CHAPTER 489

REVISED UNIFORM LIMITED LIABILITY COMPANY ACT

[SP]
Before January 1, 2011, this chapter governs
limited liability companies formed on or
after January 1, 2009, and companies
electing to be subject to this chapter;
on and after January 1, 2011, this chapter governs
all limited liability companies; see §489.1304

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ARTICLE 1

GENERAL PROVISIONS

489.101 Short title.

This chapter may be cited as the *"Revised Uniform Limited Liability Company Act"*.

2008 Acts, ch 1162, §1, 155

489.102 Definitions.

As used in this chapter:

1. *"Certificate of organization"* means the certificate required by section 489.201. The term includes the certificate as amended or restated.

2. *"Contribution"* means any benefit provided by a person to a limited liability company that is any of the following:

a. In order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company.

b. In order to become a member after formation of the company and in accordance with an agreement between the person and the company.

c. In the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the company.

3. *"Debtor in bankruptcy"* means a person that is the subject of any of the following:

a. An order for relief under Tit. 11 of the United States Code or a successor statute of general application.

b. A comparable order under federal, state, or foreign law governing insolvency.

4. *"Deliver"* or *"delivery"* means any method of delivery used in conventional commercial practice, including delivery in person, by mail, commercial delivery, and electronic transmission.

5. *"Distribution"*, except as otherwise provided in section 489.405, subsection 6, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

6. *"Domestic cooperative"* means an entity organized on a cooperative basis under chapter 497, 498, or 499 or a cooperative organized under chapter 501 or 501A.

7. *"Effective"*, with respect to a record required or permitted to be delivered to the secretary of state for filing under this chapter, means effective under section 489.205, subsection 3.

8. *"Electronic transmission"* means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

9. *"Foreign limited liability company"* means an unincorporated entity formed under the law of a jurisdiction other than this state and denominated by that law as a limited liability company.

10. *"Limited liability company"*, except in the phrase *"foreign limited liability company"*, means an entity formed under this chapter.

11. *"Manager"* means a person that under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in section 489.407, subsection 3.

12. *"Manager-managed limited liability company"* means a limited liability company that qualifies under section 489.407, subsection 1.

13. *"Member"* means a person that has become a member of a limited liability company under section 489.401 and has not dissociated under section 489.602.

14. *"Member-managed limited liability company"* means a limited liability company that is not a manager-managed limited liability company.

15. *"Operating agreement"* means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in section 489.110, subsection 1. The term includes the agreement as amended or restated.

16. *"Organizer"* means a person that acts under section 489.201 to form a limited liability company.

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

18. *"Principal office"* means the principal executive office of a limited liability company or foreign limited liability company, whether or not the office is located in this state.

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

20. *"Registered office"* means the office that a limited liability company or foreign limited liability company is required to designate and maintain under section 489.113.

21. *"Sign"* means, with the present intent to authenticate or adopt a record, to do any of the following:

a. Execute or adopt a tangible symbol.

b. Attach to or logically associate with the record an electronic symbol, sound, or process.

22. *"State"* means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

23. *"Transfer"* includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, or transfer by operation of law.

24. *"Transferable interest"* means the right, as originally associated with a person's capacity as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

25. *"Transferee"* means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

2008 Acts, ch 1162, §2, 155; 2010 Acts, ch 1100, §1
[T] Subsection 20 amended

489.103 Knowledge — notice.

1. A person knows a fact when the person has or is any of the following:

a. Has actual knowledge of it.

b. Is deemed to know it under subsection 4, paragraph *"a"*, or law other than this chapter.

2. A person has notice of a fact when the person has or is any of the following:

a. Has reason to know the fact from all of the facts known to the person at the time in question.

b. Is deemed to have notice of the fact under subsection 4, paragraph *"b"*.

3. A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

4. A person that is not a member is deemed both of the following:

a. To know of a limitation on authority to transfer real property as provided in section 489.302, subsection 7.

b. To have notice of all of the following regarding a limited liability company's:

(1) Dissolution, ninety days after a statement of dissolution under section 489.702, subsection 2, paragraph *"b"*, subparagraph (1), becomes effective.

(2) Termination, ninety days after a statement of termination under section 489.702, subsection 2, paragraph *"b"*, subparagraph (6), becomes effective.

(3) Merger, conversion, or domestication, ninety days after articles of merger, conversion, or domestication under article 10 become effective.

2008 Acts, ch 1162, §3, 155

489.104 Nature, purpose, and duration of limited liability company.

1. A limited liability company is an entity distinct from its members.

2. A limited liability company may have any lawful purpose, regardless of whether for profit.

3. A limited liability company has perpetual duration.

2008 Acts, ch 1162, §4, 155

489.105 Powers.

1. Except as otherwise provided in subsection 2, a limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities.

2. Until a limited liability company has or has had at least one member, the company lacks the capacity to do any act or carry on any activity except all of the following:

a. Delivering to the secretary of state for filing a statement of change under section 489.114, an amendment to the certificate under section 489.202, a statement of correction under section 489.206, a biennial report under section 489.209, or a statement of termination under section 489.702, subsection 2, paragraph "*b*", subparagraph (6).

b. Admitting a member under section 489.401.

c. Dissolving under section 489.701.

3. A limited liability company that has or has had at least one member may ratify an act or activity that occurred when the company lacked capacity under subsection 2.

2008 Acts, ch 1162, §5, 155

489.106 Governing law.

The law of this state governs all of the following:

1. The internal affairs of a limited liability company.

2. The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of a limited liability company.

2008 Acts, ch 1162, §6, 155

489.107 Supplemental principles of law.

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

2008 Acts, ch 1162, §7, 155

489.108 Name.

1. The name of a limited liability company must contain the words "*limited liability company*" or "*limited company*" or the abbreviation "L. L. C.", "LLC", "L. C.", or "LC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.".

2. Unless authorized by subsection 3, the name of a limited liability company must be distinguishable in the records of the secretary of state from all of the following:

a. The name of each person that is not an individual and that is incorporated, organized, or authorized to transact business in this state.

b. Each name reserved under section 489.109.

3. A limited liability company may apply to the secretary of state for authorization to use a name that does not comply with subsection 2. The secretary of state shall authorize use of the name applied for if either of the following applies:

a. The present user, registrant, or owner of the noncomplying name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the noncomplying name to a name that complies with subsection 2 and is distinguishable in the records of the secretary of state from the name applied for.

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

4. 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 any 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.

5. This article 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 of its members if it is member-managed or its managers if it is manager-managed, adopting the fictitious name.

6. Subject to section 489.805, this section applies to a foreign limited liability company transacting business in this state which has a certificate of authority to transact business in this state or which has applied for a certificate of authority.

2008 Acts, ch 1162, §8, 155; 2009 Acts, ch 133, §160

489.109 Reservation of name.

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

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

2008 Acts, ch 1162, §9, 155

489.110 Operating agreement — scope, function, and limitations.

1. Except as otherwise provided in subsections 2 and 3, the operating agreement governs all of the following:

a. Relations among the members as members and between the members and the limited liability company.

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

c. The activities of the company and the conduct of those activities.

d. The means and conditions for amending the operating agreement.

2. To the extent the operating agreement does not otherwise provide for a matter described in subsection 1, this chapter governs the matter.

3. An operating agreement shall not do any of the following:

a. Vary a limited liability company's capacity under section 489.105 to sue and be sued in its own name.

b. Vary the law applicable under section 489.106.

c. Vary the power of the court under section 489.204.

d. Subject to subsections 4 through 7, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty.

e. Subject to subsections 4 through 7, eliminate the contractual obligation of good faith and fair dealing under section 489.409, subsection 4.

f. Unreasonably restrict the duties and rights stated in section 489.410.

g. Vary the power of a court to decree dissolution in the circumstances specified in section 489.701, subsection 1, paragraphs "*d*" and "*e*".

h. Vary the requirement to wind up a limited liability company's business as specified in section 489.702, subsection 1, and subsection 2, paragraph "*a*".

i. Unreasonably restrict the right of a member to maintain an action under article 9.

j. Restrict the right to approve a merger, conversion, or domestication under section

489.1014 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization.

k. Except as otherwise provided in section 489.112, subsection 2, restrict the rights under this chapter of a person other than a member or manager.

4. If not manifestly unreasonable, the operating agreement may do any of the following:

a. Restrict or eliminate the duty to do any of the following:

(1) As required in section 489.409, subsection 2, paragraph *"a"*, and subsection 8, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity.

(2) As required in section 489.409, subsection 2, paragraph *"b"*, and subsection 8, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company.

(3) As required by section 489.409, subsection 2, paragraph *"c"*, and subsection 8, to refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

b. Identify specific types or categories of activities that do not violate the duty of loyalty.

c. Alter the duty of care, except to authorize intentional misconduct or knowing violation of law.

d. Alter any other fiduciary duty, including eliminating particular aspects of that duty.

e. Prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under section 489.409, subsection 4.

5. The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

6. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

7. The operating agreement may alter or eliminate the indemnification for a member or manager provided by section 489.408, subsection 1, and may eliminate or limit a member's or manager's liability to the limited liability company and members for money damages, except for any of the following:

a. A breach of the duty of loyalty.

b. A financial benefit received by the member or manager to which the member or manager is not entitled.

c. A breach of a duty under section 489.406.

d. Intentional infliction of harm on the company or a member.

e. An intentional violation of criminal law.

8. The court shall decide any claim under subsection 4 that a term of an operating agreement is manifestly unreasonable. All of the following apply:

a. The court shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time.

b. The court may invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that any of the following applies:

(1) The objective of the term is unreasonable.

(2) The term is an unreasonable means to achieve the provision's objective.

2008 Acts, ch 1162, §10, 155

489.111 Operating agreement — effect on limited liability company and persons becoming members — preformation agreement.

1. A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

2. A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

3. Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

4. An operating agreement in a signed record that excludes modification or recision except by a signed record cannot be otherwise modified or rescinded.

2008 Acts, ch 1162, §11, 155

489.112 Operating agreement — effect on third parties and relationship to records effective on behalf of limited liability company.

1. An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

2. The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under section 489.503, subsection 2, paragraph *"b"*, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

3. If a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter contains a provision that would be ineffective under section 489.110, subsection 3, if contained in the operating agreement, the provision is likewise ineffective in the record.

4. Subject to subsection 3, if a record that has been delivered by a limited liability company to the secretary of state for filing and has become effective under this chapter conflicts with a provision of the operating agreement, the following rules apply:

a. The operating agreement prevails as to members, dissociated members, transferees, and managers.

b. The record prevails as to other persons to the extent they reasonably rely on the record.

2008 Acts, ch 1162, §12, 155

489.113 Registered office and registered agent for service of process.

A limited liability company or a foreign limited liability company that has a certificate of authority under section 489.802 shall designate and continuously maintain in this state all of the following:

1. A registered office, which need not be a place of its activity in this state.

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

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

b. A domestic corporation, 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.

2008 Acts, ch 1162, §13, 155; 2010 Acts, ch 1100, §2

[T] Section amended

489.114 Change of registered office or registered agent for service of process.

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

a. The name of the company.

b. If the current registered office is to be changed, the street and mailing addresses 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 consent to the appointment. The agent's consent may be on the statement or attached to it.

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. If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any limited liability company or foreign limited liability company for which the person is the registered agent by notifying the limited liability company or foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection 1 and recites that the limited liability company or foreign limited liability company has been notified of the change.

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 by subsection 2 for each limited liability company or foreign limited liability company, or a single statement of all limited liability companies or all foreign limited liability companies named in the notice, except that it need be signed only by the registered agent 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 or foreign limited liability company named in the notice.

4. A limited liability company or foreign limited liability company may also change its registered office or registered agent in its biennial report as provided in section 489.209.

5. Subject to section 489.205, subsection 3, a statement of change is effective when filed by the secretary of state.

2008 Acts, ch 1162, §14, 155; 2010 Acts, ch 1100, §3
[T] Section amended

489.115 Resignation of registered agent for service of process.

1. A registered agent may resign the agent's agency appointment by signing and delivering to the secretary of state for filing the signed original statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued. The registered agent shall send a copy of the statement of resignation by certified mail, return receipt requested, to the limited liability company or foreign limited liability company at its principal office and to the registered office, if not discontinued. The registered agent shall certify to the secretary of state that the copies have been sent to the limited liability company or foreign limited liability company, including the date the copies were sent.

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

2008 Acts, ch 1162, §15, 155; 2010 Acts, ch 1100, §4
[T] Section stricken and rewritten

489.116 Service of process.

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

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

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

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

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

3. A limited liability company or foreign limited liability company may be served pursuant to this section, as provided in another provision of this chapter, or as provided in sections 617.3 through 617.6, unless the manner of service is otherwise specifically provided for by another provision of law.

2008 Acts, ch 1162, §16, 155; 2010 Acts, ch 1100, §5; 2010 Acts, ch 1193, §56
[T] Section amended

489.117 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. Certificate 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. Statement of change of registered agent or registered office or both ..... No fee
f. Registered agent's statement of change of registered office for each affected limited liability company ..... No fee
g. Registered agent's statement of resignation ..... No fee
h. Amendment to certificate of organization ..... $ 50
i. Restatement of certificate of organization with amendment of certificate ..... $ 50
j. Articles of merger ..... $ 50
k. Statement of dissolution ..... $ 5
l. Declaration of administrative dissolution ..... No fee
m. Application for reinstatement following administrative dissolution ..... $ 5
n. Certificate of reinstatement ..... No fee
o. Application for certificate of authority $100
p. Application for amended certificate of authority $100
q. Statement of cancellation ..... $ 10
r. Certificate of revocation of authority to transact business ..... No fee
s. Statement of correction ..... $ 5
t. Application for certificate of existence or authorization ..... $ 5
u. 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 limited liability company:

a. One dollar a page for copying.
b. Five dollars for the certificate.

4. The secretary of state may impose, assess, and collect a filing fee as a condition to accepting a biennial report as provided in section 489.209.

2008 Acts, ch 1162, §17, 155; 2010 Acts, ch 1100, §6, 7
[T] Subsection 1, paragraphs e and f stricken and former paragraphs g – w redesignated as e – u
[T] NEW subsection 4

ARTICLE 2

FORMATION — CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

489.201 Formation of limited liability company — certificate of organization.

1. One or more persons may act as organizers to form a limited liability company by signing and delivering to the secretary of state for filing a certificate of organization.

2. A certificate of organization must state all of the following:

a. The name of the limited liability company, which must comply with section 489.108.

b. The street address of the initial registered office and the name of the initial registered agent for service of process on the company.

3. Subject to section 489.112, subsection 3, a certificate of organization may also contain statements as to matters other than those required by subsection 2. However, a statement in a certificate of organization is not effective as a statement of authority.

4. A limited liability company is formed when the secretary of state has filed the certificate of organization, unless the certificate states a delayed effective date pursuant to section 489.205, subsection 3. If the certificate states a delayed effective date, a limited liability company is not formed if, before the certificate takes effect, a statement of cancellation is signed and delivered to the secretary of state for filing and the secretary of state files the certificate.

5. Subject to any delayed effective date and except in a proceeding by this state to dissolve a limited liability company, the filing of the certificate of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

2008 Acts, ch 1162, §18, 155; 2010 Acts, ch 1100, §8
[T] Subsection 2, paragraph b amended

489.202 Amendment or restatement of certificate of organization.

1. A certificate of organization may be amended or restated at any time.

2. To amend its certificate of organization, a limited liability company must deliver to the secretary of state for filing an amendment stating all of the following:

a. The name of the company.

b. The date of filing of its certificate of organization.

c. The changes the amendment makes to the certificate as most recently amended or restated.

3. To restate its certificate of organization, a limited liability company must deliver to the secretary of state for filing a restatement, designated as such in its heading, stating all of the following:

a. In the heading or an introductory paragraph, the company's present name and the date of the filing of the company's initial certificate of organization.

b. If the company's name has been changed at any time since the company's formation, each of the company's former names.

c. The changes the restatement makes to the certificate as most recently amended or restated.

4. Subject to section 489.112, subsection 3, and section 489.205, subsection 3, an amendment to or restatement of a certificate of organization is effective when filed by the secretary of state.

5. If a member of a member-managed limited liability company, or a manager of a

manager-managed limited liability company, knows that any information in a filed certificate of organization was inaccurate when the certificate was filed or has become inaccurate owing to changed circumstances, the member or manager shall promptly do any of the following:

a. Cause the certificate to be amended.

b. If appropriate, deliver to the secretary of state for filing a statement of change under section 489.114 or a statement of correction under section 489.206.

2008 Acts, ch 1162, §19, 155

489.203 Signing of records to be delivered for filing to secretary of state.

1. A record delivered to the secretary of state for filing pursuant to this chapter must be signed as follows:

a. Except as otherwise provided in paragraphs *"b"* and *"c"*, a record signed on behalf of a limited liability company must be signed by a person authorized by the company.

b. A limited liability company's initial certificate of organization must be signed by at least one person acting as an organizer.

c. A record filed on behalf of a limited liability company that does not have or has not had at least one member must be signed by an organizer.

d. A record filed on behalf of a dissolved limited liability company that has no members must be signed by the person winding up the company's activities under section 489.702, subsection 3, or a person appointed under section 489.702, subsection 4, to wind up those activities.

e. A statement of cancellation under section 489.201, subsection 4, must be signed by each organizer that signed the initial certificate of organization, but a personal representative of a deceased or incompetent organizer may sign in the place of the decedent or incompetent.

f. A statement of denial by a person under section 489.303 must be signed by that person.

g. Any other record must be signed by the person on whose behalf the record is delivered to the secretary of state.

2. Any record filed under this chapter may be signed by an agent.

2008 Acts, ch 1162, §20, 155

489.204 Signing and filing pursuant to judicial order.

1. If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing under this chapter does not do so, any other person that is aggrieved may petition the district court to order one or more of the following:

a. The person to sign the record.

b. The person to deliver the record to the secretary of state for filing.

c. The secretary of state to file the record unsigned.

2. If a petitioner under subsection 1 is not the limited liability company or foreign limited liability company to which the record pertains, the petitioner shall make the company a party to the action.

3. If a district court orders an unsigned record to be delivered to the secretary of state, the secretary of state shall file the record and the court order upon receipt.

2008 Acts, ch 1162, §21, 155

489.205 Delivery to and filing of records by secretary of state — effective time and date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees have been paid, unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, the secretary of state shall file the record and any of the following applies:

a. For a statement of denial under section 489.303, send a copy of the filed statement and a receipt for the fees to the person on whose behalf the statement was delivered for filing and to the limited liability company.

b. For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

2. Upon request and payment of the requisite fee, the secretary of state shall send to the requester a certified copy of a requested record.

3. Except as otherwise provided in sections 489.115 and 489.206, and except for a certificate of organization that contains a statement as provided in section 489.201, subsection 4, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Subject to section 489.115, section 489.201, subsection 4, and section 489.206, a record filed by the secretary of state is effective as follows:

a. If the record does not specify either an effective time or a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record.

b. If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record.

c. If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of any of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

d. If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of any of the following:

(1) The specified date.

(2) The ninetieth day after the record is filed.

e. A delayed effective date for a record shall not be later than the ninetieth day after the date on which it is filed.

2008 Acts, ch 1162, §22, 155

489.206 Correcting filed record.

1. A limited liability company or foreign limited liability company may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the company to the secretary of state and filed by the secretary of state, if at the time of filing the record contained inaccurate information or was defectively signed.

2. A statement of correction under subsection 1 shall not have a delayed effective date and must do all of the following:

a. Describe the record to be corrected, including its filing date, or attach a copy of the record as filed.

b. Specify the inaccurate information and the reason it is inaccurate or the manner in which the signing was defective.

c. Correct the defective signature or inaccurate information.

3. When filed by the secretary of state, a statement of correction under subsection 1 is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed as to all of the following:

a. For the purposes of section 489.103, subsection 4.

b. As to persons that previously relied on the uncorrected record and would be adversely affected by the retroactive effect.

2008 Acts, ch 1162, §23, 155

489.207 Penalty for signing false record.

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

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

2008 Acts, ch 1162, §24, 155

489.208 Certificate of existence or authorization.

1. The secretary of state, upon request and payment of the requisite fee, shall furnish to

any person a certificate of existence for a limited liability company if the records filed in the office of the secretary of state show that the company has been formed under section 489.201 and the secretary of state has not filed a statement of termination pertaining to the company. A certificate of existence must state all of the following:

a. The company's name.

b. That the company was duly formed under the laws of this state, the date of its formation, and the period of its duration if less than perpetual.

c. Whether all fees, taxes, and penalties due under this chapter or other law to the secretary of state have been paid.

d. Whether the company's most recent biennial report required by section 489.209 has been filed by the secretary of state.

e. Whether the secretary of state has administratively dissolved the company.

f. Whether the company has delivered to the secretary of state for filing a statement of dissolution.

g. That a statement of termination has not been filed by the secretary of state.

h. Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.

2. The secretary of state, upon request and payment of the requisite fee, shall furnish to any person a certificate of authorization for a foreign limited liability company if the records filed in the office of the secretary of state show that the secretary of state has filed a certificate of authority, has not revoked the certificate of authority, and has not filed a notice of cancellation. A certificate of authorization must state all of the following:

a. The company's name and any alternate name adopted under section 489.805, subsection 1, for use in this state.

b. That the company is authorized to transact business in this state.

c. Whether all fees, taxes, and penalties due under this chapter or other law to the secretary of state have been paid.

d. Whether the company's most recent biennial report required by section 489.209 has been filed by the secretary of state.

e. That the secretary of state has not revoked the company's certificate of authority and has not filed a notice of cancellation.

f. Other facts of record in the office of the secretary of state which are specified by the person requesting the certificate.

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

2008 Acts, ch 1162, §25, 155; 2010 Acts, ch 1100, §9
[T] Subsection 1, paragraph b amended

489.209 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 company.

b. The street address of the company's registered office, the name of its registered agent at that office, and the consent of any new registered agent.

c. The street address of its principal office.

d. In the case of a foreign limited liability company, the state or other jurisdiction under whose law the company is formed and any alternate name adopted under section 489.805, subsection 1.

2. Information in a biennial report under this section must be current as of the date the report is delivered to the secretary of state for filing. The report shall be executed on behalf of the limited liability company or foreign limited liability company and signed as provided in section 489.203.

3. The first biennial report under this section must be delivered to the secretary of state

between January 1 and April 1 of the first odd-numbered year following the calendar year in which a limited liability company was formed or a foreign limited liability company was authorized to transact business. A subsequent biennial report must be delivered to the secretary of state between January 1 and April 1 of each following odd-numbered calendar year. A filing fee for the biennial report shall be determined by the secretary of state pursuant to section 489.117. Each biennial report shall contain information related to the two-year period immediately preceding the calendar year in which the report is filed.

4. If a biennial report does not contain the information required in this section, the secretary of state shall promptly notify the reporting limited liability company or foreign limited liability company in writing and return the report to it for correction.

5. The secretary of state may provide for the change of registered office or registered agent on the form prescribed by the secretary of state for the biennial report, provided that the form contains the information required in section 489.114. If the secretary of state determines that a biennial report does not contain the information required in this section but otherwise meets the requirements of section 489.114 for the purpose of changing the registered office or registered agent, the secretary of state shall file the statement of change for the registered office or registered agent, effective as provided in section 489.205, subsection 3, before returning the biennial report to the limited liability company as provided in this section. A statement of change of registered office or registered agent accomplished pursuant to this subsection shall be executed by a person authorized to execute the biennial report.

2008 Acts, ch 1162, §26, 155; 2010 Acts, ch 1100, §10
[T] Section amended

ARTICLE 3

RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED LIABILITY COMPANY

489.301 No agency power of member as member.

1. A member is not an agent of a limited liability company solely by reason of being a member.

2. A person's status as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the person's conduct.

2008 Acts, ch 1162, §27, 155

489.302 Statement of authority.

1. A limited liability company may deliver to the secretary of state for filing a statement of authority. All of the following apply to the statement:

a. It must include the name of the company and the street address of its principal office.

b. With respect to any position that exists in or with respect to the company, it may state the authority, or limitations on the authority, of all persons holding the position to do any of the following:

(1) Execute an instrument transferring real property held in the name of the company.

(2) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

c. It may state the authority, or limitations on the authority, of a specific person to do any of the following:

(1) Execute an instrument transferring real property held in the name of the company.

(2) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

2. To amend or cancel a statement of authority filed by the secretary of state under section 489.205, subsection 1, a limited liability company must deliver to the secretary of state for filing an amendment or cancellation stating all of the following:

a. The name of the company.

b. The street address of the company's principal office.

c. The caption of the statement being amended or canceled and the date the statement being affected became effective.

d. The contents of the amendment or a declaration that the statement being affected is canceled.

3. A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

4. Subject to subsection 3 and section 489.103, subsection 4, and except as otherwise provided in subsections 6, 7, and 8, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

5. Subject to subsection 3, a grant of authority not pertaining to a transfer of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value, any of the following applies:

a. The person has knowledge to the contrary.

b. The statement has been canceled or restrictively amended under subsection 2.

c. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

6. Subject to subsection 3, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company and that is recorded by certified copy in the office for recording transfers of the real property is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value, any of the following applies:

a. The statement has been canceled or restrictively amended under subsection 2 and a certified copy of the cancellation or restrictive amendment has been recorded in the office for recording transfers of the real property.

b. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the office for recording transfers of the real property.

7. Subject to subsection 3, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the office for recording transfers of that real property, all persons are deemed to know of the limitation.

8. Subject to subsection 9, an effective statement of dissolution or statement of termination is a cancellation of any filed statement of authority for the purposes of subsection 6 and is a limitation on authority for the purposes of subsection 7.

9. After a statement of dissolution becomes effective, a limited liability company may deliver to the secretary of state for filing and, if appropriate, may record a statement of authority that is designated as a post-dissolution statement of authority. The statement operates as provided in subsections 6 and 7.

10. Unless earlier canceled, an effective statement of authority is canceled by operation of law five years after the date on which the statement, or its most recent amendment, becomes effective. This cancellation operates without need for any recording under subsection 6 or 7.

11. An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy for the purposes of subsection 6, paragraph "*a*".

2008 Acts, ch 1162, §28, 155; 2009 Acts, ch 41, §144, 145; 2010 Acts, ch 1100, §11, 12
[T] Subsection 1, paragraph a amended
[T] Subsection 2, paragraph b amended

489.303 Statement of denial.

A person named in a filed statement of authority granting that person authority may deliver to the secretary of state for filing a statement of denial that does all of the following:

1. Provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains.

2. Denies the grant of authority.

3. Certifies to the secretary of state that the person denying authority has sent a copy of the statement of denial to the limited liability company, including the date on which the copy was sent.

2008 Acts, ch 1162, §29, 155; 2010 Acts, ch 1100, §13
[T] NEW subsection 3

489.304 Liability of members and managers.

1. For debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise all of the following apply:

a. They are solely the debts, obligations, or other liabilities of the company.

b. They do not become the debts, obligations, or other liabilities of a member or manager solely by reason of the member acting as a member or manager acting as a manager.

2. The failure of a limited liability company to observe any particular formalities relating to the exercise of its powers or management of its activities is not a ground for imposing liability on the members or managers for the debts, obligations, or other liabilities of the company.

2008 Acts, ch 1162, §30, 155

ARTICLE 4

RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

489.401 Becoming member.

1. If a limited liability company is to have only one member upon formation, a person becomes the member as agreed by that person and the organizer of the company or a majority of organizers if more than one. That person and the organizer may be, but need not be, different persons. If different, the organizer acts on behalf of the initial member.

2. If a limited liability company is to have more than one member upon formation, those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

3. If a limited liability company has no members upon formation, a person becomes a member of the limited liability company with the consent of the organizer or a majority of the organizers if more than one. The organizers may consent to more than one person simultaneously becoming the company's initial members.

4. After formation of a limited liability company, a person becomes a member upon any of the following:

a. As provided in the operating agreement.

b. As the result of a transaction effective under article 10.

c. With the consent of all the members.

d. If, within ninety consecutive days after the company ceases to have any members, all of the following occur:

(1) The last person to have been a member, or the legal representative of that person, designates a person to become a member.

(2) The designated person consents to become a member.

5. A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

2008 Acts, ch 1162, §31, 155; 2009 Acts, ch 41, §146

489.402 Form of contribution.

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

2008 Acts, ch 1162, §32, 155

489.403 Liability for contributions.

1. A person's obligation to make a contribution to a limited liability company is not excused by the person's death, disability, or other inability to perform personally. If a person does not make a required contribution, the person or the person's estate is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

2. A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection 1 may enforce the obligation.

3. 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 interest to that of a nondefaulting member, a forced sale of the member's interest, forfeiture of the member's 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 interest by appraisal or by formula and redemption, or sale of the member's interest at such value or other penalty or consequence.

2008 Acts, ch 1162, §33, 155

489.404 Sharing of and right to distributions before dissolution.

1. Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 489.502 and any charging order in effect under section 489.503.

2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in section 489.708, subsection 3, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a member or transferee becomes entitled to receive a distribution, the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

2008 Acts, ch 1162, §34, 155

489.405 Limitations on distribution.

1. A limited liability company shall not make a distribution if after the distribution any of the following applies:

a. The company would not be able to pay its debts as they become due in the ordinary course of the company's activities.

b. The company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

2. A limited liability company may base a determination that a distribution is not prohibited under subsection 1 on financial statements prepared on the basis of accounting

practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

3. Except as otherwise provided in subsection 5, the effect of a distribution under subsection 1 is measured as follows:

a. In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company.

b. In all other cases, as follows:

(1) The date that distribution is authorized, if the payment occurs within one hundred twenty days after that date.

(2) The date that payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

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

5. A limited liability company's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection 1 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section. If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

6. In subsection 1, "*distribution*" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

2008 Acts, ch 1162, §35, 155

489.406 Liability for improper distributions.

1. Except as otherwise provided in subsection 2, if a member of a member-managed limited liability company or manager of a manager-managed limited liability company consents to a distribution made in violation of section 489.405 and in consenting to the distribution fails to comply with section 489.409, the member or manager is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 489.405.

2. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection 1 applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

3. A person that receives a distribution knowing that the distribution to that person was made in violation of section 489.405 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 489.405.

4. A person against which an action is commenced because the person is liable under subsection 1 may do all of the following:

a. Implead any other person that is subject to liability under subsection 1 and seek to compel contribution from the person.

b. Implead any person that received a distribution in violation of subsection 3 and seek to compel contribution from the person in the amount the person received in violation of subsection 3.

5. An action under this section is barred if not commenced within two years after the distribution.

2008 Acts, ch 1162, §36, 155

489.407 Management of limited liability company.

1. A limited liability company is a member-managed limited liability company unless the operating agreement does any of the following:

a. Expressly provides that any of the following apply:

(1) The company is or will be "manager-managed".

(2) The company is or will be "managed by managers".

(3) Management of the company is or will be "vested in managers".

b. Includes words of similar import.

2. In a member-managed limited liability company, all of the following rules apply:

a. The management and conduct of the company are vested in the members.

b. Each member has equal rights in the management and conduct of the company's activities.

c. A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

d. An act outside the ordinary course of the activities of the company, including selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property, with or without the goodwill, may be undertaken only with the consent of all members.

e. The operating agreement may be amended only with the consent of all members.

f. Approve a merger, conversion, or domestication under article 10.*

3. In a manager-managed limited liability company, all of the following rules apply:

a. Except as otherwise expressly provided in this chapter, any matter relating to the activities of the company is decided exclusively by the managers.

b. Each manager has equal rights in the management and conduct of the activities of the company.

c. A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

d. The consent of all members is required to do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the company's property, with or without the goodwill, outside the ordinary course of the company's activities.

(2) Approve a merger, conversion, or domestication under article 10.

(3) Undertake any other act outside the ordinary course of the company's activities.

(4) Amend the operating agreement.

e. A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

f. A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

g. A person's ceasing to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

4. An action requiring the consent of members under this chapter may be taken without a meeting, and a member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the member's agent.

5. The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management as a member and a manager.

6. This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

2008 Acts, ch 1162, §37, 155

[SP] *Description of approval process and any restrictions on the approval process probably intended; corrective legislation is pending

489.408 Indemnification and insurance.

1. A limited liability company shall reimburse for any payment made and indemnify

for any debt, obligation, or other liability incurred by a member of a member-managed company or the manager of a manager-managed company in the course of the member's or manager's activities on behalf of the company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with the duties stated in sections 489.405 and 489.409.

2. A limited liability company may purchase and maintain insurance on behalf of a member or manager of the company against liability asserted against or incurred by the member or manager in that capacity or arising from that status even if, under section 489.110, subsection 7, the operating agreement could not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

2008 Acts, ch 1162, §38, 155

489.409 Standards of conduct for members and managers.

1. A member of a member-managed limited liability company owes to the company and, subject to section 489.901, subsection 2, the other members the fiduciary duties of loyalty and care stated in subsections 2 and 3.

2. The duty of loyalty of a member in a member-managed limited liability company includes all of the following duties:

a. To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member regarding any of the following:

(1) In the conduct or winding up of the company's activities.

(2) From a use by the member of the company's property.

(3) From the appropriation of a limited liability company opportunity.

b. To refrain from dealing with the company in the conduct or winding up of the company's activities as or on behalf of a person having an interest adverse to the company.

c. To refrain from competing with the company in the conduct of the company's activities before the dissolution of the company.

3. Subject to the business judgment rule as stated in subsection 7, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the company's activities is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith upon opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

4. A member in a member-managed limited liability company or a manager-managed limited liability company shall discharge the duties under this chapter or under the operating agreement and exercise any rights consistently with the contractual obligation of good faith and fair dealing.

5. It is a defense to a claim under subsection 2, paragraph "*b*", and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

6. All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

7. *a.* A member satisfies the duty of care in subsection 3 if all of the following apply:

(1) The member is not interested in the subject matter of the business judgment.

(2) The member is informed with respect to the subject of the business judgment to the extent the member reasonably believes to be appropriate in the circumstances.

(3) The member has a rational basis for believing that the business judgment is in the best interests of the limited liability company.

b. A person challenging the business judgment of a member has the burden of proving a breach of the duty of care, and in a damage action, the burden of proving that the breach was the legal cause of damage suffered by the limited liability company.

8. In a manager-managed limited liability company, all of the following rules apply:

a. Subsections 1, 2, 3, 5, and 7 apply to the manager or managers and not the members.

b. The duty stated under subsection 2, paragraph "*c*", continues until winding up is completed.

c. Subsection 4 applies to the members and managers.

d. Subsection 6 applies only to the members.

e. A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

2008 Acts, ch 1162, §39, 155

489.410 Right of members, managers, and dissociated members to information.

1. In a member-managed limited liability company, all of the following rules apply:

a. On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the company's activities, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

b. The company shall furnish to each member all of the following:

(1) Without demand, any information concerning the company's activities, financial condition, and other circumstances which the company knows and is material to the proper exercise of the member's rights and duties under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information.

(2) On demand, any other information concerning the company's activities, financial condition, and other circumstances, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

c. The duty to furnish information under paragraph *"b"* also applies to each member to the extent the member knows any of the information described in paragraph *"b"*.

2. In a manager-managed limited liability company, all of the following rules apply:

a. The informational rights stated in subsection 1 and the duty stated in subsection 1, paragraph *"c"*, apply to the managers and not the members.

b. During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if all of the following apply:

(1) The member seeks the information for a purpose material to the member's interest as a member.

(2) The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information.

(3) The information sought is directly connected to the member's purpose.

c. Within ten days after receiving a demand pursuant to paragraph *"b"*, subparagraph (2), the company shall in a record inform the member that made the demand all of the following:

(1) Of the information that the company will provide in response to the demand and when and where the company will provide the information.

(2) If the company declines to provide any demanded information, the company's reasons for declining.

d. Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the member's decision.

3. On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subsection 2, paragraph *"b"*. The company shall respond to a demand made pursuant to this subsection in the manner provided in subsection 2, paragraph *"c"*.

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

5. A member or dissociated member may exercise rights under this section through

an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection 7 applies both to the agent or legal representative and the member or dissociated member.

6. The rights under this section do not extend to a person as transferee.

7. In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

2008 Acts, ch 1162, §40, 155

ARTICLE 5

TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

489.501 Nature of transferable interest.

A transferable interest is personal property.

2008 Acts, ch 1162, §41, 155

489.502 Transfer of transferable interest.

1. For a transfer, in whole or in part, all of the following applies to a transferable interest:

a. It is permissible.

b. It does not by itself cause a member's dissociation or a dissolution and winding up of the limited liability company's activities.

c. Subject to section 489.504, it does not entitle the transferee to do any of the following:

(1) Participate in the management or conduct of the company's activities.

(2) Except as otherwise provided in subsection 3, have access to records or other information concerning the company's activities.

2. A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

3. In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the company's transactions only from the date of dissolution.

4. A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

5. A limited liability company need not give effect to a transferee's rights under this section until the company has notice of the transfer.

6. A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement or another agreement to which the transferor is a party is ineffective as to a person having notice of the restriction at the time of transfer.

7. Except as otherwise provided in section 489.602, subsection 4, paragraph *"b"*, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

8. When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the member's obligations under section 489.403 and section 489.406, subsection 3, known to the transferee when the transferee becomes a member.

2008 Acts, ch 1162, §42, 155

489.503 Charging order.

1. On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on a judgment debtor's transferable interest and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

2. To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may do all of the following:

a. Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made.

b. Make all other orders necessary to give effect to the charging order.

3. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale only obtains the transferable interest, does not thereby become a member, and is subject to section 489.502.

4. At any time before foreclosure under subsection 3, the member or transferee whose transferable interest is subject to a charging order under subsection 1 may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

5. At any time before foreclosure under subsection 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

6. This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the member's or transferee's transferable interest.

7. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the judgment debtor's transferable interest.

2008 Acts, ch 1162, §43, 155

489.504 Power of personal representative of deceased member.

If a member dies, the deceased member's personal representative or other legal representative may exercise the rights of a transferee provided in section 489.502, subsection 3, and, for the purposes of settling the estate, the rights of a current member under section 489.410.

2008 Acts, ch 1162, §44, 155

ARTICLE 6

MEMBER'S DISSOCIATION

489.601 Member's power to dissociate — wrongful dissociation.

1. A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under section 489.602, subsection 1.

2. A person's dissociation from a limited liability company is wrongful only if any of the following applies to the dissociation:

a. It is in breach of an express provision of the operating agreement.

b. It occurs before the termination of the company and any of the following applies:

(1) The person withdraws as a member by express will.

(2) The person is expelled as a member by judicial order under section 489.602, subsection 5.

(3) The person is dissociated under section 489.602, subsection 7, paragraph "*a*", by becoming a debtor in bankruptcy.

(4) In the case of a person that is not a trust other than a business trust, an estate, or an

individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

3. A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 489.901, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

2008 Acts, ch 1162, §45, 155

489.602 Events causing dissociation.

A person is dissociated as a member from a limited liability company when any of the following applies:

1. The company has notice of the person's express will to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, on that later date.

2. An event stated in the operating agreement as causing the person's dissociation occurs.

3. The person is expelled as a member pursuant to the operating agreement.

4. The person is expelled as a member by the unanimous consent of the other members if any of the following applies:

a. It is unlawful to carry on the company's activities with the person as a member.

b. There has been a transfer of all of the person's transferable interest in the company, other than any of the following:

(1) A transfer for security purposes.

(2) A charging order in effect under section 489.503 which has not been foreclosed.

c. The person is a corporation and, within ninety days after the company notifies the person that it will be expelled as a member because the person has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the certificate of dissolution has not been revoked or its charter or right to conduct business has not been reinstated.

d. The person is a limited liability company or partnership that has been dissolved and whose business is being wound up.

5. On application by the company, the person is expelled as a member by judicial order because the person has done any of the following:

a. Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the company's activities.

b. Has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person's duties or obligations under section 489.409.

c. Has engaged in, or is engaging in, conduct relating to the company's activities which makes it not reasonably practicable to carry on the activities with the person as a member.

6. In the case of a person who is an individual, any of the following applies:

a. The person dies.

b. In a member-managed limited liability company, any of the following applies:

(1) A guardian or general conservator for the person is appointed.

(2) There is a judicial order that the person has otherwise become incapable of performing the person's duties as a member under this chapter or the operating agreement.

7. In a member-managed limited liability company, the person does any of the following:

a. Becomes a debtor in bankruptcy.

b. Executes an assignment for the benefit of creditors.

c. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property.

8. In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the trust's entire transferable interest in the company is distributed.

9. In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the estate's entire transferable interest in the company is distributed.

10. In the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member.

11. The company participates in a merger under article 10, if any of the following applies:

a. The company is not the surviving entity.

b. Otherwise as a result of the merger, the person ceases to be a member.

12. The company participates in a conversion under article 10.

13. The company participates in a domestication under article 10, if, as a result of the domestication, the person ceases to be a member.

14. The company terminates.

2008 Acts, ch 1162, §46, 155

489.603 Effect of person's dissociation as member.

1. When a person is dissociated as a member of a limited liability company, all of the following apply:

a. The person's right to participate as a member in the management and conduct of the company's activities terminates.

b. If the company is member-managed, the person's fiduciary duties as a member end with regard to matters arising and events occurring after the person's dissociation.

c. Subject to section 489.504 and article 10, any transferable interest owned by the person immediately before dissociation in the person's capacity as a member is owned by the person solely as a transferee.

2. A person's dissociation as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members which the person incurred while a member.

2008 Acts, ch 1162, §47, 155

489.604 Member's power to dissociate under certain circumstances.

1. If the certificate of organization or an operating agreement does not specify the time or the events upon the happening of which a member may dissociate, a member may dissociate from the limited liability company in the event any amendment to the certificate 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 transferable interest in any of the ways described in paragraphs *"a"* through *"f"*. A dissociation 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 section:

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

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

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.

f. Waives the application of this section to the limited liability company.

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

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

4. 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.

5. The operating agreement of a limited liability company may waive the applicability of this section to the company and its members.

2008 Acts, ch 1162, §48, 155

ARTICLE 7

DISSOLUTION AND WINDING UP

489.701 Events causing dissolution.

1. A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

a. An event or circumstance that the operating agreement states causes dissolution.

b. The consent of all the members.

c. Once the company has at least one member, the passage of ninety consecutive days during which the company has no members.

d. On application by a member, the entry by a district court of an order dissolving the company on the grounds that any of the following applies:

(1) The conduct of all or substantially all of the company's activities is unlawful.

(2) It is not reasonably practicable to carry on the company's activities in conformity with the certificate of organization and the operating agreement.

e. On application by a member or transferee, the entry by a district court of an order dissolving the company on the grounds that the managers or those members in control of the company have done any of the following:

(1) Have acted, are acting, or will act in a manner that is illegal or fraudulent.

(2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

2. In a proceeding brought under subsection 1, paragraph *"e"*, the court may order a remedy other than dissolution.

2008 Acts, ch 1162, §49, 155

489.702 Winding up.

1. A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

2. In winding up its activities, all of the following apply to a limited liability company:

a. It shall discharge the company's debts, obligations, or other liabilities, settle and close the company's activities, and marshal and distribute the assets of the company.

b. It may do all of the following:

(1) Deliver to the secretary of state for filing a statement of dissolution stating the name of the company and that the company is dissolved.

(2) Preserve the company activities and property as a going concern for a reasonable time.

(3) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative.

(4) Transfer the company's property.

(5) Settle disputes by mediation or arbitration.

(6) Deliver to the secretary of state for filing a statement of termination stating the name of the company and that the company is terminated.

(7) Perform other acts necessary or appropriate to the winding up.

3. If a dissolved limited liability company has no members, the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, the person has the powers of a sole manager under section 489.407, subsection 3, and is deemed to be a manager for the purposes of section 489.304, subsection 1, paragraph *"b"*.

4. If the legal representative under subsection 3 declines or fails to wind up the company's activities, a person may be appointed to do so by the consent of transferees owning a majority

of the rights to receive distributions as transferees at the time the consent is to be effective. All of the following apply to a person appointed under this subsection:

a. The person has the powers of a sole manager under section 489.407, subsection 3, and is deemed to be a manager for the purposes of section 489.304, subsection 1, paragraph *"b"*.

b. The person shall promptly deliver to the secretary of state for filing an amendment to the company's certificate of organization to do all of the following:

(1) State that the company has no members.

(2) State that the person has been appointed pursuant to this subsection to wind up the company.

(3) Provide the street and mailing addresses of the person.

5. The district court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the company's activities pursuant to any of the following:

a. On application of a member, if the applicant establishes good cause.

b. On the application of a transferee, if all of the following apply:

(1) The company does not have any members.

(2) The legal representative of the last person to have been a member declines or fails to wind up the company's activities.

(3) Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection 4.

c. In connection with a proceeding under section 489.701, subsection 1, paragraph *"d"* or *"e"*.

2008 Acts, ch 1162, §50, 155; 2009 Acts, ch 133, §161

489.703 Known claims against dissolved limited liability company.

1. Except as otherwise provided in subsection 4, a dissolved limited liability company may give notice of a known claim under subsection 2, which has the effect as provided in subsection 3.

2. A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must do all of the following:

a. Specify the information required to be included in a claim.

b. Provide a mailing address to which the claim is to be sent.

c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant.

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

3. A claim against a dissolved limited liability company is barred if the requirements of subsection 2 are met and any of the following applies:

a. The claim is not received by the specified deadline.

b. If the claim is timely received but rejected by the company, all of the following apply:

(1) The company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice.

(2) The claimant does not commence the required action within the ninety days.

4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

2008 Acts, ch 1162, §51, 155

489.704 Other claims against dissolved limited liability company.

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

2. The notice authorized by subsection 1 must do all of the following:

a. Be published at least once in a newspaper of general circulation in the county in this state in which the dissolved limited liability company's principal office is located or, if it has none in this state, in the county in which the company's registered office is or was last located.

b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent.

c. State that a claim against the company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

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

a. A claimant that did not receive notice in a record under section 489.703.

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

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

4. A claim not barred under this section may be enforced as follows:

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

b. If assets of the company have been distributed after dissolution, against a member or transferee to the extent of that person's proportionate share of the claim or of the assets distributed to the member or transferee after dissolution, whichever is less, but a person's total liability for all claims under this paragraph does not exceed the total amount of assets distributed to the person after dissolution.

2008 Acts, ch 1162, §52, 155

489.705 Administrative dissolution.

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

a. The limited liability company has not delivered a biennial report to the secretary of state in a form that meets the requirements of section 489.209 within sixty days after it is due, or has not paid within sixty days after the due date, any fee, tax, or penalty due to the secretary of state under this chapter or law other than this chapter.

b. The limited liability company is without a registered office or registered agent in this state for sixty days or more.

c. The limited liability company does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

d. The limited liability company's period of duration stated in its certificate of organization has expired.

2. If the secretary of state determines that a ground exists for administratively dissolving a limited liability company, the secretary of state shall file a record of the determination and serve the company with a copy of the filed record.

3. If within sixty days after service of the copy pursuant to subsection 2 a limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall dissolve the company administratively by preparing, signing, and filing a declaration of dissolution that states the grounds for dissolution. The secretary of state shall serve the company with a copy of the filed declaration.

4. A limited liability company that has been administratively dissolved continues in existence but, subject to section 489.706, may carry on only activities necessary to wind up its activities and liquidate its assets under sections 489.702 and 489.708 and to notify claimants under sections 489.703 and 489.704.

5. The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

2008 Acts, ch 1162, §53, 155; 2010 Acts, ch 1100, §14

[T] Subsection 1 amended

489.706 Reinstatement following administrative dissolution.

1. A limited liability company administratively dissolved under section 489.705 may apply to the secretary of state for reinstatement at any time after the effective date of dissolution.

The application must be delivered to the secretary of state and 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 489.705 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 489.108.

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

2. The secretary of state shall refer the federal tax identification number contained in the application for reinstatement to the departments of revenue and workforce development. The departments of revenue and workforce development shall report to the secretary of state the tax status of the limited liability company. If either 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 declaration of dissolution until the filing delinquency or liability is satisfied.

3. 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 subsection 2 has been satisfied, and that the information is correct, the secretary of state shall cancel the declaration 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 489.116. 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 certificate 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 489.108, if the reinstatement is effective within five years of the effective date of the limited liability company's dissolution.

4. 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.

2008 Acts, ch 1162, §54, 155; 2010 Acts, ch 1040, §1
[T] Subsection 2 amended

489.707 Appeal from rejection of reinstatement.

1. If the secretary of state rejects a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall prepare, sign, and file a notice that explains the reason for rejection and serve the company with a copy of the notice.

2. Within thirty days after service of a notice of rejection of reinstatement under subsection 1, a limited liability company may appeal from the rejection by petitioning the district court to set aside the dissolution. The petition must be served on the secretary of state and contain a copy of the secretary of state's declaration of dissolution, the company's application for reinstatement, and the secretary of state's notice of rejection.

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

2008 Acts, ch 1162, §55, 155

489.708 Distribution of assets in winding up limited liability company's activities.

1. In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

2. After a limited liability company complies with subsection 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 489.503:

a. To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions.

b. In equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 489.502.

3. If a limited liability company does not have sufficient surplus to comply with subsection 2, paragraph *"a"*, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

4. All distributions made under subsections 2 and 3 must be paid in money.

2008 Acts, ch 1162, §56, 155

ARTICLE 8

FOREIGN LIMITED LIABILITY COMPANIES

489.801 Governing law.

1. The law of the state or other jurisdiction under which a foreign limited liability company is formed governs all of the following:

a. The internal affairs of the company.

b. The liability of a member as member and a manager as manager for the debts, obligations, or other liabilities of the company.

2. A foreign limited liability company shall not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

3. A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company shall not engage in or exercise in this state.

2008 Acts, ch 1162, §57, 155

489.802 Application for certificate of authority.

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

a. The name of the company and, if the name does not comply with section 489.108, an alternate name adopted pursuant to section 489.805, subsection 1.

b. The name of the state or other jurisdiction under whose law the company is formed.

c. The street and mailing addresses of the company's principal office and, if the law of the jurisdiction under which the company is formed requires the company to maintain an office in that jurisdiction, the street and mailing addresses of the required office.

d. The name of the company's initial registered agent for service of process in this state.

2. A foreign limited liability company shall deliver with a completed application under subsection 1 a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the company's publicly filed records in the state or other jurisdiction under whose law the company is formed.

2008 Acts, ch 1162, §58, 155; 2010 Acts, ch 1100, §15

[T] Subsection 1, paragraph d amended

489.803 Activities not constituting transacting business.

1. Activities of a foreign limited liability company which do not constitute transacting business in this state within the meaning of this article include all of the following:

a. Maintaining, defending, or settling an action or proceeding.

b. Carrying on any activity concerning its internal affairs, including holding meetings of its members or managers.

c. Maintaining accounts in financial institutions.

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

e. Selling through independent contractors.

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

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

h. Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts and holding, protecting, or maintaining property so acquired.

i. Conducting an isolated transaction that is completed within thirty days and is not in the course of similar transactions.

j. Transacting business in interstate commerce.

2. For purposes of this article, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

2008 Acts, ch 1162, §59, 155

489.804 Filing of certificate of authority.

Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application of a foreign limited liability company, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the company or its representative.

2008 Acts, ch 1162, §60, 155

489.805 Noncomplying name of foreign limited liability company.

1. A foreign limited liability company whose name does not comply with section 489.108 shall not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with section 489.108. After obtaining a certificate of authority with an alternate name, a foreign limited liability company shall transact business in this state under the alternate name.

2. If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with section 489.108, it may not thereafter transact business in this state until it complies with subsection 1 and obtains an amended certificate of authority.

2008 Acts, ch 1162, §61, 155

489.806 Revocation of certificate of authority.

1. A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state in the manner provided in subsections 2 and 3 if the company does not do any of the following:

a. Pay, within sixty days after the due date, any fee, tax, or penalty due the secretary of state under this chapter or law other than this chapter.

b. Deliver, within sixty days after the due date, its biennial report required under section 489.209.

c. Appoint and maintain a registered agent and registered office as required by section 489.113, subsections 1 and 2.

d. Deliver for filing a statement of a change under section 489.114 within thirty days after a change has occurred in the name of its registered agent or the address of its registered office.

2. To revoke a certificate of authority of a foreign limited liability company, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the company's registered agent for service of process in this state or, if the company does not appoint and

maintain a proper registered agent in this state, to the company's principal office. The notice must state all of the following:

a. The revocation's effective date, which must be at least sixty days after the date the secretary of state sends the copy.

b. The grounds for revocation under subsection 1.

3. The authority of a foreign limited liability company to transact business in this state ceases on the effective date in the notice of revocation unless before that date the company cures each ground for revocation stated in the notice filed under subsection 2. If the company cures each ground, the secretary of state shall file a record so stating.

2008 Acts, ch 1162, §62, 155; 2010 Acts, ch 1100, §16, 17
[T] Subsection 1, paragraphs c and d amended
[T] Subsection 2, unnumbered paragraph 1 amended

489.807 Cancellation of certificate of authority.

1. To cancel its certificate of authority to transact business in this state, a foreign limited liability company must deliver to the secretary of state for filing a notice of cancellation stating all of the following:

a. The name of the foreign limited liability company and that the company desires to cancel its certificate of authority.

b. 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.

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

d. 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 is canceled when the notice becomes effective.

2008 Acts, ch 1162, §63, 155

489.808 Effect of failure to have certificate of authority.

1. A foreign limited liability company transacting business in this state shall not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

2. The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

3. 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.

4. A district 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 district court may further stay the proceeding until the foreign limited liability company or its successor or assignee obtains the certificate.

5. 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.

6. A member or manager of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

7. If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its

registered agent for service of process for rights of action arising out of the transaction of business in this state.

2008 Acts, ch 1162, §64, 155

489.809 Action by attorney general.

The attorney general may maintain an action to enjoin a foreign limited liability company from transacting business in this state in violation of this article.

2008 Acts, ch 1162, §65, 155

ARTICLE 9

ACTIONS BY MEMBERS

489.901 Direct action by member.

1. Subject to subsection 2, a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

2. A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

2008 Acts, ch 1162, §66, 155

489.902 Derivative action.

A member may maintain a derivative action to enforce a right of a limited liability company as follows:

1. The member first makes a demand on the other members in a member-managed limited liability company, or the managers of a manager-managed limited liability company, requesting that they cause the company to bring an action to enforce the right, and the managers or other members do not bring the action within ninety days from the date the demand was made unless the member has earlier been notified that the demand has been rejected by the company or unless irreparable injury to the company would result by waiting for the expiration of the ninety-day period.

2. A demand under subsection 1 would be futile.

2008 Acts, ch 1162, §67, 155

489.903 Proper plaintiff.

1. Except as otherwise provided in subsection 2, a derivative action under section 489.902 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

2. If the sole plaintiff in a derivative action dies while the action is pending, the court may permit another member of the limited liability company to be substituted as plaintiff.

2008 Acts, ch 1162, §68, 155

489.904 Pleading.

In a derivative action under section 489.902, the complaint must state with particularity any of the following:

1. The date and content of the plaintiff's demand and the response to the demand by the managers or other members.

2. If a demand has not been made, the reasons a demand under section 489.902, subsection 1, would be futile.

2008 Acts, ch 1162, §69, 155

489.905 Reserved.

489.906 Proceeds and expenses.

1. Except as otherwise provided in subsection 2, all of the following apply:

a. Any proceeds or other benefits of a derivative action under section 489.902, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff.

b. If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the company.

2. If a derivative action under section 489.902 is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

2008 Acts, ch 1162, §70, 155

ARTICLE 10

MERGER, CONVERSION, AND DOMESTICATION

489.1001 Definitions.

As used in this article:

1. *"Constituent limited liability company"* means a constituent organization that is a limited liability company.

2. *"Constituent organization"* means an organization that is party to a merger.

3. *"Converted organization"* means the organization into which a converting organization converts pursuant to sections 489.1006 through 489.1009.

4. *"Converting limited liability company"* means a converting organization that is a limited liability company.

5. *"Converting organization"* means an organization that converts into another organization pursuant to section 489.1006.

6. *"Domesticated company"* means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 489.1010 through 489.1013.

7. *"Domesticating company"* means the company that effects a domestication pursuant to sections 489.1010 through 489.1013.

8. *"Governing statute"* means the statute that governs an organization's internal affairs.

9. *"Organization"* means a general partnership, including a limited liability partnership, limited partnership, including a limited liability limited partnership, limited liability company, business trust, corporation, or any other person having a governing statute. The term includes a domestic or foreign organization regardless of whether organized for profit.

10. *"Organizational documents"* means all of the following:

a. For a domestic or foreign general partnership, its partnership agreement.

b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement.

c. For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute.

d. For a business trust, its agreement of trust and declaration of trust.

e. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute.

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

11. *"Personal liability"* means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization by any of the following:

a. The governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization.

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

12. *"Surviving organization"* means an organization into which one or more other organizations are merged whether the organization preexisted the merger or was created by the merger.

2008 Acts, ch 1162, §71, 155

489.1002 Merger.

1. A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 489.1003 through 489.1005, and a plan of merger, if all of the following apply:

a. The governing statute of each of the other organizations authorizes the merger.

b. The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes.

c. Each of the other organizations complies with its governing statute in effecting the merger.

2. A plan of merger must be in a record and must include all of the following:

a. The name and form of each constituent organization.

b. The name and form of the surviving organization and, if the surviving organization is to be created by the merger, a statement to that effect.

c. The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration.

d. If the surviving organization is to be created by the merger, the surviving organization's organizational documents that are proposed to be in a record.

e. If the surviving organization is not to be created by the merger, any amendments to be made by the merger to the surviving organization's organizational documents that are, or are proposed to be, in a record.

2008 Acts, ch 1162, §72, 155

489.1003 Action on plan of merger by constituent limited liability company.

1. Subject to section 489.1014, a plan of merger must be consented to by all the members of a constituent limited liability company.

2. Subject to section 489.1014 and any contractual rights, after a merger is approved, and at any time before articles of merger are delivered to the secretary of state for filing under section 489.1004, a constituent limited liability company may amend the plan or abandon the merger as follows:

a. As provided in the plan.

b. Except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

2008 Acts, ch 1162, §73, 155

489.1004 Filings required for merger — effective date.

1. After each constituent organization has approved a merger, articles of merger must be signed on behalf of all of the following:

a. Each constituent limited liability company, as provided in section 489.203, subsection 1.

b. Each other constituent organization, as provided in its governing statute.

2. Articles of merger under this section must include all of the following:

a. The name and form of each constituent organization and the jurisdiction of its governing statute.

b. The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, a statement to that effect.

c. The date the merger is effective under the governing statute of the surviving organization.

d. If the surviving organization is to be created by the merger, as follows:

(1) If it will be a limited liability company, the company's certificate of organization.

(2) If it will be an organization other than a limited liability company, the organizational document that creates the organization that is in a public record.

e. If the surviving organization preexists the merger, any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record.

f. A statement as to each constituent organization that the merger was approved as required by the organization's governing statute.

g. If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of section 489.1005, subsection 2.

h. Any additional information required by the governing statute of any constituent organization.

3. Each constituent limited liability company shall deliver the articles of merger for filing in the office of the secretary of state.

4. A merger becomes effective under this article as follows:

a. If the surviving organization is a limited liability company, upon the later of any of the following:

(1) Compliance with subsection 3.

(2) Subject to section 489.205, subsection 3, as specified in the articles of merger.

b. If the surviving organization is not a limited liability company, as provided by the governing statute of the surviving organization.

2008 Acts, ch 1162, §74, 155

489.1005 Effect of merger.

1. When a merger becomes effective all of the following apply:

a. The surviving organization continues or comes into existence.

b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity.

c. All property owned by each constituent organization that ceases to exist vests in the surviving organization.

d. All debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization.

e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred.

f. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization.

g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect.

h. Except as otherwise agreed, if a constituent limited liability company ceases to exist, the merger does not dissolve the limited liability company for the purposes of article 7.

i. If the surviving organization is created by the merger, any of the following applies:

(1) If it is a limited liability company, the certificate of organization becomes effective.

(2) If it is an organization other than a limited liability company, the organizational document that creates the organization becomes effective.

j. If the surviving organization preexisted the merger, any amendments provided for in the articles of merger for the organizational document that created the organization become effective.

2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent

organization, if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its registered agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 489.116, subsections 2 and 3.

2008 Acts, ch 1162, §75, 155; 2010 Acts, ch 1193, §57, 77
[T] Subsection 2 amended

489.1006 Conversion.

1. An organization other than a limited liability company or a foreign limited liability company may convert to a limited liability company, and a limited liability company may convert to an organization other than a foreign limited liability company pursuant to this section, sections 489.1007 through 489.1009, and a plan of conversion, if all of the following apply:

a. The other organization's governing statute authorizes the conversion.

b. The conversion is not prohibited by the law of the jurisdiction that enacted the other organization's governing statute.

c. The other organization complies with its governing statute in effecting the conversion.

2. A plan of conversion must be in a record and must include all of the following:

a. The name and form of the organization before conversion.

b. The name and form of the organization after conversion.

c. The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration.

d. The organizational documents of the converted organization that are, or are proposed to be, in a record.

2008 Acts, ch 1162, §76, 155

489.1007 Action on plan of conversion by converting limited liability company.

1. Subject to section 489.1014, a plan of conversion must be consented to by all the members of a converting limited liability company.

2. Subject to section 489.1014 and any contractual rights, after a conversion is approved, and at any time before articles of conversion are delivered to the secretary of state for filing under section 489.1008, a converting limited liability company may amend the plan or abandon the conversion as follows:

a. As provided in the plan.

b. Except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

2008 Acts, ch 1162, §77, 155

489.1008 Filings required for conversion — effective date.

1. After a plan of conversion is approved, all of the following apply:

a. A converting limited liability company shall deliver to the secretary of state for filing articles of conversion, which must be signed as provided in section 489.203, subsection 1, and must include all of the following:

(1) A statement that the limited liability company has been converted into another organization.

(2) The name and form of the organization and the jurisdiction of its governing statute.

(3) The date the conversion is effective under the governing statute of the converted organization.

(4) A statement that the conversion was approved as required by this chapter.

(5) A statement that the conversion was approved as required by the governing statute of the converted organization.

(6) All documents required to be filed with the secretary of state in accordance with the governing statute of the converted organization to effectuate the conversion.

(7) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing addresses of an office which the secretary of state may use for the purposes of section 489.1009, subsection 3.

b. If the converting organization is not a converting limited liability company, the converting organization shall deliver to the secretary of state for filing a certificate of organization, which must include, in addition to the information required by section 489.201, subsection 2, all of the following:

(1) A statement that the converted organization was converted from another organization.

(2) The name and form of that converting organization and the jurisdiction of its governing statute.

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

2. A conversion becomes effective as follows:

a. If the converted organization is a limited liability company, when the certificate of organization takes effect.

b. If the converted organization is not a limited liability company, as provided by the governing statute of the converted organization.

2008 Acts, ch 1162, §78, 155

489.1009 Effect of conversion.

1. An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

2. When a conversion takes effect all of the following apply:

a. All property owned by the converting organization remains vested in the converted organization.

b. All debts, obligations, or other liabilities of the converting organization continue as debts, obligations, or other liabilities of the converted organization.

c. An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred.

d. Except as prohibited by law other than this chapter, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization.

e. Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

f. Except as otherwise agreed, the conversion does not dissolve a converting limited liability company for the purposes of article 7.

3. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability for which the converting limited liability company is liable if, before the conversion, the converting limited liability company was subject to suit in this state on the debt, obligation, or other liability. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its registered agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 489.116, subsections 2 and 3.

2008 Acts, ch 1162, §79, 155; 2010 Acts, ch 1193, §58, 77

[T] Subsection 3 amended

489.1010 Domestication.

1. A foreign limited liability company may become a limited liability company pursuant to this section, sections 489.1011 through 489.1013, and a plan of domestication, if all of the following apply:

a. The foreign limited liability company's governing statute authorizes the domestication.

b. The domestication is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The foreign limited liability company complies with its governing statute in effecting the domestication.

2. A limited liability company may become a foreign limited liability company pursuant to this section, sections 489.1011 through 489.1013, and a plan of domestication, if all of the following apply:

a. The foreign limited liability company's governing statute authorizes the domestication.

b. The domestication is not prohibited by the law of the jurisdiction that enacted the governing statute.

c. The foreign limited liability company complies with its governing statute in effecting the domestication.

3. A plan of domestication must be in a record and must include all of the following:

a. The name of the domesticating company before domestication and the jurisdiction of its governing statute.

b. The name of the domesticated company after domestication and the jurisdiction of its governing statute.

c. The terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration.

d. The organizational documents of the domesticated company that are, or are proposed to be, in a record.

2008 Acts, ch 1162, §80, 155

489.1011 Action on plan of domestication by domesticating limited liability company.

1. A plan of domestication must be consented to as follows:

a. By all the members, subject to section 489.1014, if the domesticating company is a limited liability company.

b. As provided in the domesticating company's governing statute, if the company is a foreign limited liability company.

2. Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are delivered to the secretary of state for filing under section 489.1012, a domesticating limited liability company may amend the plan or abandon the domestication as follows:

a. As provided in the plan.

b. Except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

2008 Acts, ch 1162, §81, 155

489.1012 Filings required for domestication — effective date.

1. After a plan of domestication is approved, a domesticating company shall deliver to the secretary of state for filing articles of domestication, which must include all of the following:

a. A statement, as the case may be, that the company has been domesticated from or into another jurisdiction.

b. The name of the domesticating company and the jurisdiction of its governing statute.

c. The name of the domesticated company and the jurisdiction of its governing statute.

d. The date the domestication is effective under the governing statute of the domesticated company.

e. If the domesticating company was a limited liability company, a statement that the domestication was approved as required by this chapter.

f. If the domesticating company was a foreign limited liability company, a statement that the domestication was approved as required by the governing statute of the other jurisdiction.

g. If the domesticated company was a foreign limited liability company not authorized to transact business in this state, the street and mailing addresses of an office that the secretary of state may use for the purposes of section 489.1013, subsection 2.

2. A domestication becomes effective as follows:

a. When the certificate of organization takes effect, if the domesticated company is a limited liability company.

b. According to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

2008 Acts, ch 1162, §82, 155

489.1013 Effect of domestication.

1. When a domestication takes effect, all of the following apply:

a. The domesticated company is for all purposes the company that existed before the domestication.

b. All property owned by the domesticating company remains vested in the domesticated company.

c. All debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company.

d. An action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred.

e. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company.

f. Except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect.

g. Except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of article 7.

2. A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company, if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state appoints the secretary of state as its registered agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 489.116, subsections 2 and 3.

3. If a limited liability company has adopted and approved a plan of domestication under section 489.1010 providing for the company to be domesticated in a foreign jurisdiction, a statement surrendering the company's certificate of organization must be delivered to the secretary of state for filing setting forth all of the following:

a. The name of the company.

b. A statement that the certificate of organization is being surrendered in connection with the domestication of the company in a foreign jurisdiction.

c. A statement that the domestication was approved as required by this chapter.

d. The jurisdiction of formation of the domesticated foreign limited liability company.

2008 Acts, ch 1162, §83, 155; 2010 Acts, ch 1061, §65; 2010 Acts, ch 1193, §59, 77

[T] Subsection 2 amended

[T] Subsection 3, paragraph c amended

489.1014 Restrictions on approval of mergers, conversions, and domestications.

1. If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, converted, or domesticated organization, approval or amendment of a plan of merger, conversion, or domestication is ineffective without the consent of the member, unless all of the following apply:

a. The company's operating agreement provides for approval of a merger, conversion, or domestication with the consent of fewer than all the members.

b. The member has consented to the provision of the operating agreement.

2. A member does not give the consent required by subsection 1 merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

2008 Acts, ch 1162, §84, 155

489.1015 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 489.1002, the plan of merger is approved as provided in section 489.1003, and the articles of merger are prepared, signed, and filed as provided in section 489.1004.

e. Notwithstanding section 489.1002 or 489.1005, 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 489.1003, subsection 2, governs the abandonment by a limited liability company of a merger authorized by this section.

2008 Acts, ch 1162, §85, 155

489.1016 Article not exclusive.

This article does not preclude an entity from being merged, converted, or domesticated under law other than this chapter.

2008 Acts, ch 1162, §86, 155

ARTICLE 11

PROFESSIONAL LIMITED LIABILITY COMPANIES

489.1101 Definitions.

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

1. *"Employee"* or *"agent"* does not include a clerk, stenographer, secretary, bookkeeper, technician, or other person who is 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 article 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 article.

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, osteopathic medicine and surgery, accounting practitioner, podiatry, real estate brokerage, speech pathology, audiology, veterinary medicine, pharmacy, nursing, or marital and family therapy, provided that the marital and family therapist is licensed under chapters 147 and 154D.

5. *"Professional limited liability company"* means a limited liability company subject to this article, 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. *a.* *"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 transferable interest, except as proxies.

b. *"Voluntary transfer"* does not include a transfer of an individual's interest in a limited liability company or other property to a guardian or conservator appointed for that individual or the individual's property.

2008 Acts, ch 1088, §141; 2008 Acts, ch 1162, §87, 155

489.1102 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 certificate 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.

2008 Acts, ch 1162, §88, 155

489.1103 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 liability company" or the abbreviation "P. L. L. C." or "PLLC", 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.

2008 Acts, ch 1162, §89, 155

489.1104 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.

2008 Acts, ch 1162, §90, 155

489.1105 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 a member, manager, employee, or agent, who is licensed to practice the same profession in this state. In its practice of a profession, a professional limited liability company shall not do any act which could not lawfully be done by an individual licensed to practice the profession which the professional limited liability company is authorized to practice.

2008 Acts, ch 1162, §91, 155

489.1106 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 article 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.

2008 Acts, ch 1162, §92, 155

489.1107 Relationship and liability to persons served.

This article 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 or any law respecting privileged communications. This article 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.

2008 Acts, ch 1162, §93, 155

489.1108 Issuance of interests.

An interest of a professional limited liability company shall be issued only to an individual who is licensed to practice in any state a profession which the professional limited liability company is authorized to practice. 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. Chapter 502 shall not be applicable to nor govern any transaction relating to any interests of a professional limited liability company.

2008 Acts, ch 1162, §94, 155

489.1109 Assignment of interests.

A member or other person shall not make a voluntary assignment of an 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 certificate of organization or operating agreement of the professional limited liability company may contain any additional provisions restricting the assignment of interests. Unless the certificate of organization or an operating agreement otherwise provides, a voluntary assignment requires the unanimous consent of the members.

2008 Acts, ch 1162, §95, 155

489.1110 Convertible interests — rights and options.

A professional limited liability company shall not create or issue any interest convertible into an interest of the professional limited liability company. The provisions of this article with respect to the issuance and transfer of interests apply to the creation, issuance, and transfer of any right or option entitling the holder to purchase from a professional limited liability company any interest of the professional limited liability company. A right or option 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 right or option shall expire.

2008 Acts, ch 1162, §96, 155

489.1111 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 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 certificate of organization or operating agreement of the professional limited liability company may further limit or deny the right to vote by proxy.

2008 Acts, ch 1162, §97, 155

489.1112 Required purchase by professional limited liability company of its own interests.

1. Notwithstanding any other statute or rule of law, a professional limited liability company shall purchase its own interests as provided in this section; and a member of a professional limited liability company and the member's executor, administrator, legal representative, and successors in interest, shall sell and transfer the 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 interests held by the deceased member.

3. In order to remain a member of a professional limited liability company, the 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 interests held by that member.

4. When a person other than a member of record becomes entitled to have 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 interests of the professional limited liability company, the professional limited liability company shall immediately purchase the 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 interests by operation of law, involuntary transfer of interests, judicial proceeding, execution, levy, bankruptcy proceeding, receivership proceeding, 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 interests as defined in this article.

5. Interests purchased by a 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 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 interests or certificates representing the 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 interests shall be paid as provided in this article, but the transfer of 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 certificate 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 certificate 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 interests shall be its 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 interests, disregarding 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 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 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 certificate 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 certificate 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 interests by the professional limited liability company in other situations, subject to any applicable law regarding such a purchase.

2008 Acts, ch 1162, §98, 155

489.1113 Certificates representing interests.

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

2008 Acts, ch 1162, §99, 155

489.1114 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 professional limited liability company. If a manager ceases to have this qualification, the manager shall immediately and automatically cease to hold such management position.

2008 Acts, ch 1162, §100, 155

489.1115 Merger.

A professional limited liability company shall not merge with any entity except another professional limited liability company subject to this article 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 article.

2008 Acts, ch 1162, §101, 155

489.1116 Dissolution or liquidation.

A violation of any provision of this article 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. 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 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 interests, the professional limited liability company shall not practice any profession and it shall be promptly dissolved. However, if prior to dissolution all outstanding 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 article.

2008 Acts, ch 1162, §102, 155

489.1117 Foreign professional limited liability company.

1. A foreign professional limited liability company may practice a profession in this state if it complies with the provisions of this article. 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 article with respect to the practice of a profession by a professional limited liability company apply to a foreign professional limited liability company.

2. This article 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. This subsection applies regardless of whether or not the foreign professional limited liability company is authorized to practice a profession in this state.

2008 Acts, ch 1162, §103, 155

489.1118 Limited liability companies organized under the other laws.

This article 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 article and become subject to its provisions, by amending its certificate of organization to be consistent with all provisions of this article and by stating in its amended certificate of organization that the limited liability company has voluntarily elected to adopt this article. Any limited liability company organized under any law of any other state or country may become subject to the provisions of this article by complying with all provisions of this article with respect to foreign professional limited liability companies.

2008 Acts, ch 1162, §104, 155

489.1119 Conflicts with other provisions of this chapter.

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

2008 Acts, ch 1162, §105, 155

ARTICLE 12

SERIES LIMITED LIABILITY COMPANIES

489.1201 Series of transferable interests.

1. An operating agreement may establish or provide for the establishment of a designated series of transferable 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. The name of each series must contain the name of the limited liability company and be distinguishable from the name of any other series set forth in the certificate of organization.

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 establishment of the series and of the limitation on liabilities of the series is set forth in the certificate of organization of the limited liability company. The filing of the certificate 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. A series meeting all of the conditions of subsection 2 shall be treated as a separate entity to the extent set forth in the certificate of organization.

4. Notwithstanding section 489.304, 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.

5. 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 does not have voting rights.

6. 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.

7. Except to the extent modified by this article, the provisions of this chapter which are generally applicable to a limited liability company, and its managers, members and transferees, shall be applicable to each series with respect to the operations of such series.

2008 Acts, ch 1162, §106, 155

489.1202 Management of a series.

1. A series is member-managed unless the operating agreement does any of the following:

a. Expressly provides any of the following:

(1) The series is or will be "manager-managed".

(2) The series is or will be "managed by managers".

(3) Management of the series is or will be "vested in managers".

b. Includes words of similar import.

2. In a member-managed series, unless modified pursuant to section 489.1201, subsections 5 and 6, all of the following rules apply:

a. The management and conduct of the series are vested in the members of the series.

b. Each series member has equal rights in the management and conduct of the series' activities.

c. A difference arising among series members as to a matter in the ordinary course of the activities of the series may be decided by a majority of the series members.

d. An act outside the ordinary course of the activities of the series may be undertaken only with the consent of all members of the series.

e. The operating agreement may be amended only with the consent of all members of the series.

3. In a manager-managed series, all of the following rules apply:

a. Except as otherwise expressly provided in this chapter, any matter relating to the activities of the series is decided exclusively by the managers of the series.

b. Each series manager has equal rights in the management and conduct of the activities of the series.

c. A difference arising among managers of a series as to a matter in the ordinary course of the activities of the series may be decided by a majority of the managers of the series.

d. Unless modified pursuant to section 489.1201, subsections 5 and 6, the consent of all members of the series is required to do any of the following:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the series' property, with or without the goodwill, outside the ordinary course of the series' activities.

(2) Approve a merger, conversion, or domestication under article 10.

(3) Undertake any other act outside the ordinary course of the series' activities.

(4) Amend the operating agreement as it pertains to the series.

e. A manager of the series may be chosen at any time by the consent of a majority of the members of the series and remains a manager of the series until a successor has been chosen, unless the series manager at an earlier time resigns, is removed, or dies, or, in the case of a series manager that is not an individual, terminates. A series manager may be removed at any time by the consent of a majority of the members without notice or cause.

f. A person need not be a series member to be a manager of a series, but the dissociation of a series member that is also a series manager removes the person as a manager of the series. If a person that is both a series manager and a series member ceases to be a manager of the series, that cessation does not by itself dissociate the person as a member of the series.

g. A person's ceasing to be a series manager does not discharge any debt, obligation, or other liability to the series or members of the series which the person incurred while a manager of the series.

4. An action requiring the consent of members of a series under this chapter may be taken without a meeting, and a member of a series may appoint a proxy or other agent to consent or otherwise act for the series member by signing an appointing record, personally or by the series member's agent.

5. The dissolution of a series does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the series loses the right to participate in management as a series member and a series manager.

6. This chapter does not entitle a series member of a series to remuneration for services performed for a member-managed series, except for reasonable compensation for services rendered in winding up the activities of the series.

2008 Acts, ch 1162, §107, 155

489.1203 Series distributions.

1. Any distribution made by a series before its dissolution and winding up must be in equal shares among the series members and dissociated series members, except to the extent necessary to comply with any transfer effective under section 489.502 and any charging order in effect under section 489.503.

2. A person has a right to a distribution before the dissolution and winding up of a series only if the series decides to make an interim distribution. A person's dissociation does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a series in any form other than money. Except as otherwise provided in section 489.708, subsection 3, a series may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the person's share of distributions.

4. If a series member or transferee becomes entitled to receive a distribution, the series member or transferee has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution.

5. *a.* A series shall not make a distribution if after the distribution any of the following occurs:

(1) The series would not be able to pay its debts as they become due in the ordinary course of the series' activities.

(2) The series' total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

b. As used in paragraph *"a"*, *"distribution"* does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

6. A series may base a determination that a distribution is not prohibited under subsection 1 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

7. Except as otherwise provided in subsection 9, the effect of a distribution under subsection 1 is measured as follows:

a. In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the series, as of the date money or other property is transferred or debt incurred by the series.

b. In all other cases, as of the date when one of the following occurs:

(1) The distribution is authorized, if the payment occurs within one hundred twenty days after that date.

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

8. A series' indebtedness to a series member incurred by reason of a distribution made in accordance with this section is at parity with the series' indebtedness to its general, unsecured creditors.

9. A series' indebtedness, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection 5 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members of the series under this section. If such indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

10. *a.* Except as otherwise provided in paragraph *"b"*, if a member of a member-managed series or manager of a manager-managed series consents to a distribution made in violation of this section and in consenting to the distribution fails to comply with section 489.409, the member or manager is personally liable to the series for the amount of the distribution that exceeds the amount that could have been distributed without the violation of this section.

b. To the extent the operating agreement of a member-managed series expressly relieves a series member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members of the series, the liability stated in paragraph *"a"* applies to the other members of the series and not the member of the series that the operating agreement relieves of authority and responsibility.

11. A person that receives a distribution knowing that the distribution to that person was made in violation of this section is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under this section.

12. A person against which an action is commenced because the person is liable under subsection 10 may do any of the following:

a. Implead any other person that is subject to liability under subsection 10 and seek to compel contribution from the person.

b. Implead any person that received a distribution in violation of subsection 11 and seek to compel contribution from the person in the amount the person received in violation of that subsection.

13. An action under this section is barred if not commenced within two years after the distribution.

2008 Acts, ch 1162, §108, 155; 2009 Acts, ch 133, §162, 163

489.1204 Dissociation from a series.

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 transferable 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.

2008 Acts, ch 1162, §109, 155

489.1205 Termination of a series.

1. Except to the extent otherwise provided in the operating agreement, a series may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of a series established pursuant to section 489.1201, subsection 1, shall not affect the limitation on a liability of such series provided by section 489.1201, subsection 2. A series is not terminated and its affairs shall continue despite the dissolution of the limited liability company under article 7 but the series shall be terminated and its affairs shall be wound up upon the first to occur of any of the events described in section 489.701, subsection 1, paragraphs *"a"* through *"e"*, as applied to the series.

2. Notwithstanding section 489.702, unless otherwise provided in the operating agreement, any of the following persons may wind up the affairs of a 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 transferable interests of the series owned by all of the members associated with the series or by the members of each class or group associated with the series.

3. The persons winding up the affairs of a series, in the name of the series and for and on behalf of the series, may take all actions with respect to the series as are permitted under section 489.702 for a limited liability company. The persons winding up the affairs of a series shall provide for the claims and obligations of the series as provided in section 489.708 for a limited liability company and distribute the assets of the series as provided in section 489.708 for a limited liability company. An action taken pursuant to this subsection shall not affect the liability of a member and shall not impose liability on a liquidating trustee.

2008 Acts, ch 1162, §110, 155

489.1206 Foreign series.

A foreign limited liability company that is authorized to do business in this state under article 8 which is governed by an operating agreement that establishes or provides for the establishment of designated series of transferable 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.

2008 Acts, ch 1162, §111, 155

ARTICLE 13

MISCELLANEOUS PROVISIONS

489.1301 Uniformity of application and construction.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2008 Acts, ch 1162, §112, 155

489.1302 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede

section 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. § 7003(b).

2008 Acts, ch 1162, §113, 155

489.1303 Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

2008 Acts, ch 1162, §114, 155

[SP] Section takes effect January 1, 2009; 2008 Acts, ch 1162, §155

489.1304 Application to existing relationships.

1. Before January 1, 2011, this chapter governs all of the following:

a. A limited liability company formed on or after January 1, 2009.

b. Except as otherwise provided in subsection 3, a limited liability company formed before January 1, 2009, which elects, in the manner provided in its operating agreement or by law for amending the operating agreement, to be subject to this chapter.

2. Except as otherwise provided in subsection 3, on and after January 1, 2011, this chapter governs all limited liability companies.

3. For the purposes of applying this chapter to a limited liability company formed before January 1, 2009, all of the following apply:

a. The limited liability company's articles of organization are deemed to be the company's certificate of organization.

b. For the purposes of applying section 489.102, subsection 12, and subject to section 489.112, subsection 4, language in the limited liability company's articles of organization designating the limited liability company's management structure operates as if that language were in the operating agreement.

2008 Acts, ch 1162, §115, 155