WEST VIRGINIA CODE CHAPTER 31B

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§31B-1-101. Definitions.

In this chapter:

(1) "Articles of organization" means initial, amended and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the office of the Secretary of State or other official having custody of company records in the state or country under whose law it is organized.

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession and other lawful purpose, whether or not carried on for profit.

(4) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application or a comparable order under federal, state or foreign law governing insolvency.

(5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including, but not limited to, delivery by hand, mail, commercial delivery and electronic transmission.

(6) "Distinguishable" means, in relation to the name of a business a difference between names which would allow a person to recognize or perceive the name of the business as being noticeably different including at least a one-word difference between names when the words are common terms and the company is or might appear to be in a similar business and at least a word order difference between names when the different word is a proper name or an unusual term, or when the company is clearly in a different type of business from the existing name.

(7) "Distribution" means a transfer of money, property or other benefit from a limited liability company to a member in the member's capacity as a member or to a transferee of the member's distributional interest.

(8) "Distributional interest" means all of a member's interest in distributions by the limited liability company.

(9) "Electronic transmission" or "electronically transmitted" 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.

(10) "Entity" means a person other than an individual.

(11) "Foreign limited liability company" means an unincorporated entity organized under

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laws other than the laws of this state which afford limited liability to its owners comparable to the liability under section 3-303 and is not required to obtain a certificate of authority to transact business under any law of this state other than this chapter.

(12) "Limited liability company" means a limited liability company organized under this chapter.

(13) "Manager" means a person, whether or not a member of a manager-managed company, who is vested with authority under section 3-301.

(14) "Manager-managed company" means a limited liability company which is so designated in its articles of organization.

(15) "Member-managed company" means a limited liability company other than a manager-managed company.

(16) "Operating agreement" means the agreement under section 1-103 concerning the relations among the members, managers and limited liability company. The term includes amendments to the agreement.

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

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

(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) "Sign" or "signature" means to identify a record by means of a signature, mark or other symbol, with intent to authenticate it and includes, but is not limited to, any manual, facsimile, conformed or electronic signature.

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

(22) "Term company" means a limited liability company in which its members have agreed to remain members until the expiration of a term specified in the articles of organization.

(23) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance and gift.

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§31B-1-102. Knowledge and notice.

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

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

(1) Knows the fact;

(2) Has received a notification of the fact; or

(3) Has reason to know the fact exists from all of the facts known to the person at the time in question.

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

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

(1) Comes to the person's attention; or

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

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

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§31B-1-103. Effect of operating agreement; nonwaivable provisions.

(a) Except as otherwise provided in subsection (b) of this section, all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers and company.

(b) The operating agreement may not:

(1) Unreasonably restrict a right to information or access to records under section 4-408;

(2) Eliminate the duty of loyalty under section 4-409(b) or 6-603(b)(3), but the agreement may:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(3) Unreasonably reduce the duty of care under section 4-409(c) or 6-603(b)(3);

(4) Eliminate the obligation of good faith and fair dealing under section 4-409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(5) Vary the right to expel a member in an event specified in section 6-601(6);

(6) Vary the requirement to wind up the limited liability company's business in a case specified in section 8-801(b)(4) or (b)(5); or

(7) Restrict rights of a person, other than a manager, member and transferee of a member's distributional interest, under this chapter.

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§31B-1-104. Supplemental principles of law.

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

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six of this code.

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§31B-1-105. Name.

(a) The name of a limited liability company must contain "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.".

(b) Except as authorized by subsections (c) and (d) of this section, the name of a limited liability company must be distinguishable upon the records of the Secretary of State from:

(1) The name of any corporation, limited partnership, limited liability partnership or limited liability company incorporated, organized or authorized to transact business in this state;

(2) A name reserved or registered under sections 1-106 or 1-107 of this article or under sections twelve or thirteen of article one, chapter thirty-one of this code.

(3) A fictitious name approved under section 10-1005 for a foreign company authorized to transact business in this state because its real name is unavailable.

(c) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the records of the Secretary of State from one or more of the names described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The present user, registrant or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the Secretary of State to change the name to a name that is distinguishable upon the records of the Secretary of State from the name applied for; or

(2) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(d) A limited liability company may use the name, including a fictitious name, of another domestic or foreign company which is used in this state if the other company is organized or authorized to transact business in this state and the company proposing to use the name has:

(1) Merged with the other company;

(2) Been formed by reorganization with the other company; or

(3) Acquired substantially all of the assets, including the name, of the other company.

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§31B-1-106. Reserved name.

(a) A person may reserve the exclusive use of the name of a limited liability company, including a fictitious name for a foreign company whose name is not available, by delivering an application to the Secretary of State for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is available, it must be reserved for the applicant's exclusive use for a one hundred twenty-day period. The reservation may be renewed for one additional period of one hundred twenty days, but may not thereafter be reserved by the same or associated persons within one calendar year of the expiration of the last reservation period.

(b) 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 a signed notice of the transfer which states the name and address of the transferee.

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§31B-1-107. Registered name.

(a) A foreign limited liability company may register its name subject to the requirements of section 10-1005, if the name is distinguishable upon the records of the Secretary of State from names that are not available under section 1-105(b).

(b) A foreign limited liability company registers its name, or its name with any addition required by section 10-1005, by delivering to the Secretary of State for filing an application:

(1) Setting forth its name, or its name with any addition required by section 10-1005, the state or country and date of its organization and a brief description of the nature of the business in which it is engaged; and

(2) Accompanied by a certificate of existence, or a record of similar import, from the state or country of organization.

(c) A foreign limited liability company whose registration is effective may renew it for successive years by delivering for filing in the office of the Secretary of State a renewal application complying with subsection (b) of this section between October 1, and December 31, of the preceding year. The renewal application renews the registration for the following calendar year.

(d) A foreign limited liability company whose registration is effective may qualify as a foreign company under its name or consent in writing to the use of its name by a limited liability company later organized under this chapter or by another foreign company later authorized to transact business in this state. The registered name terminates when the limited liability company is organized or the foreign company qualifies or consents to the qualification of another foreign company under the registered name.

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§31B-1-108. Designated office and agent for service of process.

(a) A limited liability company and a foreign limited liability company authorized to do business in this state may continuously maintain in this state:

(1) An office, which need not be a place of its business in this state; and

(2) An agent and address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this state, a domestic corporation, another limited liability company, or a foreign corporation or foreign company authorized to do business in this state.

(c) Every limited liability company shall pay the annual report fee of $25 for the filing of the annual report for the limited liability company or the biennial report fee of $50 for the filing of the biennial report as described in §59-1-2a of this code, which fee shall be due and payable with the filing of the annual or biennial report, as applicable, after the initial registration of the limited liability company on or before the dates specified in §59-1-2a of this code and other applicable provisions thereof, and shall be collected by the Secretary of State and deposited in the general administrative fees account established by §59-1-2 of this code. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this chapter.

(d) The Secretary of State shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

(f) The amendments to this section enacted in 2008 are effective beginning on and after July 1, 2008.

(g) Amendments to this section concerning the election of biennial reporting enacted into law during the Regular Legislative Session of the year 2026, shall take effect on July 1, 2026, and shall not forgive prior failures to file annual reports or pay annual fees previously due.

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§31B-1-109. Change of designated office or agent for service of process.

A limited liability company may change its designated office or agent for service of process by delivering to the secretary of state for filing a statement of change which sets forth:

(1) The name of the company;

(2) The address of its current designated office, if any;

(3) If the current designated office is to be changed, the address of the new designated office;

(4) The name and address of its current agent for service of process, if any;

(5) If the current agent for service of process or address of that agent is to be changed, the new address or the name and address of the new agent for service of process.

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§31B-1-110. Resignation of agent for service of process.

(a) An agent for service of process of a limited liability company may resign by delivering to the Secretary of State for filing a record of the statement of resignation.

(b) After filing a statement of resignation, the Secretary of State shall mail a copy to the designated office and another copy to the limited liability company at its principal office.

(c) An agency is terminated on the thirty-first day after the statement is filed in the office of the Secretary of State.

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§31B-1-111. Service of process.

(a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Secretary of State is an agent of the company upon whom process, notice or demand may be served.

(c) Service of any process, notice or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State, the assistant Secretary of State or clerk having charge of the limited liability company department of the Secretary of State, the original process, notice or demand and two copies thereof for each defendant, along with the fee required by section two, article one, chapter fifty-nine of this code. No process, notice or demand may be served on or accepted by the Secretary of State less than ten days before the return day thereof. The Secretary of State, upon being served with or accepting any process, notice or demand, shall: (1) File in his or her office a copy of the process, notice or demand, endorsed as of the time of service or acceptance; and (2) transmit one copy of the process, notice or demand by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to the limited liability company's registered agent: Provided, That if there is no registered agent, then to the individual whose name and address was last given to the Secretary of State's office as the person designated to receive process, notice or demand. If no person has been named, then to the principal office of the limited liability company at the address last given to the Secretary of State's office and if no address is available on record with the Secretary of State then to the address provided on the original process, notice or demand, if available; and (3) transmit the original process, notice or demand to the clerk's office of the court from which the process, notice or demand was issued. Such service or acceptance of process, notice or demand is sufficient if the return receipt is signed by an agent or employee of such company, or the registered or certified mail so sent by the Secretary of State is refused by the addressee and the registered or certified mail is returned to the Secretary of State, showing the stamp of the United States Postal Service that delivery thereof has been refused, and such return receipt or registered or certified mail is received by the Secretary of State by a means which may include electronic issuance and acceptance of electronic return receipts. After receiving verification from the United States Postal Service that acceptance of process, notice or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice or demand was issued by a means which may include electronic notification. If the process, notice or demand was refused or undeliverable by the United States Postal Service the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State shall be provided

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by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice or demand was issued. No process, notice or demand may be served on the Secretary of State or accepted by him or her less than ten days before the return day of the process or notice. The court may order continuances as may be reasonable to afford each defendant opportunity to defend the action or proceedings.

(d) The Secretary of State shall keep a record of all processes, notices and demands served pursuant to this section and record the time of and the action taken regarding the service.

(e) This section does not affect the right to serve process, notice or demand in any manner otherwise provided by law.

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§31B-1-112. Nature of business and powers.

(a) A limited liability company may be organized under this chapter for any lawful purpose, subject to any law of this state governing or regulating business.

(b) Unless its articles of organization provide otherwise, a limited liability company has the same powers as an individual to do all things necessary or convenient to carry on its business or affairs, including power to:

(1) Sue and be sued, and defend in its name;

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

(3) Sell, convey, mortgage, grant a security interest in, lease, exchange and otherwise encumber or dispose of all or any part of its property;

(4) Purchase, receive, subscribe for or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;

(5) Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises or income;

(6) Lend money, invest and reinvest its funds and receive and hold real and personal property as security for repayment;

(7) Be a promoter, partner, member, associate or manager of any partnership, joint venture, trust or other entity;

(8) Conduct its business, locate offices and exercise the powers granted by this chapter within or without this state;

(9) Elect managers and appoint officers, employees and agents of the limited liability company, define their duties, fix their compensation and lend them money and credit;

(10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans and benefit or incentive plans for any or all of its current or former members, managers, officers, employees and agents;

(11) Make donations for the public welfare or for charitable, scientific or educational purposes; and

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(12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

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§31B-1-113. Disclosures required by limited liability companies holding certain licenses.

Notwithstanding any provisions of this code to the contrary, any limited liability company seeking or holding a Class A liquor license issued pursuant to the provisions of article seven, chapter sixty of this code, or which seeks or holds a license under the provisions of article twenty-two-b, chapter twenty-nine of this code shall disclose in any required application the identities of all members or persons entitled to a distribution under section one hundred one, article one, chapter thirty-one-b, or if the license is already held, shall reveal the identities of all members or persons entitled to a distribution under section one hundred one, article one, chapter thirty-one-b, to the regulatory agency overseeing the licensee.

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§31B-1-114. Penalty for signing false document.

Any person who signs a document required to be filed with the Secretary of State by this chapter which he or she knows is false in any material respect is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

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§31B-2-201. Limited liability company as legal entity.

A limited liability company is a legal entity distinct from its members.

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§31B-2-202. Organization.

(a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the Secretary of State for filing, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

(b) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the Secretary of State is conclusive proof that the organizers satisfied all conditions precedent to the creation of a limited liability company.

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§31B-2-203. Articles of organization.

(a) Articles of organization of a limited liability company must set forth:

(1) The name of the company;

(2) The address of the initial designated office in West Virginia, if any, and the mailing address of the principal office;

(3) The name and address of the initial agent for service of process, if any;

(4) The name and address of each organizer and of each member having authority to execute instruments on behalf of the limited liability company;

(5) Whether the company is to be a term company and, if so, the term specified;

(6) Whether the company is to be manager-managed and, if so, the name and address of each initial manager;

(7) Whether one or more of the members of the company are to be liable for its debts and obligations under section 3-303(c);

(8) The purpose or purposes for which the limited liability company is organized; and

(9) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) Articles of organization of a limited liability company may set forth:

(1) Provisions permitted to be set forth in an operating agreement; or

(2) Other matters not inconsistent with law.

(c) Articles of organization of a limited liability company may not vary the nonwaivable provisions of section 1-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

(1) The operating agreement controls as to managers, members and members' transferees; and

(2) The articles of organization control as to persons other than managers, members and their transferees who reasonably rely on the articles to their detriment.

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§31B-2-204. Amendment or restatement of articles of organization.

(a) Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the Secretary of State for filing. The articles of amendment must set forth the:

(1) Name of the limited liability company;

(2) Date of filing of the articles of organization; and

(3) Amendment to the articles.

(b) A limited liability company may restate its articles of organization at any time. Restated articles of organization must be signed and filed in the same manner as articles of amendment. Restated articles of organization must be designated as such in the heading and state in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its initial articles of organization.

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§31B-2-205. Signing of records.

(a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the Secretary of State must be signed in the name of the company by a:

(1) Manager of a manager-managed company;

(2) Member of a member-managed company;

(3) Person organizing the company, if the company has not been formed; or

(4) Fiduciary, if the company is in the hands of a receiver, trustee or other court-appointed fiduciary.

(b) A record signed under subsection (a) of this section must state adjacent to the signature the name and capacity of the signer.

(c) Any person may sign a record to be filed under subsection (a) of this section by an attorney-in-fact. Powers of attorney relating to the signing of records to be filed under subsection (a) of this section by an attorney-in-fact need not be filed in the office of the Secretary of State as evidence of authority by the person filing but must be retained by the company.

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§31B-2-206. Filing in office of Secretary of State.

(a) Articles of organization or any other record authorized to be filed under this chapter must be in a medium permitted by the Secretary of State and must be delivered to the office of the Secretary of State. Delivery may be made by electronic transmission if permitted by the Secretary of State. Unless the Secretary of State determines that a record fails to comply as to form with the filing requirements of this chapter, and if all filing fees have been paid, the Secretary of State shall file the record and send a receipt for the record and the fees to the limited liability company or its representative.

(b) Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.

(c) Except as otherwise provided in subsection (d) of this section and section 2-207(c), a record accepted for filing by the Secretary of State is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original record; or

(2) At the time specified in the record as its effective time on the date it is filed.

(d) A record may specify a delayed effective time and date, and if it does so the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. If a delayed effective date is later than the ninetieth day after the record is filed, the record is effective on the ninetieth day.

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§31B-2-207. Correcting filed record.

(a) A limited liability company or foreign limited liability company may correct a record filed by the Secretary of State if the record contains a false or erroneous statement or was defectively signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

(i) Describe the record, including its filing date, or attach a copy of it to the articles of correction;

(ii) Specify the incorrect statement and the reason it is incorrect or the manner in which the signing was defective; and

(iii) Correct the incorrect statement or defective signing; and

(2) By delivering the corrected record to the Secretary of State for filing.

(c) Articles of correction are effective retroactively on the effective date of the record they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

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§31B-2-208. Certificate of existence or authorization.

(a) A person may request the Secretary of State to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(b) A certificate of existence for a limited liability company must set forth:

(1) The company's name;

(2) That it is duly organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if the latter, the period specified;

(3) If payment is reflected in the records of the Secretary of State and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(4) Whether its most recent annual or biennial report required by §31B-2-211 of this code has been filed with the Secretary of State;

(5) That articles of termination have not been filed; and

(6) Other facts of record in the office of the Secretary of State which may be requested by the applicant.

(c) A certificate of authorization for a foreign limited liability company must set forth:

(1) The company's name used in this state;

(2) That it is authorized to transact business in this state;

(3) If payment is reflected in the records of the Secretary of State and nonpayment affects the authorization of the company that all fees, taxes, and penalties owed to this state have been paid;

(4) Whether its most recent annual or biennial report required by §31B-2-211 of this code has been filed with the Secretary of State;

(5) That a certificate of cancellation has not been filed; and

(6) Other facts of record in the office of the Secretary of State which may be requested by the applicant.

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

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§31B-2-209. Liability for false statement in filed record.

If a record authorized or required to be filed under this chapter contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

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§31B-2-210. Filing by judicial act.

If a person required by section 2-205 to sign any record fails or refuses to do so, any other person who is adversely affected by the failure or refusal may petition the circuit court to direct the signing of the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall order the Secretary of State to sign and file an appropriate record.

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§31B-2-211. Annual and Biennial Report for Secretary of State.

(a) A limited liability company, and a foreign limited liability company authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:

(1) The name of the company and the state or country under whose law it is organized;

(2) The address of its designated office, if any, and the name and address of its agent for service of process in this state, if any;

(3) The address of its principal office;

(4) The names and business addresses of any managers and the name and address of each member having authority to execute instruments on behalf of the limited liability company; and

(5) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) Information in an annual report must be current as of the date the annual report is signed on behalf of the limited liability company.

(c) The first annual report must be delivered to the Secretary of State between January 1 and July 1 of the year following the calendar year in which a limited liability company was organized or a foreign company was authorized to transact business. Subsequent annual reports must be delivered to the Secretary of State between January 1 and July 1 of the ensuing calendar years.

(d) If an annual report does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within 30 days after the effective date of the notice, it is timely filed.

(e) Notwithstanding any provision of this section to the contrary, a limited liability company or a foreign limited liability company authorized to transact business in this state may elect to file a biennial report in lieu of an annual report if the company has timely filed all required annual reports under this section for five consecutive calendar years and is in good standing with the Secretary of State at the time of election.

(1) The election shall be made at the time of filing the fifth consecutive timely annual report, or, for any limited liability company or foreign limited liability company that has already satisfied the five-year timely filing requirement as of the effective date of this subsection, at any time between January 1 and July 1 of the next calendar year following the effective date

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of this subsection in a form and manner prescribed by the Secretary of State;

(2) Upon making the biennial reporting election, the limited liability company or foreign limited liability company is not required to file an annual report for the next calendar year. The first biennial report shall be delivered to the Secretary of State between January 1 and July 1 of the second calendar year following the calendar year in which the election is made, and every two years thereafter;

(3) Biennial reports shall include the same information as the annual reports outlined in subsection (a) of this section and shall be delivered in a form and manner prescribed by the Secretary of State. If a biennial report does not contain the information required in subsection (a) of this section, the Secretary of State shall promptly notify the reporting limited liability company or foreign limited liability company and return the report to it for correction. If the report is corrected to contain the information required in subsection (a) of this section and delivered to the Secretary of State within 60 days after the effective date of the notice, it is timely filed;

(4) After election of biennial reporting, any failure to timely file a biennial report or loss of good standing revokes the biennial reporting election, and the limited liability company or foreign limited liability company must timely file annual reports for another five consecutive calendar years before making the election again.

(f) Amendments to this section concerning the election of biennial reporting enacted into law during the Regular Legislative Session of the year 2026, shall take effect on July 1, 2026, and shall not forgive prior failures to file annual reports or pay annual fees previously due.

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§31B-3-301. Agency of members and managers.

(a) Subject to subsections (b) and (c) of this section:

(1) Each member is an agent of the limited liability company for the purpose of its business and an act of a member, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

(2) An act of a member which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.

(b) Subject to subsection (c) of this section, in a manager-managed company:

(1) A member is not an agent of the company for the purpose of its business solely by reason of being a member. Each manager is an agent of the company for the purpose of its business and an act of a manager, including the signing of an instrument in the company's name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(2) An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under section 4-404.

(c) Unless the articles of organization limit their authority, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

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§31B-3-302. Limited liability company liable for member's or manager's actionable conduct.

A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a member or manager acting in the ordinary course of business of the company or with authority of the company.

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§31B-3-303. Liability of members and managers.

(a) Except as otherwise provided in subsection (c) of this section, the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager nor for fines, fees or penalties individually assessed against another member or manager for acts unrelated to the business of the limited liability company. It is the intent and policy of the Legislature to modify the applicability of the "corporate veil piercing" analysis adopted in Joseph Kubican v. The Tavern, LLC, 232 W.Va. 268, 752 S.E.2d 299 (2013) with respect to any claim against a limited liability company arising after the effective date of the reenactment of this section during the regular session of the Legislature, 2022.

(b) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers for liabilities of the company.

(c) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(1) A provision to that effect is contained in the articles of organization, and a member so liable has consented in writing to the adoption of the provision or to be bound by the provision;

(2) The member against whom liability is asserted has personally guaranteed the liability or obligation of the limited liability company in writing;

(3) There is any tax liability of the limited liability company, which the law of the state or of the United States imposes liability upon the member;

(4) The member commits actual or constructive fraud which causes injury to an individual or entity.

(d) The "corporate veil piercing" analysis adopted in Joseph Kubican v. The Tavern, LLC, 232 W.Va. 268, 752 S.E.2d 299 (2013) shall apply to a claim asserted against a limited liability company for the purpose of determining personal liability of all or specified members or managers only if (1) the company is not adequately capitalized for the reasonable risks of the corporate undertaking and (2) the company does not carry liability insurance coverage for the primary risks of the business, with minimum limits of $100,000 liability insurance, or such higher amount as may be specifically required by law.

(e) *Enterprise liability.* — In circumstances where the members of a limited liability company are, in whole or in part, corporations, limited liability companies, or other entities which are

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not human beings, then, if a jury shall determine that the liability of a limited liability company sounding in tort arose as part of the activities of a joint enterprise, those entities which are part of the joint enterprise with the limited liability company may be liable for the liability of the limited liability company which arose as part of the business operations of the joint enterprise, not as a "piercing of the veil", but instead under the doctrine of joint enterprise liability.

(f) *Member as tortfeasor*. — Nothing in this section may immunize or shield a member of a limited liability company, solely because he or she is a member of a limited liability company, from liability for his or her own tortious conduct that proximately causes injury to another party while the member is acting on behalf of the limited liability company. In such circumstance, the liability of a member is not through "veil piercing", but rather primary, as against any tortfeasor.

(g) *Clawback authority*. — If a member is proved to have committed any of the following acts, then a creditor of the limited liability company whose judgment the limited liability company cannot satisfy may seek clawback from the member under this subsection: *Provided*, That the limited liability company's judgment creditor may proceed in the shoes of the limited liability company to clawback funds from the member in order to reimburse the limited liability company for either the amount of the judgment against the limited liability company or the amount transferred from the limited liability company to the member in bad faith, whichever is less. The wrongful acts which will justify clawback, but not "veil piercing", are:

(1) Conflicted exchange;

(2) Insolvency distribution; or

(3) Siphoning of funds.

(h) *Definitions*. — As used in this section:

(1) "Conflicted exchange" means a transfer of money or other property from a limited liability company to a member of the limited liability company, or to any other organization in which the member has a material financial interest, in exchange for services, goods, or other tangible or intangible property of less than reasonable equivalent value.

(2) "Insolvency distribution" means a transfer of money or other property from a limited liability company to a member of that limited liability company, or to any other organization in which the member has a material financial interest, in respect of the member's ownership interest, that renders the limited liability company insolvent.

(3) "Insolvent" means, with respect to a limited liability company, that the limited liability company is unable to pay its debts in the ordinary course of business. Claims that are unusual in nature or amount, including tort claims in claims for consequential damages, are

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not to be considered claims in the ordinary course of business for the purposes of this section.

(4) “Siphoning of funds” means whether the manager or majority member has siphoned funds from the limited liability company in violation of the articles of organization, the operating agreement, or this article.

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§31B-4-401. Form of contribution.

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

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§31B-4-402. Member's liability for contributions.

(a) A member's obligation to contribute money, property or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability or other inability to perform personally. If a member does not make the required contribution of property or services, the member is obligated at the option of the company to contribute money equal to the value of that portion of the stated contribution which has not been made.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a) of this section, and without notice of any compromise under section 4-404(c)(5), may enforce the original obligation.

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§31B-4-403. Member's and manager's rights to payments and reimbursement.

(a) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of its business or property.

(b) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution the member agreed to make.

(c) A payment or advance made by a member which gives rise to an obligation of a limited liability company under subsection (a) or (b) of this section constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(d) A member is not entitled to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the business of the company.

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§31B-4-404. Management of limited liability company.

(a) In a member-managed company:

(1) Each member has equal rights in the management and conduct of the company's business; and

(2) Except as otherwise provided in subsection (c) of this section or in section 8-801(b)(3)(i), any matter relating to the business of the company may be decided by a majority of the members.

(b) In a manager-managed company:

(1) Each manager has equal rights in the management and conduct of the company's business;

(2) Except as otherwise provided in subsection (c) of this section or in section 8-801(b)(3)(i), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(3) A manager:

(i) Must be designated, appointed, elected, removed or replaced by a vote, approval or consent of a majority of the members; and

(ii) Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(c) The only matters of a member or manager-managed company's business requiring the consent of all of the members are:

(1) The amendment of the operating agreement under section 1-103;

(2) The authorization or ratification of acts or transactions under section 1-103(b)(2)(ii) which would otherwise violate the duty of loyalty;

(3) An amendment to the articles of organization under section 2-204;

(4) The compromise of an obligation to make a contribution under section 4-402(b);

(5) The compromise, as among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;

(6) The making of interim distributions under section 4-405(a), including the redemption of an interest;

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(7) The admission of a new member;

(8) The use of the company's property to redeem an interest subject to a charging order;

(9) The consent to dissolve the company under section 8-801(b)(2);

(10) A waiver of the right to have the company's business wound up and the company terminated under section 8-802(b);

(11) The consent of members to merge with another entity under section 9-904(c)(1); and

(12) The sale, lease, exchange or other disposal of all, or substantially all, of the company's property with or without goodwill.

(d) Action requiring the consent of members or managers under this chapter may be taken or without a meeting.

(e) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

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§31B-4-405. Sharing of and right to distributions.

(a) Any distributions made by a limited liability company before its dissolution and winding up must be in equal shares.

(b) A member has no right to receive, and may not be required to accept, a distribution in kind.

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

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§31B-4-406. Limitations on distributions.

(a) A distribution may not be made if:

(1) The limited liability company would not be able to pay its debts as they become due in the ordinary course of business; or

(2) 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 receiving the distribution.

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

(c) Except as otherwise provided in subsection (e) of this section, the effect of a distribution under subsection (a) of this section is measured:

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

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

(i) Distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or

(ii) Payment is made if it occurs more than one hundred twenty days after the date of authorization.

(d) 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.

(e) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) of this section if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to members could then be made under this section. If the 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.

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§31B-4-407. Liability for unlawful distributions.

(a) A member of a member-managed company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section 4-406, the articles of organization, or the operating agreement is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating section 4-406, the articles of organization, or the operating agreement if it is established that the member or manager did not perform the member's or manager's duties in compliance with section 4-409.

(b) A member of a manager-managed limited liability company who knew a distribution was made in violation of section 4-406, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by the member exceeded the amount that could properly have been paid under section 4-406.

(c) A member or manager against whom an action is brought under this section may implead in the action all:

(1) Other members or managers who voted for or assented to the distribution in violation of subsection (a) of this section and may compel contribution from them; and

(2) Members who received a distribution in violation of subsection (b) of this section and may compel contribution from the member in the amount received in violation of subsection (b) of this section.

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution.

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§31B-4-408. Member's right to information.

(a) A limited liability company shall provide members and their agents and attorneys access to its records, if any, at the company's principal office or other reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(b) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and

(2) On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member has the right upon written demand given to the limited liability company to obtain at the company's expense a copy of any written operating agreement.

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§31B-4-409. General standards of member's and manager's conduct.

(a) The only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c) of this section.

(b) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(1) To account to the 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 or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;

(2) 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; and

(3) To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

(c) A member's duty of care to a member-managed company and its other members in the conduct of and winding up of the company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct or a knowing violation of law.

(d) A member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(f) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(g) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last surviving member as if the person were a member.

(h) In a manager-managed company:

(1) A member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

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(2) A manager is held to the same standards of conduct prescribed for members in subsections (b) through (f) of this section;

(3) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (b) through (f) of this section to the extent that the member exercises the managerial authority vested in a manager by this chapter; and

(4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) through (f) of this section to the extent of the managerial authority delegated to the members by the operating agreement.

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§31B-4-410. Actions by members.

(a) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(1) The member's rights under the operating agreement;

(2) The member's rights under this chapter; and

(3) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

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

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§31B-4-411. Continuation of term company after expiration of specified term.

(a) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(b) If the members in a member-managed company or the managers in a manager-managed company continue the business without any winding up of the business of the company, it continues as an at-will company.

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§31B-5-501. Member's distributional interest.

(a) A member is not a coowner of, and has no transferable interest in, property of a limited liability company.

(b) A distributional interest in a limited liability company is personal property and, subject to sections 5-502 and 5-503, may be transferred, in whole or in part.

(c) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to section 5-503, may also provide for the transfer of any interest represented by the certificate.

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§31B-5-502. Transfer of distributional interest.

A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

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§31B-5-503. Rights of transferee.

(a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in the operating agreement or all other members consent.

(b) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under section 4-402 and for obligations under section 4-407 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member.

(c) Whether or not a transferee of a distributional interest becomes a member under subsection (a) of this section, the transferor is not released from liability to the limited liability company under the operating agreement or this chapter.

(d) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, require access to information concerning the company's transactions or inspect or copy any of the company's records.

(e) A transferee who does not become a member is entitled to:

(1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(2) Receive, upon dissolution and winding up of the limited liability company's business:

(i) In accordance with the transfer, the net amount otherwise distributable to the transferor;

(ii) A statement of account only from the date of the latest statement of account agreed to by all the members;

(3) Seek under section 8-801(b)(6) a judicial determination that it is equitable to dissolve and wind up the company's business.

(f) A limited liability company need not give effect to a transfer until it has notice of the transfer.

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§31B-5-504. Rights of creditor.

(a) On application by a judgment creditor of a member of a limited liability company or of a member's transferee, a court having jurisdiction may charge the distributional interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor and make all other orders, directions, accounts and inquiries the judgment debtor might have made or which the circumstances may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, a distributional interest in a limited liability company which is charged may be redeemed:

(1) By the judgment debtor;

(2) With property other than the company's property, by one or more of the other members; or

(3) With the company's property, but only if permitted by the operating agreement.

(d) This chapter does not affect a member's right under exemption laws with respect to the member's distributional interest in a limited liability company.

(e) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company.

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§31B-6-601. Events causing member's dissociation.

A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;

(2) An event agreed to in the operating agreement as causing the member's dissociation;

(3) Upon transfer of all of a member's distributional interest, other than a transfer for security purposes or a court order charging the member's distributional interest which has not been foreclosed;

(4) The member's expulsion pursuant to the operating agreement;

(5) The member's expulsion by unanimous vote of the other members if:

(i) It is unlawful to carry on the company's business with the member;

(ii) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;

(iii) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(iv) A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;

(6) On application by the company or another member, the member's expulsion by judicial determination because the member:

(i) Engaged in wrongful conduct that adversely and materially affected the company's business;

(ii) Willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 4-409; or

(iii) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;

(7) The member's:

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(i) Becoming a debtor in bankruptcy;

(ii) Executing an assignment for the benefit of creditors;

(iii) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver or liquidator of the member or of all or substantially all of the member's property; or

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

(8) In the case of a member who is an individual:

(i) The member's death;

(ii) The appointment of a guardian or general conservator for the member; or

(iii) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;

(10) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) Termination of the existence of a member if the member is not an individual, estate or trust other than a business trust.

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§31B-6-602. Member's power to dissociate; wrongful dissociation.

(a) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will pursuant to section 6-601(1).

(b) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(1) It is in breach of an express provision of the agreement; or

(2) Before the expiration of the specified term of a term company:

(i) The member withdraws by express will;

(ii) The member is expelled by judicial determination under section 6-601(6);

(iii) The member is dissociated by becoming a debtor in bankruptcy; or

(iv) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(c) A member who wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(d) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (b) of this section, damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

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§31B-6-603. Effect of member's dissociation.

(a) If under section 8-801 a member's dissociation from a limited liability company results in a dissolution and winding up of the company's business, article eight of this chapter applies. If a member's dissociation from the company does not result in a dissolution and winding up of the company's business under section 8-801:

(1) In an at-will company, the company must cause the dissociated member's distributional interest to be purchased under article seven of this chapter; and

(2) In a term company:

(i) If the company dissolves and winds up its business on or before the expiration of its specified term, article eight of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under article seven of this chapter on the date of the expiration of the term specified at the time of the member's dissociation.

(b) Upon a member's dissociation from a limited liability company:

(1) The member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in section 8-803, and the member ceases to be a member and is treated the same as a transferee of a member;

(2) The member's duty of loyalty under section 4-409(b)(3) terminates; and

(3) The member's duty of loyalty under section 4-409(b)(1) and (2) and duty of care under section 4-409(c) continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to section 8-803.

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§31B-7-701. Company purchase of distributional interest.

(a) A limited liability company shall purchase a distributional interest of a:

(1) Member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under section 8-801; or

(2) Member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under section 8-801.

(b) A limited liability company must deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than thirty days after the date determined under subsection (a) of this section. The purchase offer must be accompanied by:

(1) A statement of the company's assets and liabilities as of the date determined under subsection (a) of this section;

(2) The latest available balance sheet and income statement, if any; and

(3) An explanation of how the estimated amount of the payment was calculated.

(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under section 8-801(b)(5)(iv).

(d) If an agreement to purchase the distributional interest is not made within one hundred twenty days after the date determined under subsection (a) of this section, the dissociated member, within another one hundred twenty days, may commence a proceeding against the limited liability company to enforce the purchase. The company at its expense shall notify in writing all of the remaining members, and any other person the court directs, of the commencement of the proceeding. The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section 7-702 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(f) Damages for wrongful dissociation under section 6-602(b), and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company,

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must be offset against the purchase price.

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§31B-7-702. Court action to determine fair value of distributional interest.

(a) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(1) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(2) Specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price and a covenant not to compete or other restriction on a dissociated member; and

(3) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(b) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers or managers, if any, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the company or the remaining members that is not terminated by the court.

(c) If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under section 8-801(b)(5)(iv). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale had not been ordered.

(d) If the court finds that a party to the proceeding acted arbitrarily, vexatiously or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with section 7-701(b).

(e) Interest must be paid on the amount awarded from the fair market value determined under section 7-701(a) to the date of payment.

WV Legislature

§31B-7-703. Dissociated member's power to bind limited liability company.

For two years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under article nine of this chapter, is bound by an act of the dissociated member which would have bound the company under section 3-301 before dissociation only if at the time of entering into the transaction the other party:

(1) Reasonably believed that the dissociated member was then a member;

(2) Did not have notice of the member's dissociation; and

(3) Is not deemed to have had notice under section 7-704.

WV Legislature

§31B-7-704. Statement of dissociation.

(a) A dissociated member or a limited liability company may file in the office of the Secretary of State a statement of dissociation stating the name of the company and that the member is dissociated from the company.

(b) For the purposes of sections 3-301 and 7-703, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

WV Legislature

§31B-8-801. Events causing dissolution and winding up of company's business.

(a) In this section, "future distributions" means the total distributions that, as of the date of dissociation, are reasonably estimated to be made to the remaining members if the company were continued until the projected date of its termination, reduced by the amount of distributions that would have been made to the remaining members if the business of the company were dissolved and wound up on the date of dissociation.

(b) A limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events:

(1) An event specified in the operating agreement;

(2) Consent of the number or percentage of members specified in the operating agreement;

(3) Dissociation of a member who is also a manager or, if none, a member of an at-will company, and dissociation of a member who is also a manager or, if none, a member of a term company but only if the dissociation was for a reason provided in section 6-601(7) through (11) and occurred before the expiration of the specified term, but the company is not dissolved and required to be wound up by reason of the dissociation if:

(i) Within ninety days after the dissociation, the business of the company is continued by the agreement of:

(A) The remaining members that would be entitled to receive a majority of any distributions that would be made to them assuming the business of the company were dissolved and wound up on the date of the dissociation; and

(B) The remaining members that would be entitled to receive a majority of any future distributions that would be made to them assuming the business of the company were continued after the date of the dissociation; or

(ii) The business of the company is continued under a right to continue stated in the operating agreement;

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

(5) On application by a member or a dissociated member, upon entry of a judicial decree that:

(i) The economic purpose of the company is likely to be unreasonably frustrated;

(ii) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;

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(iii) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(iv) The company failed to purchase the petitioner's distributional interest as required by section 7-701; or

(v) The managers or members in control of the company have acted, are acting or will act in a manner that is illegal, oppressive, fraudulent or unfairly prejudicial to the petitioner;

(6) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:

(i) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer; or

(ii) At any time, if the company was at will at the time the applicant became a transferee by member dissociation, transfer or entry of a charging order that gave rise to the transfer.

WV Legislature

§31B-8-802. Limited liability company continues after dissolution.

(a) Subject to subsection (b) of this section, a limited liability company continues after dissolution only for the purpose of winding up its business.

(b) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(1) The limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(2) The rights of a third party accruing under section 8-804(a) or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected.

WV Legislature

§31B-8-803. Right to wind up limited liability company's business.

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

(b) A legal representative of the last surviving member may wind up a limited liability company's business.

(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section 8-806, settle disputes by mediation or arbitration and perform other necessary acts.

WV Legislature

§31B-8-804. Member's or manager's power and liability as agent after dissolution.

(a) A limited liability company is bound by a member's or manager's act after dissolution that:

(1) Is appropriate for winding up the company's business; or

(2) Would have bound the company under section 3-301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

(b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability.

WV Legislature

§31B-8-805. Articles of termination.

(a) At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the Secretary of State articles of termination stating:

(1) The name of the company;

(2) The date of the dissolution; and

(3) That the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination, or upon a later effective date, if specified in the articles of termination.

WV Legislature

§31B-8-806. Distribution of assets in winding up limited liability company's business.

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b) of this section.

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares.

WV Legislature

§31B-8-807. Known claims against dissolved limited liability company.

(a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

(b) A dissolved limited liability company shall notify its known claimants in writing of the dissolution. The notice must:

(1) Specify the information required to be included in a claim;

(2) Provide a mailing address where the claim is to be sent;

(3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and

(4) State that the claim will be barred if not received by the deadline.

(c) A claim against a dissolved limited liability company is barred if the requirements of subsection (b) of this section are met, and:

(1) The claim is not received by the specified deadline; or

(2) In the case of a claim that is timely received but rejected by the dissolved company, the claimant does not commence a proceeding to enforce the claim within ninety days after the receipt of the notice of the rejection.

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

WV Legislature

§31B-8-808. Other claims against dissolved limited liability company.

(a) 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.

(b) The notice must:

(1) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited liability company's principal office is located or, if none in this state, in which its designated office is or was last located;

(2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and

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

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b) of this section, the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company within five years after the publication date of the notice:

(1) A claimant who did not receive written notice under section 8-807;

(2) A claimant whose claim was timely sent to the dissolved company but not acted on; and

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

(d) A claim not barred under this section may be enforced:

(1) Against the dissolved limited liability company, to the extent of its undistributed assets; or

(2) If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

WV Legislature

§31B-8-809. Grounds for administrative dissolution.

(a) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:

(1) The company fails to pay any fees, taxes, or penalties imposed by this chapter or other law within 60 days after they are due;

(2) The company fails to deliver its annual or biennial report to the Secretary of State within 60 days after it is due;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is, or all the licenses are, required for the continued operation of the company;

(4) The company is in default with the Bureau of Employment Programs as provided in §21A-2-6 of this code; or

(5) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this chapter.

(b) A limited liability company administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the procedure in §31B-8-811 of this code or appeal the Secretary of State's denial of reinstatement pursuant to the procedure in §31B-8-812 of this code.

WV Legislature

§31B-8-810. Procedure for and effect of administrative dissolution.

(a) If the Secretary of State determines that one or more grounds exist under §31B-8-809 of this code for administratively dissolving a limited liability company, the Secretary of State shall notify the company by certified mail with written notice of the determination pursuant to §31B-1-111 of this code.

(b) If the company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within 60 days after service of the notice is perfected under §31B-1-111 of this code, the Secretary of State shall administratively dissolve the company by signing and filing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall send electronic notice to the company with a copy of the certificate of dissolution if the Secretary of State has an email address on file for the company.

(c) A company administratively dissolved continues its existence but may carry on only business necessary to wind up and liquidate its business and affairs under §31B-8-802 of this code and to notify claimants under §31B-8-807 and §31B-8-808 of this code.

(d) The administrative dissolution of a company does not terminate the authority of its agent for service of process.

WV Legislature

§31B-8-811. Reinstatement following administrative dissolution.

(a) A limited liability company administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the company and the effective date of its administrative dissolution;

(2) State that the ground for dissolution either did not exist or have been eliminated;

(3) State that the company's name satisfies the requirements of section 1-105; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the company have been paid.

(b) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of dissolution and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(c) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the company may resume its business as if the administrative dissolution had never occurred.

WV Legislature

§31B-8-812. Appeal from denial of reinstatement.

(a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the company with a record that explains the reason or reasons for denial.

(b) The company may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the company's application for reinstatement and the Secretary of State's notice of denial.

(c) The court may summarily order the Secretary of State to reinstate the dissolved company or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

WV Legislature

§31B-9-901. Definitions.

In this article:

(1) "Corporation" means a corporation under chapter thirty-one of this code, a predecessor law, or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership created under article nine, chapter forty-seven of this code, a predecessor law, or comparable law of another jurisdiction.

(5) "Partner" includes a general partner and a limited partner.

(6) "Partnership" means a general partnership under chapter forty-seven-b of this code, a predecessor law, or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners concerning the partnership or limited partnership.

(8) "Shareholder" means a shareholder in a corporation.

WV Legislature

§31B-9-902. Conversion of partnership or limited partnership to limited liability company.

(a) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.

(b) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(c) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liability company or the cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination thereof.

(d) After a conversion is approved under subsection (b) of this section, the partnership or limited partnership shall file articles of organization in the office of the Secretary of State which satisfy the requirements of section 2-203 and contain:

(1) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;

(2) Its former name;

(3) A statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (b) of this section; and

(4) In the case of a limited partnership, a statement that the certificate of limited partnership is to be canceled as of the date the conversion took effect.

(e) In the case of a limited partnership, the filing of articles of organization under subsection (d) of this section cancels its certificate of limited partnership as of the date the conversion took effect.

(f) A conversion takes effect when the articles of organization are filed in the office of the Secretary of State or at any later date specified in the articles of organization.

(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect.

(h) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company. A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited

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partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

WV Legislature

§31B-9-903. Effect of conversion; entity unchanged.

(a) A partnership or limited partnership that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect:

(1) All property owned by the converting partnership or limited partnership vests in the limited liability company;

(2) All debts, liabilities and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(3) An action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(4) Except as prohibited by other law, all of the rights, privileges, immunities, powers and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(5) Except as otherwise provided in the agreement of conversion under section 9-902(c), all of the partners of the converting partnership continue as members of the limited liability company.

WV Legislature

§31B-9-904. Merger of entities; confirmation of title to real estate required.

(a) Pursuant to a plan of merger approved under subsection (c) of this section, a limited liability company may be merged with or into one or more limited liability companies, foreign limited liability companies, corporations, foreign corporations, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships or other domestic or foreign entities.

(b) A plan of merger must set forth:

(1) The name of each entity that is a party to the merger;

(2) The name of the surviving entity into which the other entities will merge;

(3) The type of organization of the surviving entity;

(4) The terms and conditions of the merger;

(5) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property, in whole or in part; and

(6) The street address of the surviving entity's principal place of business.

(c) A plan of merger must be approved:

(1) In the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(3) In the case of a partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under section 9-902(b); and

(4) In the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of such a requirement, by all the owners of interests in the entity.

(d) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(e) The merger is effective upon the filing of the articles of merger with the Secretary of State, or at such later date as the articles may provide.

WV Legislature

(f) Irrespective of whether the surviving limited liability company is to be governed by the laws of this state or by the laws of any other state, any constituent limited liability company thereof owning or holding real estate in this state shall further evidence title thereto in the surviving limited liability company by executing and acknowledging for record a confirmatory deed or deeds to the respective parcels of real estate, which deed or deeds shall be recorded in the office of the clerk of the county commission of the respective counties in which such real estate is situate; and such deed or deeds shall recite as the consideration therefor the said merger and shall be deemed confirmatory of the title of such real estate in the surviving limited liability company.

WV Legislature

§31B-9-905. Articles of merger.

(a) After approval of the plan of merger under section 9-904(c), unless the merger is abandoned under section 9-904(d), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the Secretary of State for filing. The articles must set forth:

(1) The name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(2) For each limited liability company that is to merge, the date its articles of organization were filed with the Secretary of State;

(3) That a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(4) The name and address of the surviving limited liability company or other surviving entity;

(5) The effective date of the merger;

(6) If a limited liability company is the surviving entity, such changes in its articles of organization as are necessary by reason of the merger;

(7) If a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the Secretary of State or, if an application has not been filed, a statement to that effect; and

(8) If the surviving entity is not a limited liability company, an agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state which is to merge, and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity.

(b) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the Secretary of State.

(c) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is to merge.

(d) Articles of merger operate as an amendment to the limited liability company's articles of organization.

WV Legislature

§31B-9-906. Effect of merger.

(a) When a merger takes effect:

(1) The separate existence of each limited liability company and other entity that is a party to the merger, other than the surviving entity, terminates;

(2) All property owned by each of the limited liability companies and other entities that are party to the merger vests in the surviving entity;

(3) All debts, liabilities and other obligations of each limited liability company and other entity that is party to the merger become the obligations of the surviving entity;

(4) An action or proceeding pending by or against a limited liability company or other party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(5) Except as prohibited by other law, all the rights, privileges, immunities, powers and purposes of every limited liability company and other entity that is a party to a merger become vested in the surviving entity.

(b) The Secretary of State is an agent for service of process in an action or proceeding against the surviving foreign entity to enforce an obligation of any party to a merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the Secretary of State shall send a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(1) The date the company receives the process, notice or demand;

(2) The date shown on the return receipt, if signed on behalf of the company; or

(3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

(e) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

WV Legislature

§31B-9-907. Article not exclusive.

This article does not preclude an entity from being converted or merged under other law.

WV Legislature

§31B-10-1001. Law governing foreign limited liability companies.

(a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members and their transferees.

(b) A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the laws of another jurisdiction under which the foreign company is organized and the laws of this state.

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

WV Legislature

§31B-10-1002. Application for certificate of authority.

(a) 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, together with the fee prescribed by section two, article one, chapter fifty-nine of this code.

The application shall set forth:

(1) The name of the foreign company or, if its name is unavailable for use in this state, a name that satisfies the requirements of section 10-1005 of this article;

(2) The name of the state or country under whose law it is organized;

(3) The mailing address of its principal office;

(4) The name and address of each member having authority to execute instruments on behalf of the limited liability company;

(5) The address of its initial designated office in this state, if any;

(6) The name and address of its initial agent for service of process in this state, if any;

(7) Whether the duration of the company is for a specified term and, if so, the period specified;

(8) Whether the company is manager-managed and, if so, the name and address of each initial manager;

(9) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 3-303(c);

(10) The purpose or purposes for which the limited liability company is organized; and

(11) An e-mail address where informational notices and reminders of annual filings may be sent, unless there is a technical inability to comply.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the Secretary of State or other official having custody of company records in the state or country under whose law it is organized.

WV Legislature

§31B-10-1003. Activities not constituting transacting business.

(a) Activities of a foreign limited liability company that do not constitute transacting business in this state within the meaning of this article include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange and registration of the foreign company's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(7) Creating or acquiring indebtedness, mortgages or security interests in real or personal property;

(8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;

(10) Transacting business in interstate commerce;

(11) Applying for withholding tax on an employee residing in the State of West Virginia who works for the foreign limited liability company in another state; and

(12) Holding all, or a portion thereof, of the outstanding stock of another corporation authorized to transact business in the State of West Virginia: Provided, That the foreign limited liability company does not produce goods, services or otherwise conduct business in the State of West Virginia.

(b) 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 (a) of this section, constitutes transacting business in this state.

(c) 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 any other

WV Legislature

law of this state.

WV Legislature

§31B-10-1004. Issuance of certificate of authority.

Unless the Secretary of State determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the Secretary of State, upon payment of all filing fees, shall file the application and send a receipt for it and the fees to the limited liability company or its representative.

WV Legislature

§31B-10-1005. Name of foreign limited liability company.

(a) If the name of a foreign limited liability company does not satisfy the requirements of section 1-105, the company, to obtain or maintain a certificate of authority to transact business in this state, must use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its managers, in the case of a manager-managed company, or of its members, in the case of a member-managed company, adopting the fictitious name.

(b) Except as authorized by subsections (c) and (d) of this section, the name, including a fictitious name to be used to transact business in this state, of a foreign limited liability company must be distinguishable upon the records of the Secretary of State from:

(1) The name of any corporation, limited partnership, or company incorporated, organized or authorized to transact business in this state;

(2) A name reserved or registered under section 1-106 or 1-107; and

(3) The fictitious name of another foreign limited liability company authorized to transact business in this state.

(c) A foreign limited liability company may apply to the Secretary of State for authority to use in this state a name that is not distinguishable upon the records of the Secretary of State from a name described in subsection (b) of this section. The Secretary of State shall authorize use of the name applied for if:

(1) The present user, registrant or owner of a reserved name consents to the use in a record and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the foreign applying limited liability company; or

(2) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this state.

(d) A foreign limited liability company may use in this state the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated, organized or authorized to transact business in this state and the foreign limited liability company:

(1) Has merged with the other entity;

(2) Has been formed by reorganization of the other entity; or

(3) Has acquired all or substantially all of the assets, including the name, of the other entity.

(e) If a foreign limited liability company authorized to transact business in this state changes

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its name to one that does not satisfy the requirements of section 1-105, it may not transact business in this state under the name as changed until it adopts a name satisfying the requirements of section 1-105 and obtains an amended certificate of authority.

WV Legislature

§31B-10-1006. Revocation and reinstatement of certificate of authority.

(a) 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 subsection (b) of this section if:

(1) The company fails to:

(A) Pay any fees, taxes, and penalties owed to this state;

(B) Deliver its annual or biennial report required under §31-2-211 of this code to the Secretary of State within 60 days after it is due; or

(C) File a statement of a change in the name or business address of the agent as required by this article;

(2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company pursuant to this article;

(3) The professional license of one or more of the license holders is revoked by a professional licensing board and the license is or all the licenses are required for the continued operation of the company; or

(4) The company is in default with the Bureau of Employment Programs as provided in §21a-2-6 of this code.

(b) The Secretary of State may not revoke a certificate of authority of a foreign limited liability company unless the Secretary of State sends the company notice of the revocation, at least 60 days before its effective date, by a record addressed to its principal office. The notice must specify the cause for the revocation of the certificate of authority. The authority of the company to transact business in this state ceases on the effective date of the revocation unless the foreign limited liability company cures the failure before that date.

(c) A foreign limited liability company administratively revoked may apply to the Secretary of State for reinstatement within two years after the effective date of revocation. The application must:

(1) Recite the name of the company and the effective date of its administrative revocation;

(2) State that the ground for revocation either did not exist or has been eliminated;

(3) State that the company's name satisfies the requirements of §31B-10-1005 of this code; and

(4) Contain a certificate from the Tax Commissioner reciting that all taxes owed by the company have been paid.

WV Legislature

(d) If the Secretary of State determines that the application contains the information required by subsection (a) of this section and that the information is correct, the Secretary of State shall cancel the certificate of revocation and prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(e) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative revocation and the company may resume its business as if the administrative revocation had never occurred.

WV Legislature

§31B-10-1007. Cancellation of authority.

A foreign limited liability company may cancel its authority to transact business in this state by filing in the office of the Secretary of State a certificate of cancellation. Cancellation does not terminate the authority of the Secretary of State to accept service of process on the company for claims for relief arising out of the transactions of business in this state.

WV Legislature

§31B-10-1008. Effect of failure to obtain certificate of authority.

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

(b) 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 foreign limited liability company from defending an action or proceeding in this state.

(c) Limitations on personal liability of managers, members and their transferees are not waived solely by transacting business in this state without a certificate of authority.

(d) If a foreign limited liability company transacts business in this state without a certificate of authority, it appoints the Secretary of State as its agent for service of process for claims for relief arising out of the transaction of business in this state.

WV Legislature

§31B-10-1009. Action by Attorney General.

The Attorney General may maintain an action to restrain a foreign limited liability company from transacting business in this state in violation of this article.

WV Legislature

§31B-11-1101. Right of action.

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

WV Legislature

§31B-11-1102. Proper plaintiff.

In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced; and:

(1) Must have been a member at the time of the transaction of which the plaintiff complains; or

(2) The plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

WV Legislature

§31B-11-1103. Pleading.

In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

WV Legislature

§31B-11-1104. Expenses.

If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

WV Legislature

§31B-12-1201. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

WV Legislature

§31B-12-1202. Short title.

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

WV Legislature

§31B-12-1203. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are severable.

WV Legislature

§31B-12-1204. Effective date.

This chapter takes effect on July 1, 1996.

WV Legislature

§31B-12-1205. Transitional provisions.

(a) Before July 1, 1996, this chapter governs only a limited liability company organized:

(1) After the effective date of this chapter, unless the company is continuing the business of a dissolved limited liability company under the provisions of the former West Virginia limited liability company act; and

(2) Before the effective date of this chapter, which elects, as provided by subsection (c) of this section, to be governed by this chapter.

(b) On and after July 1, 1996, this chapter governs all limited liability companies.

(c) Before July 1, 1996, a limited liability company voluntarily may elect, in the manner provided in its operating agreement or by law for amending the operating agreement, to be governed by this chapter.

WV Legislature

§31B-12-1206. Savings clause.

This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

WV Legislature

§31B-12-1207. Equality of workers' compensation treatment.

(a) Notwithstanding any provision of subdivision (3), subsection (g), section one, article two, chapter twenty-three of this code to the contrary, all covered members of limited liability companies which are treated as partnerships for federal income tax purposes shall be subject to the calculation of premium on the members as provided for partners in a partnership in section one-b, article two, chapter twenty-three of this code. Any limited liability company excluding any member from workers' compensation coverage or computing premiums on such member as a partner prior to the effective date of this section is deemed to have made an effective election in accordance with the provisions of this section for all periods until such limited liability company modifies the election.

(b) Notwithstanding any provision of subdivision (3), subsection (g), section one, article two, chapter twenty-three of this code to the contrary, a person is not a member of a limited liability company for whom coverage is required under that section if the person is a member solely as an investor and does not participate in the direction, administration, or control of the company and its activities or investments unless that person is employed in the service of the company for the purpose of carrying on the industry, business, service or work in which it is engaged.

WV Legislature

§31B-13-1301. Definitions.

As used in this article:

(1) "Licensing board" means the governing body or agency established under chapter thirty of this code which is responsible for the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide;

(2) "Professional limited liability company" means a limited liability company organized under this chapter for the purpose of rendering a professional service; and

(3) "Professional service" means the services rendered by the following professions: Attorneys-at-law under article two, physicians and podiatrists under article three, dentists under article four, optometrists under article eight, accountants under article nine, veterinarians under article ten, architects under article twelve, engineers under article thirteen, osteopathic physicians and surgeons under article fourteen, chiropractors under article sixteen, psychologists under article twenty-one, social workers under article thirty, acupuncturists under article thirty-six and land surveyors under article thirteen-a, all of chapter thirty of this code.

WV Legislature

§31B-13-1302. Who may become a member; professional limited liability companies authorized.

(a) One or more persons duly licensed or otherwise legally authorized to render the same or compatible professional services or to otherwise practice together within this state may become members of a professional limited liability company under the provisions of this chapter for the purpose of rendering the same or compatible professional services. Notwithstanding any provision of this code to the contrary, including any limitation or restriction set forth in any licensing provision of chapter thirty of this code, a professional limited liability company may be formed to provide any of the professional services as defined in section one thousand three hundred one of this article.

(b) Any one or more persons who, under applicable legal or ethical rules or principles, can collectively practice the same or compatible professions, whether as general partners, joint venturers, fellow shareholders, fellow members or common business owners, may form, own and operate, as members, a professional limited liability company under this article. For purposes of this section, members of professional limited liability companies may be natural persons, professional corporations, other professional limited liability companies and professional partnerships. Professional limited liability companies may form, own and operate separate limited liability companies.

(c) No professional limited liability company organized under this article may have as a member anyone other than a person who is duly licensed or otherwise legally authorized to render the professional services for which the professional limited liability company was organized. The names of members of professional limited liability companies who have signature authority shall be furnished to the Secretary of State. Any change in the persons who have signature authority for a professional limited liability company shall be promptly reported to the Secretary of State.

WV Legislature

§31B-13-1303. Name.

The name of a professional limited liability company shall contain the words "professional limited liability company" or the abbreviation "P.L.L.C.", "PLLC", "Professional L.L.C.", or "Professional LLC".

WV Legislature

§31B-13-1304. Duty of licensing board.

The licensing board for each of the professions authorized to form professional limited liability companies under this article shall propose legislative rules for promulgation, in accordance with the provisions of article three, chapter twenty-nine-a of this code, providing for the implementation of this article and the procedures for the formation and approval of professional limited liability companies for the particular profession under the jurisdiction of such licensing board. The rules of each licensing board shall permit the formation and approval of professional limited liability companies with members from different professions.

WV Legislature

§31B-13-1305. Professional relationships not affected; liability for debts, etc., of limited liability company, its members, managers, employees and agents; individual liability.

(a) The provisions of this article shall not be construed to alter or affect the professional relationship between an individual furnishing professional services and a person receiving that service either with respect to liability arising out of that professional service or any confidential relationship between the individual rendering and the individual receiving the professional services, and all confidential relationships enjoyed under the laws of this state, whether now in existence, or hereafter enacted, shall remain inviolate.

(b) A member, manager, agent or employee of a professional limited liability company shall not, by reason of being a member, manager, agent or employee of a professional limited liability company, be personally liable for any debts or claims against, or the acts or omissions of the professional limited liability company or of another member, manager, agent or employee of the professional limited liability company.

(c) The professional limited liability company shall be liable for the acts or omissions of its members, managers, agents and employees to the same extent to which any other limited liability company would be liable for the acts or omissions of its members, managers, agents and employees while they are engaged in carrying on the professional limited liability company business.

(d) Notwithstanding any provision of this article to the contrary, any individual who renders a professional service as a member, manager, agent or employee of a professional limited liability company is liable for a negligent or wrongful act or omission in which the individual personally participated to the same extent as if the individual rendered the professional service as a sole practitioner.

(e) A professional limited liability company organized under this article shall carry at all times at least $1 million of professional liability insurance which shall insure the limited liability company and its members against liability imposed upon the company or any of its members arising out of the performance of professional services to patients or clients of the company by any of the members or professional or nonprofessional managers or employees of the limited liability company.

(f) If, in any proceeding, compliance by a professional limited liability company with the requirements of subsection (e) of this section is disputed, that issue shall be determined by the court, and the burden of proof of compliance shall be on the person who claims the limitation of liability set forth in subsection (b) of this section.

(g) If a professional limited liability company is in compliance with the requirements of subsection (e) of this section, the requirements of this section shall not be admissible or in any way be made known to a jury in determining an issue of liability for or extent of the obligation or damages in question.

WV Legislature

(h) A professional limited liability company is considered to be in compliance with subsection (e) of this section if it provides $1 million of funds specifically designated and segregated for the satisfaction of judgments against the limited liability company, its members or any of its professional or nonprofessional managers or employees resulting from any of the types of claims covered by subsection (e) of this section, by:

(1) Deposit in trust or in bank escrow of cash, bank certificates of deposit or United States treasury obligation; or

(2) A bank letter of credit or insurance company bond.

WV Legislature

§31B-13-1306. Application of article.

Except as otherwise specifically provided in this article, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies.

WV Legislature

§31B-14-101. Short title.

This act may be cited as the Uniform Protected Series Act.

WV Legislature

§31B-14-102. Definitions.

In this chapter:

"Asset" means property in which a series limited liability company or protected series has rights; or as to which the company or protected series has the power to transfer rights.

"Associated asset" means an asset that meets the requirements of §31B-14-301 of this code.

"Associated member" means a member that meets the requirements of §31B-14-302.

"Foreign protected series" means an arrangement, configuration, or other structure established by a foreign limited liability company which has attributes comparable to a protected series established under this chapter. The term applies whether or not the law under which the foreign company is organized refers to "protected series".

"Foreign series limited liability company" means a foreign limited liability company that has at least one foreign protected series.

"Jurisdiction of formation" means the jurisdiction whose law governs the internal affairs of an entity.

"Non-associated asset" means:

An asset of a series limited liability company which is not an associated asset of the company; or an asset of a protected series of the company which is not an associated asset of the protected series.

"Person" includes a protected series.

"Protected series", except in the phrase "foreign protected series", means a protected series established under §31B-14-201.

"Protected-series manager" means a person under whose authority the powers of a protected series are exercised and under whose direction the activities and affairs of the protected series are managed under the operating agreement and this chapter.

"Protected-series distributional interest" means a right to receive a distribution from a protected series.

"Protected-series transferee" means a person to which all or part of a protected-series distributional interest of a protected series of a series limited liability company has been transferred, other than the company. The term includes a person that owns a protected-series distributional interest as a result of ceasing to be an associated member of a protected series.

WV Legislature

"Series limited liability company" or “company”, except in the phrase "foreign series limited liability company", means a limited liability company that has at least one protected series.

WV Legislature

§31B-14-103. Nature of protected series.

A protected series of a series limited liability company is a person distinct from:

(1) The company, subject to §31B-14-104(c), §31B-14-501(1), and §31B-14-502(d);

(2) Another protected series of the company;

(3) A member of the company, whether or not the member is an associated member of the protected series;

(4) A protected-series transferee of a protected series of the company; and

(5) A transferee of a distributional interest of the company.

WV Legislature

§31B-14-104. Powers and duration of protected series.

(a) A protected series of a series limited liability company has the capacity to sue and be sued in its own name.

(b) Except as otherwise provided in subsections (c) and (d) of this section, a protected series of a series limited liability company has the same powers and purposes as the company.

(c) A protected series of a series limited liability company ceases to exist not later than when the company completes its winding up.

(d) A protected series of a series limited liability company may not:

(1) Be a member of the company;

(2) Establish a protected series; or

(3) Except as permitted by law of this state other than this chapter, have a purpose or power that the law of this state other than this chapter prohibits a limited liability company from doing or having.

WV Legislature

§31B-14-105. Governing law.

The law of this state governs:

(1) The internal affairs of a protected series of a series limited liability company, including:

(A) Relations among any associated members of the protected series;

(B) Relations among the protected series and:

(i) Any associated member;

(ii) The protected-series manager; or

(iii) Any protected-series transferee;

(C) Relations between any associated member and:

(i) The protected-series manager; or

(ii) Any protected-series transferee;

(D) The rights and duties of a protected-series manager;

(E) Governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) The relations between a protected series of a series limited liability company and each of the following:

(A) The company;

(B) Another protected series of the company;

(C) A member of the company which is not an associated member of the protected series;

(D) A protected-series manager that is not a protected-series manager of the protected series; and

(E) A protected-series transferee that is not a protected-series transferee of the protected series;

(3) The liability of a person for a debt, obligation, or other liability of a protected series of a series limited liability company if the debt, obligation, or liability is asserted solely by reason

WV Legislature

of the person being or acting as:

(A) An associated member, protected-series transferee, or protected-series manager of the protected series;

(B) A member of the company which is not an associated member of the protected series;

(C) A protected-series manager that is not a protected-series manager of the protected series;

(D) A protected-series transferee that is not a protected-series transferee of the protected series;

(E) A manager of the company; or

(F) A transferee of a distributional interest of the company;

(4) The liability of a series limited liability company for a debt, obligation, or other liability of a protected series of the company if the debt, obligation, or liability is asserted solely by reason of the company:

(A) Having delivered to the Secretary of State for filing under §31B-14-201(b) a protected series designation pertaining to the protected series or under §31B-14-201(d) or §31B-14-202(c) a statement of designation change pertaining to the protected series;

(B) Being or acting as a protected-series manager of the protected series;

(C) Having the protected series be or act as a manager of the company; or

(D) Owning a protected-series distributional interest of the protected series; and

(5) The liability of a protected series of a series limited liability company for a debt, obligation, or other liability of the company or of another protected series of the company if the debt, obligation, or liability is asserted solely by reason of:

(A) The protected series:

(i) Being a protected series of the company or having as a protected-series manager the company or another protected series of the company; or

(ii) Being or acting as a protected-series manager of another protected series of the company or a manager of the company; or

(B) The company owning a protected-series distributional interest of the protected series.

WV Legislature

§31B-14-106. Effect of operating agreement.

(a) Except as otherwise provided in this section and subject to §31B-14-107 and §31B-14-108, the operating agreement of a series limited liability company governs:

(1) The internal affairs of a protected series, including:

(A) Relations among any associated members of the protected series;

(B) Relations among the protected series and:

(i) Any associated member;

(ii) The protected-series manager; or

(iii) Any protected-series transferee;

(C) Relations between any associated member and:

(i) The protected-series manager: or

(ii) Any protected-series transferee;

(D) The rights and duties of a protected-series manager;

(E) Governance decisions affecting the activities and affairs of the protected series and the conduct of those activities and affairs; and

(F) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) Relations among the protected series, the company, and any other protected series of the company;

(3) Relations between:

(A) The protected series, its protected-series manager, any associated member of the protected series, or any protected-series transferee of the protected series; and

(B) A person in the person's capacity as:

(i) A member of the company which is not an associated member of the protected series;

(ii) A protected-series transferee or protected-series manager of another protected series; or

(iii) A transferee of the company.

WV Legislature

(b) If chapter 31B of this code restricts the power of an operating agreement to affect a matter, the restriction applies to a matter under §31B-14-108.

(c) If law of this state other than this article imposes a prohibition, limitation, requirement, condition, obligation, liability, or other restriction on a limited liability company, a member, manager, or other agent of the company, or a transferee of the company, except as otherwise provided in law of this state other than this article, the restriction applies in accordance with §31B-14-108.

(d) Except as otherwise provided in §31B-14-107, if the operating agreement of a series limited liability company does not provide for a matter described in subsection (a) of this section in a manner permitted by this article, the matter is determined in accordance with the following rules:

(1) To the extent this article addresses the matter, this article governs.

(2) To the extent this article does not address the matter, chapter 31B of this code governs the matter in accordance with §31B-14-108.

WV Legislature

§31B-14-107. Additional limitations on operating agreement.

An operating agreement may not vary the effect of:

(1) §31B-14-107;

(2) §31B-14-103;

(3) §31B-14-104(a);

(4) §31B-14-104(b) to provide a protected series a power beyond the powers chapter 31B of this code provides a limited liability company;

(5) §31B-14-104(c) or (d);

(6) §31B-14-105;

(7) §31B-14-106;

(8) §31B-14-108;

(9) §31B-14-201, except to vary the manner in which a limited liability company approves establishing a protected series;

(10) §31B-14-202;

(11) §31B-14-203;

(12) §31B-14-302;

(13) §31B-14-303(a) or (b);

(14) §31B-14-304(c), (f), or (g);

(15) §31B-14-401, except to decrease or eliminate a limitation of liability stated in §31B-14-401;

(16) §31B-14-402;

(17) §31B-14-403;

(18) §31B-14-404;

(19) §31B-14-501(1), (4), and (5);

(20) §31B-14-502, except to designate a different person to manage winding up;

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(21) §31B-14-503;

(22) §31B-14-601 *et seq.*;

(23) §31B-14-701 *et seq.*;

(A) The manner in which a series limited liability company may elect under §31B-14-803(a)(2) to be subject to this article; or

(B) The person that has the right to sign and deliver to the Secretary of State for filing a record under §31B-14-803(b)(2); or

(25) A provision of this article pertaining to:

(A) Registered agents; or

(B) The Secretary of State, including provisions pertaining to records authorized or required to be delivered to the Secretary of State for filing under this article.

WV Legislature

§31B-14-108. Rules for applying limited liability company act.

(a) Except as otherwise provided in subsection (b) of this section and §31B-14-107, the following rules apply in applying §31B-14-106, §31B-14-304(c) and (f), §31B-14-501(4)(A), §31B-14-502(a), and §31B-14-503(2):

(1) A protected series of a series limited liability company is deemed to be a limited liability company that is formed separately from the series limited liability company and is distinct from the series limited liability company and any other protected series of the series limited liability company.

(2) An associated member of the protected series is deemed to be a member of the company deemed to exist under §31B-14-108(a)(1) of this code.

(3) A protected-series transferee of the protected series is deemed to be a transferee of the company deemed to exist under §31B-14-108(a)(1) of this code.

(4) A protected-series distributional interest of the protected series is deemed to be a distributional interest of the company deemed to exist under §31B-14-108(a)(1) of this code.

(5) A protected-series manager is deemed to be a manager of the company deemed to exist under §31B-14-108(a)(1).

(6) An asset of the protected series is deemed to be an asset of the company deemed to exist under §31B-14-108(a)(1) of this code, whether or not the asset is an associated asset of the protected series.

(7) Any creditor or other obligee of the protected series is deemed to be a creditor or obligee of the company deemed to exist under §31B-14-108(a)(1) of this code.

(b) Subsection (a) of this section does not apply if its application would:

(1) Contravene §31B-1-103 of this code; or

(2) Authorize or require the Secretary of State to:

(A) Accept for filing a type of record that neither this article nor chapter 31B of this code authorizes or requires a person to deliver to the Secretary of State for filing; or

(B) Make or deliver a record that neither this article nor chapter 31B of this code authorizes or requires the Secretary of State to make or deliver.

WV Legislature

§31B-14-201. Protected series designation; amendment.

(a) With the affirmative vote or consent of all members of a limited liability company, the company may establish a protected series.

(b) To establish a protected series, a limited liability company shall deliver to the Secretary of State for filing a protected series designation, signed by the company, stating the name of the company and the name of the protected series to be established.

(c) A protected series is established when the protected series designation takes effect under §31B-2-206 of this code.

(d) To amend a protected series designation, a series limited liability company shall deliver to the Secretary of State for filing a statement of designation change, signed by the company, that changes the name of the company, the name of the protected series to which the designation applies, or both. The change takes effect when the statement of designation change takes effect under §31B-2-206 of this code.

WV Legislature

§31B-14-202. Name.

(a) Except as otherwise provided in subsection (b) of this section, the name of a protected series must comply with §31B-1-105 of this code.

(b) The name of a protected series of a series limited liability company must:

(1) Begin with the name of the company, including any word or abbreviation required by §31B-1-105(a) of this code; and

(2) Contain the phrase "Protected Series" or "protected series" or the abbreviation "P.S." or "PS".

(c) If a series limited liability company changes its name, the company shall deliver to the Secretary of State for filing a statement of designation change for each of the company's protected series, changing the name of each protected series to comply with §31B-14-202 of this code.

WV Legislature

§31B-14-203. Registered agent.

(a) The registered agent in this state for a series limited liability company is the registered agent in this state for each protected series of the company.

(b) Before delivering a protected series designation to the Secretary of State for filing, a limited liability company shall agree with a registered agent that the agent will serve as the registered agent in this state for both the company and the protected series.

(c) A person that signs a protected series designation delivered to the Secretary of State for filing affirms as a fact that the limited liability company on whose behalf the designation is delivered has complied with subsection (b) of this section.

(d) A person that ceases to be the registered agent for a series limited liability company ceases to be the registered agent for each protected series of the company.

(e) A person that ceases to be the registered agent for a protected series of a series limited liability company, other than as a result of the termination of the protected series, ceases to be the registered agent of the company and any other protected series of the company.

(f) Except as otherwise agreed by a series limited liability company and its registered agent, the agent is not obligated to distinguish between a process, notice, demand, or other record concerning the company and a process, notice, demand, or other record concerning a protected series of the company.

WV Legislature

§31B-14-204. Service of process, notice, demand, or other record.

(a) A protected series of a series limited liability company may be served with a process, notice, demand, or other record required or permitted by law by:

(1) Serving the company;

(2) Serving the registered agent of the protected series; or

(3) Other means authorized by law of this state other than chapter 31B of this code of this code.

(b) Service of a summons and complaint on a series limited liability company is notice to each protected series of the company of service of the summons and complaint and the contents of the complaint.

(c) Service of a summons and complaint on a protected series of a series limited liability company is notice to the company and any other protected series of the company of service of the summons and complaint and the contents of the complaint.

(d) Service of a summons and complaint on a foreign series limited liability company is notice to each foreign protected series of the foreign company of service of the summons and complaint and the contents of the complaint.

(e) Service of a summons and complaint on a foreign protected series of a foreign series limited liability company is notice to the foreign company and any other foreign protected series of the company of service of the summons and complaint and the contents of the complaint.

(f) Notice to a person under subsection (b), (c), (d), or (e) of this section is effective whether or not the summons and complaint identify the person if the summons and complaint name as a party and identify:

(1) The series limited liability company or a protected series of the company; or

(2) The foreign series limited liability company or a foreign protected series of the foreign company.

WV Legislature

§31B-14-205. Certificate of good standing for protected series.

(a) On request of any person, the Secretary of State shall issue a certificate of good standing for a protected series of a series limited liability company or a certificate of registration for a foreign protected series if:

(1) In the case of a protected series:

(A) No statement of dissolution, termination, or relocation pertaining to the protected series has been filed; and

(B) The company has delivered to the Secretary of State for filing the most recent annual report required by §31B-2-211 of this code and the report includes the name of the protected series, unless:

(i) When the company delivered the report for filing, the protected series designation pertaining to the protected series had not yet taken effect; or

(ii) After the company delivered the report for filing, the company delivered to the Secretary of State for filing a statement of designation change changing the name of the protected series; or

(2) In the case of a foreign protected series, it is registered to do business in this state.

(b) A certificate issued under subsection (a) of this section must state:

(1) In the case of a protected series:

(A) The name of the protected series of the series limited liability company and the name of the company;

(B) That the requirements of subsection (a) of this section are met;

(C) The date the protected series designation pertaining to the protected series took effect; and

(D) If a statement of designation change pertaining to the protected series has been filed, the effective date and contents of the statement;

(2) In the case of a foreign protected series, that it is registered to do business in this state;

(3) That the fees, taxes, interest, and penalties owed to this state by the protected series or foreign protected series and collected through the Secretary of State have been paid, if:

(A) Payment is reflected in the records of the Secretary of State; and

(B) Nonpayment affects the good standing of the protected series; and

WV Legislature

(4) Other facts reflected in the records of the Secretary of State pertaining to the protected series or foreign protected series which the person requesting the certificate reasonably requests.

(c) Subject to any qualification stated by the Secretary of State in a certificate issued under subsection (a) of this section, the certificate may be relied on as conclusive evidence of the facts stated in the certificate.

WV Legislature

§31B-14-206. Information required in annual report; effect of failure to provide.

(a) In the annual report required by §31B-2-211 of this code, a series limited liability company shall include the name of each protected series of the company:

(1) For which the company has previously delivered to the Secretary of State for filing a protected series designation; and

(2) Which has not dissolved and completed winding up.

(b) A failure by a series limited liability company to comply with subsection (a) of this section with regard to a protected series prevents issuance of a certificate of good standing pertaining to the protected series but does not otherwise affect the protected series.

WV Legislature

§31B-14-301. Associated asset.

(a) Only an asset of a protected series may be an associated asset of the protected series. Only an asset of a series limited liability company may be an associated asset of the company.

(b) An asset of a protected series of a series limited liability company is an associated asset of the protected series only if the protected series creates and maintains records that state the name of the protected series and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) Identify the asset and distinguish it from any other asset of the protected series, any asset of the company, and any asset of any other protected series of the company;

(2) Determine when and from what person the protected series acquired the asset or how the asset otherwise became an asset of the protected series; and

(3) If the protected series acquired the asset from the company or another protected series of the company, determine any consideration paid, the payor, and the payee.

(c) An asset of a series limited liability company is an associated asset of the company only if the company creates and maintains records that state the name of the company and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to:

(1) Identify the asset and distinguish it from any other asset of the company and any asset of any protected series of the company;

(2) Determine when and from what person the company acquired the asset or how the asset otherwise became an asset of the company; and

(3) If the company acquired the asset from a protected series of the company, determine any consideration paid, the payor, and the payee.

(d) The records and recordkeeping required by subsections (b) and (c) of this section may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

(e) To the extent permitted by this section and law of this state other than this article, a series limited liability company or protected series of the company may hold an associated asset directly or indirectly, through a representative, nominee, or similar arrangement, except that:

(1) A protected series may not hold an associated asset in the name of the company or another protected series of the company; and

WV Legislature

(2) The company may not hold an associated asset in the name of a protected series of the company.

WV Legislature

§31B-14-302. Associated member.

(a) Only a member of a series limited liability company may be an associated member of a protected series of the company.

(b) A member of a series limited liability company becomes an associated member of a protected series of the company if the operating agreement or a procedure established by the agreement states:

(1) That the member is an associated member of the protected series;

(2) The date on which the member became an associated member; and

(3) Any protected-series distributional interest the associated member has in connection with becoming or being an associated member.

(c) If a person that is an associated member of a protected series of a series limited liability company is dissociated from the company, the person ceases to be an associated member of the protected series.

WV Legislature

§31B-14-303. Protected-series distributional interest.

(a) A protected-series distributional interest of a protected series of a series limited liability company must be owned initially by an associated member of the protected series or the company.

(b) If a protected series of a series limited liability company has no associated members when established, the company owns the protected-series distributional interests in the protected series.

(c) In addition to acquiring a protected series transferable series interest under subsection (b) of this section, a series limited liability company may acquire a protected-series distributional interest through a transfer from another person or as provided in the operating agreement.

(d) Except for §31B-14-108(a)(3), a provision of this article which applies to a protected-series transferee of a protected series of a series limited liability company applies to the company in its capacity as an owner of a protected-series distributional interest of the protected series. A provision of the operating agreement of a series limited liability company which applies to a protected-series transferee of a protected series of the company applies to the company in its capacity as an owner of a protected-series distributional interest of the protected series.

WV Legislature

§31B-14-304. Management.

(a) A protected series may have more than one protected-series manager.

(b) If a protected series has no associated members, the series limited liability company is the protected-series manager.

(c) §31B-14-108 applies to determine any duties of a protected-series manager of a protected series of a series limited liability company to:

(1) The protected series;

(2) Any associated member of the protected series; and

(3) Any protected-series transferee of the protected series.

(d) Solely by reason of being or acting as a protected-series manager of a protected series of a series limited liability company, a person owes no duty to:

(1) The company;

(2) Another protected series of the company; or

(3) Another person in that person's capacity as:

(A) A member of the company which is not an associated member of the protected series;

(B) A protected-series transferee or protected-series manager of another protected series; or

(C) A transferee of the company.

(e) An associated member of a protected series of a series limited liability company has the same rights as any other member of the company to vote on or consent to an amendment to the company's operating agreement or any other matter being decided by the members, whether or not the amendment or matter affects the interests of the protected series or the associated member.

(f) §31B-11-1101 *et seq*. of this code applies to a protected series in accordance with §31B-14-108.

(g) An associated member of a protected series is an agent for the protected series with power to bind the protected series to the same extent that a member of a limited liability company is an agent for the company with power to bind the company under §31B-3-301 of this code.

WV Legislature

§31B-14-305. Right to information concerning protected series.

(a) A member of a series limited liability company which is not an associated member of a protected series of the company has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a member that is not a manager of a manager-managed limited liability company has a right to information concerning the company under §31B-4-408 of this code.

(b) A person formerly an associated member of a protected series has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that a person dissociated as a member of a manager-managed limited liability company has a right to information concerning the company under §31B-4-408 of this code.

(c) If an associated member of a protected series dies, the legal representative of the deceased associated member has a right to information concerning the protected series to the same extent, in the same manner, and under the same conditions that the legal representative of a deceased member of a limited liability company has a right to information concerning the company under §31B-4-408 of this code.

WV Legislature

§31B-14-401. Limitations on liability.

(a) A person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

(1) A protected series of a series limited liability company solely by reason of being or acting as:

(A) An associated member, protected-series manager, or protected series transferee of the protected series; or

(B) A member, manager, or a transferee of the company; or

(2) A series limited liability company solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the company.

(b) Subject to §31B-14-404, the following rules apply:

(1) A debt, obligation, or other liability of a series limited liability company is solely the debt, obligation, or liability of the company.

(2) A debt, obligation, or other liability of a protected series is solely the debt, obligation, or liability of the protected series.

(3) A series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of a protected series of the company solely by reason of the protected series being a protected series of the company or the company:

(A) Being or acting as a protected-series manager of the protected series;

(B) Having the protected series manage the company; or

(C) Owning a protected-series distributional interest of the protected series.

(4) A protected series of a series limited liability company is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the company or another protected series of the company solely by reason of:

(A) Being a protected series of the company;

(B) Being or acting as a manager of the company or a protected-series manager of another protected series of the company; or

(C) Having the company or another protected series of the company be or act as a protected-series manager of the protected series.

WV Legislature

§31B-14-402. Claim seeking to disregard limitation of liability.

(a) Except as otherwise provided in subsection (b) of this section, a claim seeking to disregard a limitation in §31B-14-401 is governed by the principles of law and equity, including a principle providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, which would apply if each protected series of a series limited liability company were a limited liability company formed separately from the series limited liability company and distinct from the series limited liability company and any other protected series of the series limited liability company.

(b) The failure of a limited liability company or a protected series to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground to disregard a limitation in §31B-14-401(a) but may be a ground to disregard a limitation in §31B-14-401(b).

(c) This section applies to a claim seeking to disregard a limitation of liability applicable to a foreign series limited liability company or foreign protected series and comparable to a limitation stated in §31B-14-401, if:

(1) The claimant is a resident of this state or doing business or registered to do business in this state; or

(2) The claim is to establish or enforce a liability arising under law of this state other than this article or from an act or omission in this state.

WV Legislature

§31B-14-403. Remedies of judgment creditor of associated member or protected-series transferee.

§31B-5-504 of this code applies to a judgment creditor of:

(1) An associated member or protected-series transferee of a protected series; or

(2) A series limited liability company, to the extent the company owns a protected-series distributional interest of a protected series.

WV Legislature

§31B-14-404. Enforcement against non-associated asset.

(a) In this section:

(1) "Enforcement date" means 12:01 a.m. on the date on which a claimant first serves process on a series limited liability company or protected series in an action seeking to enforce under this section a claim against an asset of the company or protected series by attachment, levy, or the like.

(2) Subject to §31B-14-608(b), "incurrence date" means the date on which a series limited liability company or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under this section.

(b) If a claim against a series limited liability company or a protected series of the company has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following rules:

(1) A judgment against the company may be enforced against an asset of a protected series of the company if the asset:

(A) Was a non-associated asset of the protected series on the incurrence date; or

(B) Is a non-associated asset of the protected series on the enforcement date.

(2) A judgment against a protected series may be enforced against an asset of the company if the asset:

(A) Was a non-associated asset of the company on the incurrence date; or

(B) Is a non-associated asset of the company on the enforcement date.

(3) A judgment against a protected series may be enforced against an asset of another protected series of the company if the asset:

(A) Was a non-associated asset of the other protected series on the incurrence date; or

(B) Is a non-associated asset of the other protected series on the enforcement date.

(c) In addition to any other remedy provided by law or equity, if a claim against a series limited liability company or a protected series has not been reduced to a judgment and law other than this article permits a prejudgment remedy by attachment, levy, or the like, the court may apply subsection (b) of this section as a prejudgment remedy.

(d) In a proceeding under this section, the party asserting that an asset is or was an associated asset of a series limited liability company or a protected series of the company has the burden of proof on the issue.

WV Legislature

(e) This section applies to an asset of a foreign series limited liability company or foreign protected series if:

(1) The asset is real or tangible property located in this state;

(2) The claimant is a resident of this state or doing business or registered to do business in this state, or the claim under §31B-14-404 is to enforce a judgment, or to seek a pre-judgment remedy, pertaining to a liability arising from law of this state other than this article or an act or omission in this state; and

(3) The asset is not identified in the records of the foreign series limited liability company or foreign protected series in a manner comparable to the manner required by §31B-14-301.

WV Legislature

§31B-14-501. Events causing dissolution of protected series.

A protected series of a series limited liability company is dissolved, and its activities and affairs must be wound up on the:

(1) Dissolution of the company;

(2) Occurrence of an event or circumstance the operating agreement states causes dissolution of the protected series;

(3) Affirmative vote or consent of all members; or

(4) Entry by the court of an order dissolving the protected series on application by an associated member or protected-series manager of the protected series:

(A) In accordance with §31B-14-108 of this code; and

(B) To the same extent, in the same manner, and on the same grounds the court would enter an order dissolving a limited liability company on application by a member or manager of the company; or

(5) Entry by the court of an order dissolving the protected series on application by the company or a member of the company on the ground that the conduct of all or substantially all the activities and affairs of the protected series is illegal.

WV Legislature

§31B-14-502. Winding up dissolved protected series.

(a) Subject to subsections (b) and (c) of this section and in accordance with §31B-14-108 of this code:

(1) A dissolved protected series shall wind up its activities and affairs in the same manner that a limited liability company winds up its activities and affairs under §31B-8-801 et seq. of this code subject to the same requirements and conditions and with the same effects; and

(2) Judicial supervision or another judicial remedy is available in the winding up of the protected series to the same extent, in the same manner, under the same conditions, and with the same effects that apply under §31B-8-803(a) of this code.

(b) A dissolved protected series or series 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 under §31B-8-808 of this code.

(c) At any time after dissolution and winding up, the company may terminate a series by filing with the Secretary of State a statement of designation cancellation stating the name of the company and the protected series and that the protected series is terminated. The filing of the statement with the Secretary of State has the same effect as the filing by the Secretary of State of articles of termination under §31B-8-805 of this code.

(d) A series limited liability company has not completed its winding up until each of the protected series of the company has completed its winding up.

WV Legislature

§31B-14-503. Effect of reinstatement of series limited company or revocation of voluntary dissolution.

(a) If a series limited liability company that has been administratively dissolved applies for reinstatement, §31B-8-811 and §31B-8-812 of this code apply to each protected series of the company in accordance with §31B-14-108 of this code.

(b) If, at any time after the dissolution of a series limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, unanimously waive the right to have the company's business wound up and the company terminated, §31B-8-802(b) of this code applies to each protected series of the company in accordance with §31B-14-108 of this code.

WV Legislature

§31B-14-601. Definitions.

In this article:

"After a merger" or "after the merger" means when a merger under §31B-14-604 of this code becomes effective and afterwards.

"Before a merger" or "before the merger" means before a merger under §31B-14-604 of this code becomes effective.

"Continuing protected series" means a protected series of a surviving company which continues in uninterrupted existence after a merger under §31B-14-604 of this code.

"Merging company" means a limited liability company that is party to a merger under §31B-14-604 of this code.

"Non-surviving company" means a merging company that does not continue in existence after a merger under §31B-14-604 of this code.

"Relocated protected series" means a protected series of a non-surviving company which, after a merger under §31B-14-604 of this code, continues in uninterrupted existence as a protected series of the surviving company.

"Surviving company" means a merging company that continues in existence after a merger under §31B-14-604 of this code.

WV Legislature

§31B-14-602. Protected series may not be party to entity transaction.

A protected series may not:

(1) Acquire, be acquired, convert, merge, or survive a merger; or

(2) Be a party to or be formed, organized, established, or created in a transaction substantially like a merger, interest exchange, or conversion.

WV Legislature

§31B-14-603. Restriction on entity transaction involving protected series.

A series limited liability company may not:

(1) Acquire, be acquired, convert, or be converted; or

(2) Except as otherwise provided in §31B-14-604 of this code, be a party to or the surviving company of a merger.

WV Legislature

§31B-14-604. Merger authorized; parties restricted.

A series limited liability company may be party to a merger in accordance with §31B-9-904, §31B-9-905, §31B-9-906, §31B-14-604, and §31B-14-605 through §31B-14-608 of this code only if:

(1) Each other party to the merger is a limited liability company; and

(2) The surviving company is not created in the merger.

WV Legislature

§31B-14-605. Plan of merger.

In a merger under §31B-14-604 of this code, the plan of merger must:

(1) Comply with §31B-9-904 of this code; and

(2) State in a record:

(A) For any protected series of a non-surviving company, whether after the merger the protected series will be a relocated protected series or be dissolved, wound up, and terminated;

(B) For any protected series of the surviving company which exists before the merger, whether after the merger the protected series will be a continuing protected series or be dissolved, wound up, and terminated;

(C) For each relocated protected series or continuing protected series:

(i) The name of any person that becomes an associated member or protected-series transferee of the protected series after the merger, any consideration to be paid by, on behalf of, or in respect of the person, the name of the payor, and the name of the payee;

(ii) The name of any person whose rights or obligations in the person's capacity as an associated member or protected-series transferee will change after the merger;

(iii) Any consideration to be paid to a person who before the merger was an associated member or protected-series transferee of the protected series and the name of the payor; and

(iv) If after the merger the protected series will be a relocated protected series, its new name;

(D) For any protected series to be established by the surviving company as a result of the merger:

(i) The name of the protected series;

(ii) Any protected-series distributional interest to be owned by the surviving company when the protected series is established; and

(iii) The name of and any protected-series distributional interest owned by any person that will be an associated member of the protected series when the protected series is established; and

(E) For any person that is an associated member of a relocated protected series and will remain a member after the merger, any amendment to the operating agreement of the

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surviving company which:

(i) Is or is proposed to be in a record; and

(ii) Is necessary or appropriate to state the rights and obligations of the person as a member of the surviving company.

WV Legislature

§31B-14-606. Articles of merger.

In a merger under §31B-14-604 of this code, the articles of merger must:

(1) Comply §31B-9-905 of this code; and

(2) Include as an attachment the following records, each to become effective when the merger becomes effective:

(A) For a protected series of a merging company being terminated as a result of the merger, a statement of termination signed by the company;

(B) For a protected series of a non-surviving company which after the merger will be a relocated protected series:

(i) A statement of relocation signed by the non-surviving company which contains the name of the company and the name of the protected series before and after the merger; and

(ii) A statement of protected series designation signed by the surviving company; and

(C) For a protected series being established by the surviving company as a result of the merger, a protected series designation signed by the company.

WV Legislature

§31B-14-607. Effect of merger.

When a merger under §31B-14-604 becomes effective, in addition to the effects stated in §31B-9-906 of this code:

(1) As provided in the plan of merger, each protected series of each merging company which was established before the merger:

(A) Is a relocated protected series or continuing protected series; or

(B) Is dissolved, wound up, and terminated;

(2) Any protected series to be established as a result of the merger is established;

(3) Any relocated protected series or continuing protected series is the same person without interruption as it was before the merger;

(4) All property of a relocated protected series or continuing protected series continues to be vested in the protected series without transfer, reversion, or impairment;

(5) All debts, obligations, and other liabilities of a relocated protected series or continuing protected series continue as debts, obligations, and other liabilities of the protected series;

(6) Except as otherwise provided by law or the plan of merger, all the rights, privileges, immunities, powers, and purposes of a relocated protected series or continuing protected series remain in the protected series;

(7) The new name of a relocated protected series may be substituted for the former name of the protected series in any pending action or proceeding;

(8) If provided in the plan of merger:

(A) A person becomes an associated member or protected-series transferee of a relocated protected series or continuing protected series;

(B) A person becomes an associated member of a protected series established by the surviving company as a result of the merger;

(C) Any change in the rights or obligations of a person in the person's capacity as an associated member or protected-series transferee of a relocated protected series or continuing protected series take effect; and

(D) Any consideration to be paid to a person that before the merger was an associated member or protected-series transferee of a relocated protected series or continuing protected series is due; and

(9) Any person that is a member of a relocated protected series becomes a member of the

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surviving company, if not already a member.

WV Legislature

§31B-14-608. Application of §31B-14-404 after merger.

(a) A creditor's right that existed under §31B-14-404 of this code immediately before a merger under §31B-14-604 of this code may be enforced after the merger in accordance with the following rules:

(1) A creditor's right that existed immediately before the merger against the surviving company, a continuing protected series, or a relocated protected series continues without change after the merger.

(2) A creditor's right that existed immediately before the merger against a non-surviving company:

(A) May be asserted against an asset of the non-surviving company which vested in the surviving company as a result of the merger; and

(B) Does not otherwise change.

(3) Subject to subsection (b), the following rules apply:

(A) In addition to the remedy stated in paragraph (1) of this section, a creditor with a right under §31B-14-404 which existed immediately before the merger against a non-surviving company or a relocated protected series may assert the right against:

(i) An asset of the surviving company, other than an asset of the non-surviving company which vested in the surviving company as a result of the merger;

(ii) An asset of a continuing protected series; or

(iii) An asset of a protected series established by the surviving company as a result of the merger;

(iv) If the creditor's right was against an asset of the non-surviving company, an asset of a relocated series; or

(v) If the creditor's right was against an asset of a relocated protected series, an asset of another relocated protected series.

(B) In addition to the remedy stated in paragraph (2) of this section, a creditor with a right that existed immediately before the merger against the surviving company or a continuing protected series may assert the right against:

(i) An asset of a relocated protected series; or

(ii) An asset of a non-surviving company which vested in the surviving company as a result of the merger.

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(b) For the purposes of subsection (a)(3) of this section and §31B-14-404(b)(1)(A), (2)(A), and (3)(A) of this code, the incurrence date is deemed to be the date on which the merger becomes effective.

(c) A merger under §31B-14-604 of this code does not affect the manner in which §31B-14-404 of this code applies to a liability incurred after the merger.

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§31B-14-701. Governing law.

The law of the jurisdiction of formation of a foreign series limited liability company governs:

(1) The internal affairs of a foreign protected series of the company, including:

(A) Relations among any associated members of the foreign protected series;

(B) Relations between the foreign protected series and:

(i) Any associated member;

(ii) The protected-series manager; or

(iii) Any protected-series transferee;

(C) Relations between any associated member and:

(i) The protected-series manager:

(ii) Any protected-series transferee;

(D) The rights and duties of a protected-series manager;

(E) Governance decisions affecting the activities and affairs of the foreign protected series and the conduct of those activities and affairs; and

(F) Procedures and conditions for becoming an associated member or protected-series transferee;

(2) Relations between the foreign protected series and:

(A) The company;

(B) Another foreign protected series of the company;

(C) A member of the company which is not an associated member of the foreign protected series;

(D) A foreign protected-series manager that is not a protected-series manager of the protected series;

(E) A foreign protected-series transferee that is not a foreign protected-series transferee of the protected series; and

(F) A transferee of a distributional interest of the company;

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(3) Except as otherwise provided in §31B-14-402 of this code and §31B-14-404 of this code, the liability of a person for a debt, obligation, or other liability of a foreign protected series of a foreign series limited liability company if the debt, obligation, or liability is asserted solely by reason of the person being or acting as:

(A) An associated member, protected-series transferee, or protected-series manager of the foreign protected series;

(B) A member of the company which is not an associated member of the foreign protected series;

(C) A protected-series manager of another foreign protected series of the company;

(D) A protected-series transferee of another foreign protected series of the company;

(E) A manager of the company; or

(F) A transferee of a distributional interest of the company; and

(4) Except as otherwise provided in §31B-14-402 and §31B-14-404 of this code:

(A) The liability of the foreign series limited liability company for a debt, obligation, or other liability of a foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series being a foreign protected series of the company or the company:

(i) Being or acting as a foreign protected-series manager of the foreign protected series;

(ii) Having the foreign protected series manage the company; or

(iii) Owning a protected-series distributional interest of the foreign protected series; and

(B) The liability of a foreign protected series for a debt, obligation, or other liability of the company or another foreign protected series of the company if the debt, obligation, or liability is asserted solely by reason of the foreign protected series:

(i) Being a foreign protected series of the company or having the company or another foreign protected series of the company be or act as foreign protected-series manager of the foreign protected series; or

(ii) Managing the company or being or acting as a foreign protected-series manager of another foreign protected series of the company.

WV Legislature

§31B-14-702. No attribution of activities constituting doing business or for establishing jurisdiction.

In determining whether a foreign series limited liability company or foreign protected series of the company does business in this state or is subject to the personal jurisdiction of the courts of this state:

(1) The activities and affairs of the company are not attributable to a foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company; and

(2) The activities and affairs of a foreign protected series are not attributable to the company or another foreign protected series of the company solely by reason of the foreign protected series being a foreign protected series of the company.

WV Legislature

§31B-14-703. Registration of foreign protected series.

(a) Except as otherwise provided in this section and subject to §31B-14-402 and §31B-14-404 of this code, the law of this state governing the registration of a foreign limited liability company to do business in this state, including the consequences of not complying with that law, applies to a foreign protected series of a foreign series limited liability company as if the foreign protected series were a foreign limited liability company formed separately from the foreign series limited liability company and distinct from the foreign series limited liability company and any other foreign protected series of the foreign series limited liability company.

(b) An application by a foreign protected series of a foreign series limited liability company for registration to do business in this state must include:

(1) The name and jurisdiction of formation of the foreign series limited liability company; and

(2) If the company has other foreign protected series, the name and street and mailing address of an individual who knows the name and street and mailing address of:

(A) Each other foreign protected series of the foreign series limited liability company; and

(B) The foreign protected-series manager of and agent for service of process for each other foreign protected series of the foreign series limited liability company; and

(3) Any other information required under §31B-10-1002 of this code for a foreign limited liability company's certificate of authority, including a certificate of existence or a record of similar import.

(c) The name of a foreign protected series applying for registration or registered to do business in this state must comply with §31B-14-202 of this code and may do so using a trade name under §47-8-4 of this code if the trade name complies with §31B-14-202 of this code.

(d) The requirement in §31B-2-207 of this code to amend a statement of registration to update information applies to the information required by subsection (b) of this section.

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§31B-14-704. Disclosure required when foreign series limited liability company or foreign protected series party to proceeding.

(a) Not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in this state or a tribunal of the United States located in this state:

(1) A foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) Each foreign protected series of the company; and

(B) Each foreign protected-series manager of and a registered agent for service of process for each foreign protected series of the company; and

(2) A foreign protected series of a foreign series limited liability company shall disclose to each other party the name and street and mailing address of:

(A) The company and each manager of the company and an agent for service of process for the company; and

(B) Any other foreign protected series of the company and each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

(b) If a foreign series limited liability company or foreign protected series challenges the personal jurisdiction of the tribunal, the requirement that the foreign company or foreign protected series make disclosure under subsection (a) of this section is tolled until the tribunal determines whether it has personal jurisdiction.

(c) If a foreign series limited liability company or foreign protected series does not comply with subsection (a) of this section, a party to the proceeding may:

(1) Request the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules; or

(2) Bring a separate proceeding in the court to enforce subsection (a) of this section.

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