissolved limited liability company.

1. A dissolved limited liability company may also publish notice of its dissolution and request that persons with claims against the limited liability company present them in accordance with the notice.

2. The notice shall meet all of the following requirements:

a. Be published one time in a newspaper of general circulation in the county where the dissolved limited liability company's principal office or, if none in this state, its registered office is or was last located.

b. Describe the information that must be included in a claim and provide a mailing address where the claim may be sent.

c. State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

3. If the dissolved limited liability company publishes a newspaper notice in accordance with subsection 2, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper

notice:

a. A claimant who did not receive written notice under section 490A.1306.

b. A claimant whose claim was timely sent to the dissolved limited liability company but not acted on.

c. A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

4. A claim may be enforced under this section in either of the following ways:

a. Against the dissolved limited liability company, to the extent of its undistributed assets.

b. If the assets have been distributed in liquidation, against a member of the dissolved limited liability company to the extent of the member's pro rata share of the claim or the limited liability company assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets distributed to the member in liquidation.

92 Acts, ch 1151, § 74

490A.1308 Revocation of dissolution.

1. A limited liability company may revoke its dissolution within one hundred twenty days of the effective date of its articles of dissolution.

2. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the managers of the limited liability company alone, in which event the managers may revoke the dissolution without member action.

3. After the revocation of dissolution is authorized, the limited liability company may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth all of the following:

a. The name of the limited liability company.

b. The effective date of the dissolution that was revoked.

c. The date that the revocation of dissolution was authorized.

d. If members of the limited liability company unanimously revoked the dissolution, a statement to that effect.

e. If the managers of the limited liability company revoked a dissolution authorized by its members, a statement that revocation was permitted by action by the managers alone pursuant to that authorization.

4. Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

5. When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution as if the dissolution had never occurred.

2006 Acts, ch 1089, §28

490A.1320 Grounds for administrative dissolution.

The secretary of state may commence a proceeding under section 490A.1321 to administratively dissolve a limited liability company if any of the following apply:

1. The limited liability company has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 490A.131 within sixty days after it is due, or has not paid the filing fee as determined by the secretary of state within sixty days after it is due.

2. The limited liability company is without a registered office or registered agent in this state as required in subchapter V for sixty days or more.

3. The limited liability company does not notify the secretary of state within sixty days that its registered office or registered agent as required in subchapter V has been changed, its registered office has been discontinued, or that its registered agent has resigned.

4. The limited liability company's period of duration stated in its articles of organization expires.

2006 Acts, ch 1089, §29

490A.1321 Procedure for and effect of administrative dissolution.

1. If the secretary of state determines that one or more grounds exist under section 490A.1320 for dissolving a limited liability company, the secretary of state shall serve the limited liability company with written notice of the secretary of state's determination under section 490A.504.

2. If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected under section 490A.504, the secretary of state shall administratively dissolve the limited liability company by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the limited liability company under section 490A.504.

3. A limited liability company administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs under part 1 of this subchapter and notify claimants under sections 490A.1306 and 490A.1307.

4. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent as provided in subchapter V.

5. The secretary of state's administrative dissolution of a limited liability company pursuant to this section appoints the secretary of state the limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the limited liability company. Upon receipt of process, the secretary of state shall serve a copy of the process on the limited liability company as provided in section 490A.504. This subsection does not preclude service on the limited liability company's registered agent, if any.

2006 Acts, ch 1089, §30

490A.1322 Reinstatement following administrative dissolution.

1. A limited liability company administratively dissolved under section 490A.1321 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution. The application must meet all of the following requirements:

a. Recite the name of the limited liability company at its date of dissolution and the effective date of its administrative dissolution.

b. State that the ground or grounds for dissolution as provided in section 490A.1320 have been eliminated.

c. If the application is received more than five years after the effective date of the administrative dissolution, state a name that satisfies the requirements of section 490A.401.

d. State the federal tax identification number of the limited liability company.

2. *a.* The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the department of revenue. The department of revenue shall report to the secretary of state the tax status of the limited liability company. If the department reports to the secretary of state that a filing delinquency or liability exists against the limited liability company, the secretary of state shall not cancel the certificate of dissolution until the filing delinquency or liability is satisfied.

b. If the secretary of state determines that the application contains the information required by subsection 1, and that a delinquency or liability reported pursuant to paragraph *"a"* of this subsection has been satisfied, and that the information is correct, the secretary of state shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites the secretary of state's determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the limited liability company under section 490A.504. If the limited liability company's name in subsection 1, paragraph *"c"*, is different than the name in subsection 1, paragraph *"a"*, the certificate of reinstatement shall constitute an amendment to the limited liability company's articles of organization insofar as it pertains to its name. A limited liability company shall not relinquish the right to retain its name as provided in section 490A.401, if the reinstatement is effective within five years of the effective date of the limited liability company's dissolution.

3. When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution as if the administrative dissolution had never occurred.

2006 Acts, ch 1089, §31

490A.1323 Appeal from denial of reinstatement.

1. If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution pursuant to section 490A.1321, the secretary of state shall serve the limited liability company under section 490A.504 with a written notice that explains the reason or reasons for denial.

2. The limited liability company may appeal the denial of reinstatement to the district court within thirty days after service of the notice of denial is perfected. The limited liability company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, the limited liability company's application for reinstatement, and the secretary of state's notice of denial.

3. The court may summarily order the secretary of state to reinstate the dissolved limited liability company or may take other action the court considers appropriate.

4. The court's final decision may be appealed as in other civil proceedings.

2006 Acts, ch 1089, §32

490A.1401 Law governing.

The law of the state or other jurisdiction under which a foreign limited liability company is formed governs its formation and internal affairs and the liability of its members and managers. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between those laws and the laws of this state. A foreign limited liability company holding a valid certificate of authority in this state shall have no greater rights and privileges than a domestic limited liability company. The certificate of authority shall not be deemed to authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

92 Acts, ch 1151, § 75; 2006 Acts, ch 1089, §33

490A.1402 Application for certificate of authority.

1. A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth all of the following:

a. The name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 490A.401.

b. The name of the state or country under whose law it is organized.

c. Its date of formation and period of duration.

d. The street address of its principal office.

e. The address of its registered office in this state and the name of its registered agent at that address as provided in subchapter V.

2. The foreign limited liability company shall deliver the completed application to the secretary of state, and also deliver to the secretary of state a certificate of existence or a document of similar import duly authenticated by the secretary of state or proper officer of the state or other jurisdiction of its formation which is dated no earlier than ninety days prior to the date the application is filed with the secretary of state.

92 Acts, ch 1151, § 76; 93 Acts, ch 39, § 32; 2006 Acts, ch 1089, §34

490A.1403 Service on foreign limited liability company.

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

2. A foreign limited liability company may be served by registered or certified mail, return receipt requested, addressed to the foreign limited liability company at its principal office shown in its application for a certificate of authority if the foreign limited liability company meets any of the following conditions:

a. Has no registered agent or its registered agent cannot with reasonable diligence be served.

b. Has withdrawn from transacting business in this state under section 490A.1406.

c. Has had its certificate of authority revoked under section 490A.1410.

3. Service is perfected under subsection 2 at the earliest of:

a. The date the foreign limited liability company receives the mail.

b. The date shown on the return receipt, if signed on behalf of the foreign limited liability company.

c. Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

4. A foreign limited liability company may also be served in any other manner permitted by law.

92 Acts, ch 1151, § 77

490A.1404 Name.

A certificate of authority shall not be issued to a foreign limited liability company unless the name of the limited liability company satisfies the requirements of section 490A.401. To obtain or maintain a certificate of authority, the company shall comply with the following:

1. The foreign limited liability company shall add the words "Limited Company" or the abbreviation "L.C." to its name for use in this state.

2. If its real name is unavailable in this state, the foreign limited liability company shall use a fictitious name that is available, and which satisfies the requirements of section 490A.401, and shall inform the secretary of state of the fictitious name.

92 Acts, ch 1151, § 78; 94 Acts, ch 1023, §59; 2006 Acts, ch 1089, §35

490A.1405 Change and amendment.

If any statement in the application for a certificate of authority of a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly deliver to the secretary of state for filing articles of correction correcting such statement as required by section 490A.123.

92 Acts, ch 1151, § 79; 2006 Acts, ch 1089, §36

490A.1406 Cancellation of certificate of authority.

1. A foreign limited liability company may cancel its certificate of authority by delivering to the secretary of state for filing a certificate of cancellation which shall set forth all of the following:

a. The name of the foreign limited liability company and the name of the state or other jurisdiction under whose jurisdiction it was formed.

b. That the foreign limited liability company is not transacting business in this state and that it surrenders its certificate of authority to transact business in this state.

c. That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state.

d. A mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under paragraph *"c"* of this subsection.

e. A commitment to notify the secretary of state in the future of any change in the mailing address of the foreign limited liability company.

2. The certificate of authority shall be canceled upon the filing of the certificate of cancellation by the secretary of state.

92 Acts, ch 1151, § 80; 93 Acts, ch 39, § 33; 94 Acts, ch 1023, §60; 2006 Acts, ch 1089, §37, 38

490A.1407 Authority to transact business required.

1. A foreign limited liability company shall not transact business in this state until it obtains a certificate of authority from the secretary of state.

2. The following activities, among others, do not constitute transacting business within the meaning of subsection 1:

a. Maintaining, defending, or settling any proceeding.

b. Holding meetings of the members or managers or carrying on other activities concerning internal company affairs.

c. Maintaining bank accounts.

d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities.

e. Selling through independent contractors.

f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts.

g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property.

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

i. Owning, without more, real or personal property.

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

k. Transacting business in interstate commerce.

3. The list of activities in subsection 2 is not exhaustive.

92 Acts, ch 1151, § 81; 93 Acts, ch 39, § 34; 94 Acts, ch 1023, §61

490A.1408 Consequences of transacting business without authority.

1. A foreign limited liability company transacting business in this state without a certificate of authority shall not maintain a proceeding in any court in this state until it obtains a certificate of authority.

2. The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a

proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

3. A court may stay a proceeding commenced by a foreign limited liability company, its successor, or assignee until it determines whether the foreign limited liability company or its successor or assignee requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

4. A foreign limited liability company is liable for a civil penalty not to exceed a total of one thousand dollars if it transacts business in this state without a certificate of authority. The attorney general may collect penalties due under this subsection.

5. Notwithstanding subsections 1 and 2, the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its official acts or prevent it from defending any proceeding in this state.

92 Acts, ch 1151, § 82

490A.1409 Actions by attorney general.

The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

92 Acts, ch 1151, § 83

490A.1410 Revocation of certificate of authority.

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of any of the following:

a. The foreign limited liability company has failed to:

(1) Pay any fees or penalties prescribed by this chapter.

(2) Appoint and maintain a registered agent as required under section 490A.1402.

(3) Deliver for filing to the secretary of state a report upon any change in the name or address of the registered agent.

(4) Deliver to the secretary of state for filing articles of correction required under section 490A.1405.

(5) Deliver for filing to the secretary of state a biennial report as required by section 490A.131.

b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other documents submitted by the foreign limited liability company under this subchapter.

2. A certificate of authority of a foreign limited liability company shall not be revoked by the secretary of state, unless both of the following apply:

a. The secretary of state has given the foreign limited liability company not less than sixty days' notice thereof by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the office required to be maintained pursuant to section 490A.1402.

b. During the sixty-day period, the foreign limited liability company has failed to pay such fees or penalties prescribed by this chapter, to file a report of change regarding the registered agent, to file any necessary articles of correction, or to correct any such misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state shall cease.

92 Acts, ch 1151, § 84; 93 Acts, ch 39, § 35; 2006 Acts, ch 1089, §39, 40

490A.1501 Definitions.

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

1. *"Employees"* or *"agents"* does not include clerks, stenographers, secretaries, bookkeepers, technicians, or other persons who are not usually and ordinarily considered by custom and practice to be practicing a profession nor any other person who performs all that person's duties for the professional limited liability company under the direct supervision and control of one or more managers, employees, or agents of the professional limited liability company who are duly licensed in this state to practice a profession which the limited liability company is authorized to practice in this state. This chapter does not require any such persons to be licensed to practice a profession if they are not required to be licensed under any other law of this state.

2. *"Foreign professional limited liability company"* means a limited liability company organized under laws other than the laws of this state for a purpose for which a professional limited liability company may be organized under this chapter.

3. *"Licensed"* includes registered, certified, admitted to practice, or otherwise legally authorized under the laws of this state.

4. *"Profession"* means the profession of certified public accountancy, architecture, chiropractic, dentistry, physical therapy, psychology, professional engineering, land surveying, landscape architecture, law, medicine and surgery, optometry, osteopathy, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medicine, pharmacy, nursing, and marriage and family therapy, provided that the marriage and family therapist is licensed under chapters 147 and 154D.

5. *"Professional limited liability company"* means a limited liability company subject to this subchapter, except a foreign professional limited liability company.

6. *"Regulating board"* means any board, commission, court, or governmental authority which, under the laws of this state, is charged with the licensing, registration, certification, admission to practice, or other legal authorization of the practitioners of any profession.

7. *"Voluntary transfer"* includes a sale, voluntary assignment, gift, pledge, or encumbrance; a voluntary change of legal or equitable ownership or beneficial interest; or a voluntary change of persons having voting rights with respect to any membership interest, except as proxies; but does not include a transfer of an individual's membership interest or other property to a guardian or conservator appointed for that individual or the individual's property.

92 Acts, ch 1151, § 85; 95 Acts, ch 138, §6; 2007 Acts, ch 13, § 1

490A.1502 Purposes and powers.

A professional limited liability company shall be organized only for the purpose of engaging in the practice of one specific profession, or two or more specific professions which could lawfully be practiced in combination by a licensed individual or a partnership of licensed individuals, and for the additional purpose of doing all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions. The articles of organization of a professional limited liability company shall state in substance that the purposes for which the professional limited liability company is organized are to engage in the general practice of a specified profession or professions, or one or more specified branches or divisions thereof, and to do all lawful things which may be incidental to or necessary or convenient in connection with the practice of the profession or professions.

92 Acts, ch 1151, § 86

490A.1503 Name.

The name of a professional limited liability company, the name of a foreign professional limited liability company or its name as modified for use in this state, and any fictitious name or trade name adopted by a professional limited liability company or foreign professional limited liability company shall contain the words "Professional Limited Company" or the abbreviation "P.L.C.", and except for the addition of such words or abbreviation, shall be a name which could lawfully be used by a licensed individual or by a partnership of licensed individuals in the practice in this state of a profession which the professional limited liability company is authorized to practice. Each regulating board may by rule adopt additional requirements as to the corporate names and fictitious or trade names of professional limited liability companies and foreign professional limited liability companies which are authorized to practice a profession which is within the jurisdiction of the regulating board.

92 Acts, ch 1151, § 87

490A.1504 Who may organize.

One or more individuals having capacity to contract and licensed to practice a profession in this state in which the professional limited liability company is to be authorized to practice, may organize a professional limited liability company.

92 Acts, ch 1151, § 88; 99 Acts, ch 208, §37

490A.1505 Practice by professional limited liability company.

Notwithstanding any other statute or rule of law, a professional limited liability company may practice a profession, but may do so in this state only through members, managers, employees, and agents who are licensed to practice the same profession in this state. In its practice of a profession, no professional limited liability company shall do any act which could not lawfully be done by individuals licensed to practice the profession which the professional limited liability company is authorized to practice.

92 Acts, ch 1151, § 89

490A.1506 Professional regulation.

A professional limited liability company shall not be required to register with or to obtain any license, registration, certificate, or other legal authorization from a regulating board in order to practice a profession. Except as provided in this section, this subchapter does not restrict or limit in any manner the authority or duties of any regulating board with respect to individuals practicing a profession which is within the

jurisdiction of the regulating board, even if the individual is a member, manager, employee, or agent of a professional limited liability company or foreign professional limited liability company and practices the individual's profession through such professional limited liability company.

92 Acts, ch 1151, § 90

490A.1507 Relationship and liability to persons served.

This subchapter does not modify any law applicable to the relationship between an individual practicing a profession and a person receiving professional services, including, but not limited to, any liability arising out of such practice and any law respecting privileged communications. This chapter does not modify or affect the ethical standards or standards of conduct of any profession, including, but not limited to, any standards prohibiting or limiting the practice of the profession by a limited liability company or prohibiting or limiting the practice of two or more professions in combination. All such standards shall apply to the members, managers, employees, and agents through whom a professional limited liability company practices any profession in this state, to the same extent that the standards apply to an individual practitioner.

92 Acts, ch 1151, § 91

490A.1508 Issuance of membership interests.

Membership interests of a professional limited liability company shall be issued only to individuals who are licensed to practice in any state a profession which the professional limited liability company is authorized to practice. Membership interests of a professional limited liability company shall not at any time be issued in, transferred into, or held in joint tenancy, tenancy in common, or any other form of joint ownership or co-ownership. The Iowa uniform securities Act as provided in chapter 502 shall not be applicable to nor govern any transaction relating to any membership interests of a professional limited liability company.

92 Acts, ch 1151, § 92; 2003 Acts, ch 108, §92

490A.1509 Assignment of membership interests.

A member or other person shall not make a voluntary assignment of a membership interest in a professional limited liability company to any person, except to the professional limited liability company or to an individual who is licensed to practice in this state a profession which the limited liability company is authorized to practice. The articles of organization or operating agreement of the professional limited liability company may contain any additional provisions restricting the assignment of membership interests. Unless the articles of organization or an operating agreement otherwise provide, a voluntary assignment requires the unanimous consent of the members.

92 Acts, ch 1151, § 93

490A.1510 Convertible membership interests rights and options.

A professional limited liability company shall not create or issue any interest convertible into a membership interest of the professional limited liability company. The provisions of this subchapter with respect to the issuance and transfer of membership interests apply to the creation, issuance, and transfer of any rights or options entitling the holder to purchase from a professional limited liability company any membership interests of the professional limited liability company. Rights or options shall not be transferable, whether voluntarily, involuntarily, by operation of law, or in any other manner. Upon the death of the holder, or when the holder ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the rights or options shall expire.

92 Acts, ch 1151, § 94

490A.1511 Voting trust proxy.

A member of a professional limited liability company shall not create or enter into a voting trust or any other agreement conferring upon any other person the right to vote or otherwise represent any membership interests of a professional limited liability company, and no such voting trust or agreement is valid or effective. Any proxy of a member of a professional limited liability company shall be an individual licensed to practice a profession in this state which the professional limited liability company is authorized to practice. Any provision in any proxy instrument denying the right of the member to revoke the proxy at any time or for any period of time is not valid or effective. This section does not otherwise limit the right of a member to vote by proxy, but the articles of organization or operating agreement of the professional limited liability company may further limit or deny the right to vote by proxy.

92 Acts, ch 1151, § 95

490A.1512 Required purchase by professional limited liability company of its own membership interests.

1. Notwithstanding any other statute or rule of law, a professional limited liability company shall purchase its own membership interests as provided in this section; and the members of a professional limited liability company and their executors, administrators, legal representatives, and successors in interest, shall sell and transfer the membership interests held by them as provided in this section.

2. Upon the death of a member, the professional limited liability company shall immediately purchase all membership interests held by the deceased member.

3. In order to remain a member of a professional limited liability company, a member shall at all times be licensed to practice in this state a profession which the professional limited liability company is authorized to practice. When a member does not have or ceases to have this qualification, the professional limited liability company shall immediately purchase all membership interests held by that member.

4. When a person other than a member of record becomes entitled to have membership interests of a professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to membership interests of the professional limited liability company, the professional limited liability company shall immediately purchase the membership interests. Without limiting the generality of the foregoing, this section shall be applicable whether the event occurs as a result of appointment of a guardian or conservator for a member or the member's property, transfer of membership interests by operation of law, involuntary transfer of membership interests, judicial proceedings, execution, levy, bankruptcy proceedings, receivership proceedings, foreclosure or enforcement of a pledge or encumbrance, or any other situation or occurrence. However, this section does not apply to any voluntary transfer of membership interests as defined in this chapter.

5. Membership interests purchased by the professional limited liability company under this section shall be transferred to the professional limited liability company as of the close of business on the date of the death or other event which requires purchase. The member and the member's executors, administrators, legal representatives, or successors in interest, shall promptly do all things which may be necessary or convenient to cause transfer to be made as of the transfer date. However, the membership interests shall promptly be transferred on the books and records of the professional limited liability company as of the transfer date, notwithstanding any delay in transferring or surrendering the membership interests or certificates representing the membership interests, and the transfer shall be valid and effective for all purposes as of the

close of business on the transfer date. The purchase price for such membership interests shall be paid as provided in this chapter, but the transfer of membership interests to the professional limited liability company as provided in this section shall not be delayed or affected by any delay or default in making payment.

6. Notwithstanding subsections 1 through 5, purchase by the professional limited liability company is not required upon the occurrence of any event other than death of a member, if the professional limited liability company is dissolved within sixty days after the occurrence of the event. The articles of organization or operating agreement of the professional limited liability company may provide that purchase is not required upon the death of a member, if the professional limited liability company is dissolved within sixty days after the date of the member's death.

7. Unless otherwise provided in the articles of organization or an operating agreement of the professional limited liability company or in an agreement among all members of the professional limited liability company all of the following apply:

a. The purchase price for membership interests shall be their book value as of the end of the month immediately preceding the death or other event which requires purchase. Book value shall be determined from the books and records of the professional limited liability company in accordance with the regular method of accounting used by the professional limited liability company, uniformly and consistently applied. Adjustments to book value shall be made, if necessary, to take into account work in process and accounts receivable. A final determination of book value made in good faith by an independent certified public accountant or firm of certified public accountants employed by the professional limited liability company for the purpose shall be conclusive on all persons.

b. The purchase price shall be paid in cash as follows:

(1) Upon the death of a member, thirty percent of the purchase price shall be paid within ninety days after death, and the balance shall be paid in three equal annual installments on the first three anniversaries of the death.

(2) Upon the happening of any other event referred to in this section, one-tenth of the purchase price shall be paid within ninety days after the date of the event, and the balance shall be paid in three equal annual installments on the first three anniversaries of the date of the event.

c. Interest from the date of death or other event shall be payable annually on principal payment dates, at the rate of six percent per annum on the unpaid balance of the purchase price.

d. All persons who are members of the professional limited liability company on the date of death or other event, and their executors, administrators, and legal representatives, shall, to the extent the professional limited liability company fails to meet its obligations under this section, be jointly liable for the payment of the purchase price and interest in proportion to their percentage of ownership of the professional limited liability company's membership interests, disregarding membership interests of the deceased or withdrawing member.

e. The part of the purchase price remaining unpaid after the initial payment shall be evidenced by a negotiable promissory note, which shall be executed by the professional limited liability company and all members liable for payment. Any person liable on the note shall have the right to prepay the note in full or in part at any time.

f. If the person making any payment is not reasonably able to determine which of two or more persons is entitled to receive a payment, or if the payment is payable to a person who is unknown, or who is under disability and there is no person legally competent to receive the payment, or who cannot be found after the exercise of reasonable diligence by the person making the payment, it shall be deposited with the treasurer of

state and shall be subject to the provisions of section 490.1440 with respect to funds deposited with the treasurer of state upon the voluntary or involuntary dissolution of a business corporation.

8. Notwithstanding the other provisions of this section, no part of the purchase price shall be required to be paid until the certificates, if any, representing the membership interests have been surrendered to the professional limited liability company.

9. Notwithstanding the other provisions of this section, payment of any part of the purchase price for membership interests of a deceased member shall not be required until the executor or administrator of the deceased member provides any indemnity, release, or other document from any taxing authority, which is reasonably necessary to protect the professional limited liability company against liability for estate, inheritance, and death taxes.

10. The articles of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for a different purchase price, a different method of determining the purchase price, a different interest rate or no interest, and other terms, conditions, and schedules of payment.

11. The articles of organization or an operating agreement of the professional limited liability company or an agreement among all members of a professional limited liability company may provide for the optional or mandatory purchase of its own membership interests by the professional limited liability company in other situations, subject to any applicable law regarding such a purchase.

92 Acts, ch 1151, § 96

490A.1513 Certificates representing membership interests.

Each certificate representing membership interests of a professional limited liability company shall state in substance that the certificate represents membership interests in a professional limited liability company and is not transferable except as expressly provided in this chapter and in the articles of organization or an operating agreement of the professional limited liability company.

92 Acts, ch 1151, § 97

490A.1514 Management.

All managers of a professional limited liability company shall at all times be individuals who are licensed to practice a profession in this state which the limited liability company is authorized to practice. A person who is not licensed shall have no authority or duties in the management or control of the limited liability company. If a manager ceases to have this qualification, the manager shall immediately and automatically cease to hold such management position.

92 Acts, ch 1151, § 98

490A.1515 Merger.

A professional limited liability company shall not merge with any entity except another professional limited liability company subject to this subchapter or a professional corporation subject to chapter 496C. Merger is not permitted unless the surviving or new professional limited liability company is a professional limited liability company which complies with all requirements of this subchapter.

92 Acts, ch 1151, § 99

490A.1516 Dissolution or liquidation.

Violation of any provision of this subchapter by a professional limited liability company or any of its members or managers shall be cause for its involuntary dissolution, or liquidation of its assets and business by the district court, as provided in section 490A.1302. Upon the death of the last remaining member of a professional limited liability company, or when the last remaining member is not licensed or ceases to be licensed to practice a profession in this state which the professional limited liability company is authorized to practice, or when any person other than the member of record becomes entitled to have all membership interests of the last remaining member of the professional limited liability company transferred into that person's name or to exercise voting rights, except as a proxy, with respect to such membership interests, the professional limited liability company shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding membership interests of the professional limited liability company are acquired by two or more persons licensed to practice a profession in this state which the professional limited liability company is authorized to practice, the professional limited liability company need not be dissolved and may practice the profession as provided in this subchapter.

92 Acts, ch 1151, § 100; 93 Acts, ch 39, § 36

490A.1517 Foreign professional limited liability company.

A foreign professional limited liability company may practice a profession in this state if it complies with the provisions of this chapter and this subchapter. The secretary of state may prescribe forms for this purpose. A foreign professional limited liability company may practice a profession in this state only through members, managers, employees, and agents who are licensed to practice the profession in this state. The provisions of this subchapter with respect to the practice of a profession by a professional limited liability company apply to a foreign professional limited liability company. This subchapter does not prohibit the practice of a profession in this state by an individual who is a member, manager, employee, or agent of a foreign professional limited liability company, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional limited liability company. The preceding sentence applies regardless of whether or not the foreign professional limited liability company is authorized to practice a profession in this state.

92 Acts, ch 1151, § 101

490A.1518 Limited liability companies organized under other laws.

This chapter does not apply to or interfere with the practice of any profession by or through any professional limited liability company organized after July 1, 1992, under any other law of this state or any other state or country, if the practice is lawful under any other statute or rule of law of this state. Any such professional limited liability company may voluntarily elect to adopt this subchapter and become subject to its provisions, by amending its articles of organization to be consistent with all provisions of this subchapter and by stating in its amended articles of organization that the limited liability company has voluntarily elected to adopt this subchapter. Any limited liability company organized under any law of any other state or country may become subject to the provisions of this subchapter by complying with all provisions of this subchapter with respect to foreign professional limited liability companies.

92 Acts, ch 1151, § 102

490A.1519 Conflicts with other provisions of this chapter.

The provisions of this subchapter shall prevail over any inconsistent provisions of this chapter.

92 Acts, ch 1151, § 103

490A.1601 Property title records.

When by merger or amendment to the articles of organization the name of any domestic or foreign limited liability company is changed, a certificate reciting the change or succession shall be issued by the secretary of state upon request and payment of any applicable fee and the certificate may be admitted to record upon payment of any applicable fee in any recording office within the jurisdiction of which any property of the limited liability company is located in order to maintain the continuity of title records, but no transfer tax shall be due thereon. If a limited liability company or other entity is not a domestic limited liability company or other entity or a foreign limited liability company or other entity authorized to do business in this state, a similar certificate by any competent authority of the state of organization or formation of the limited liability company or other entity may be admitted to record in any recording office within the jurisdiction of which any property of the limited liability company or other entity is located in order to maintain the continuity of title records upon payment of any applicable fee, but no transfer tax shall be due thereon.

92 Acts, ch 1151, § 104