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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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A N A C T

RELATING TO CORPORATIONS -- THE RHODE ISLAND LIMITED -LIABILITY
COMPANY ACT

Introduced By: Senator Dawn M. Euer

Date Introduced: March 30, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 7-16 of the General Laws entitled "The Rhode Island Limited-
2 Liability Company Act" is hereby repealed in its entirety.

3 ~~CHAPTER 7-16~~

4 ~~The Rhode Island Limited Liability Company Act~~

5 ~~**7-16-1. Short title.**~~

6 ~~This chapter shall be known and may be cited as the "Rhode Island Limited Liability~~
7 ~~Company Act".~~

8 ~~**7-16-2. Definitions.**~~

9 ~~As used in this chapter, unless the context otherwise requires:~~

10 ~~(1) "Articles of organization" means documents filed under § 7-16-5 for the purpose of~~
11 ~~forming a limited liability company.~~

12 ~~(2) "Authorized person" means a person, whether or not a member, who or that is~~
13 ~~authorized by the articles of organization, by an operating agreement, or otherwise, to act on behalf~~
14 ~~of a limited liability company or foreign limited liability company as an officer, manager or~~
15 ~~otherwise.~~

16 ~~(3) "Bankruptcy" means a proceeding under the United States Bankruptcy Code or under~~
17 ~~state insolvency or receivership law.~~

18 ~~(4) "Business" means any trade, occupation or other commercial activity engaged in for~~

1 ~~gain, profit or livelihood for which a corporation can be organized under chapter 1.2 of this title.~~

2 ~~(5) "Capital contribution" means any cash, property, services rendered, or a promissory~~
3 ~~note or other binding obligation to contribute cash or property or to perform services that a member~~
4 ~~contributes to a limited liability company in his or her capacity as a member.~~

5 ~~(6) "Capital value" means the fair market value in each case as of the date contributed of a~~
6 ~~member's capital contributions, including a contribution of services previously performed or a~~
7 ~~contribution of a binding obligation to perform services, reduced by distributions made to the~~
8 ~~member.~~

9 ~~(7) "Constituent entity" means each limited liability company, limited partnership or~~
10 ~~corporation that is a party to a plan of merger or consolidation.~~

11 ~~(8) "Corporation" means a business corporation formed under chapter 1.2 of this title or a~~
12 ~~foreign corporation.~~

13 ~~(9) "Court" includes every court and judge having jurisdiction in the case.~~

14 ~~(10) "Delivering/Delivered" means either physically transferring a paper document to the~~
15 ~~secretary of state or transferring a document to the secretary of state by electronic transmission~~
16 ~~through a medium provided and authorized by the secretary of state.~~

17 ~~(11) "Electronic transmission" means any form of communication, not directly involving~~
18 ~~the physical transmission of paper, that creates a record that may be retained, retrieved, and~~
19 ~~reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a~~
20 ~~recipient through an automated process.~~

21 ~~(12) "Filing" means delivered to the secretary of state in either paper format or electronic~~
22 ~~transmission through a medium provided and authorized by the secretary of state.~~

23 ~~(13) "Foreign corporation" means a business corporation formed under the laws of any~~
24 ~~state other than this state or any foreign country.~~

25 ~~(14) "Foreign limited liability company" means a limited liability company formed under~~
26 ~~the laws of any state other than this state or any foreign country.~~

27 ~~(15) "Foreign limited partnership" means a limited partnership formed under the laws of~~
28 ~~any state other than this state or any foreign country.~~

29 ~~(16) "Limited liability company" or "domestic limited liability company" means an entity~~
30 ~~that is organized and existing under the laws of this state pursuant to this chapter.~~

31 ~~(17) "Limited partnership" means a limited partnership formed under the laws of this state~~
32 ~~or a foreign limited partnership.~~

33 ~~(18) "L3C" or "low profit limited liability company" means a limited liability company~~
34 ~~that is organized and existing under the laws of this state under this chapter and that satisfies the~~

1 ~~requirements of § 7-16-76.~~

2 ~~(19) “Manager” or “Managers” means a person or persons designated by the members of~~
3 ~~a limited liability company to manage the limited liability company.~~

4 ~~(20) “Member” means a person with an ownership interest in a limited liability company~~
5 ~~with the rights and obligations specified under this chapter.~~

6 ~~(21) “Membership interest”, “ownership interest” or “interest” means a member’s rights in~~
7 ~~the limited liability company, collectively, including the member’s share of the profits and losses~~
8 ~~of the limited liability company, the right to receive distributions of the limited liability company’s~~
9 ~~assets, and any right to vote or participate in management of the limited liability company.~~

10 ~~(22) “New entity” means the entity into which constituent entities consolidate, as identified~~
11 ~~in the articles of consolidation provided for in § 7-16-62.~~

12 ~~(23) “Operating agreement” means any agreement, written or oral, of the members as to~~
13 ~~the affairs of a limited liability company and the conduct of its business. An operating agreement~~
14 ~~also includes a document adopted by the sole member of a limited liability company that has only~~
15 ~~one member and may include as a party one or more managers who are not members.~~

16 ~~(24) “Person” means a natural person, partnership, limited partnership, domestic or foreign~~
17 ~~limited liability company, trust, estate, corporation, non-business corporation or other association.~~

18 ~~(25) “Signature” or “Signed” or “Executed” means an original signature, facsimile, or an~~
19 ~~electronically transmitted signature submitted through a medium provided and authorized by the~~
20 ~~secretary of state.~~

21 ~~(26) “State” means a state, territory or possession of the United States, or the District of~~
22 ~~Columbia.~~

23 ~~(27) “Surviving entity” means the constituent entity surviving a merger, as identified in the~~
24 ~~articles of merger provided for in § 7-16-62.~~

25 **7-16-3. Purpose and duration.**

26 ~~Every limited liability company organized under this chapter has the purpose of engaging~~
27 ~~in any lawful business, and has perpetual existence until dissolved as terminated in accordance with~~
28 ~~this chapter, unless a more limited purpose or duration is set forth in the articles of organization.~~

29 **7-16-3.1. Professional services.**

30 ~~A limited liability company may render professional services, as defined in § 7-5.1-2, as~~
31 ~~and to the extent permitted under law or rules and regulations of the applicable regulatory agency~~
32 ~~or agencies, as defined in § 7-5.1-2. Each regulatory agency as so defined is authorized to adopt,~~
33 ~~subject to applicable law, rules and regulations regarding a domestic and foreign limited liability~~
34 ~~company rendering professional services. The rules and regulations shall not be inconsistent with~~

1 ~~law or rules or regulations regarding the rendering of professional services through a professional~~
2 ~~corporation.~~

3 ~~**7-16-3.2. Liability in rendering professional services.**~~

4 ~~(a) The liability of an individual authorized to practice a profession for his or her own~~
5 ~~negligence, wrongful acts or misconduct, or that of any person under his or her direct supervision~~
6 ~~and control, other than in an administrative capacity, shall not be affected by the individual's~~
7 ~~providing professional services in this state as a member or agent of a domestic or foreign limited-~~
8 ~~liability company.~~

9 ~~(b) An individual authorized to practice a profession and who is a member of a domestic~~
10 ~~or foreign limited liability company rendering professional services in this state is not liable solely~~
11 ~~by reason of being a member for any negligence, wrongful acts or misconduct of another member~~
12 ~~or agent of the limited liability company. A domestic or foreign limited liability company~~
13 ~~rendering professional services in the state is liable for the negligence, wrongful acts or misconduct~~
14 ~~of its members and agents providing professional services through the limited liability company~~
15 ~~within the scope of their authority or apparent authority to act for the limited liability company.~~

16 ~~(c) Notwithstanding any other provisions of this section, the personal liability of a member~~
17 ~~in a limited liability company engaged in the rendering of professional services shall not be less~~
18 ~~than or greater than the personal liability of a shareholder of a professional corporation organized~~
19 ~~under chapter 5.1 of this title engaged in the rendering of the same professional services.~~

20 ~~**7-16-3.3. Insurance or financial responsibility of limited liability company.**~~

21 ~~(a) A limited liability company that is to perform professional services, as defined in § 7-~~
22 ~~5.1-2, shall carry, if reasonably available, liability insurance of a kind that is designed to cover the~~
23 ~~kinds of negligence, wrongful acts or misconduct for which liability is limited by § 7-16-3.2. The~~
24 ~~insurance shall be in the aggregate amount of fifty thousand dollars (\$50,000) multiplied by the~~
25 ~~number of professional employees of the limited liability company as of the policy anniversary~~
26 ~~date; provided, however, that in no case shall the coverage be less than one hundred thousand~~
27 ~~dollars (\$100,000) but in no event shall the necessary coverage exceed a maximum of five hundred~~
28 ~~thousand dollars (\$500,000); provided further, however, that any policy for insurance coverage~~
29 ~~may include a deductible provision in any amount not to exceed twenty five thousand dollars~~
30 ~~(\$25,000) for each claim multiplied by the number of professional employees of the limited-~~
31 ~~liability company as of the date of the issuance of the policy. The policy or policies of insurance~~
32 ~~may be subject to any terms, conditions, exclusions and endorsements that are typically contained~~
33 ~~in policies of this type.~~

34 ~~(b) If, in any proceeding, compliance by a limited liability company with the requirements~~

1 ~~of subsection (a) of this section is disputed:~~

2 ~~(1) That issue shall be determined by the court; and~~

3 ~~(2) The burden of proof of compliance shall be on the person who claims the limitation of~~
4 ~~liability in § 7-16-3.2.~~

5 ~~(c) If a limited liability company is in compliance with the requirements of subsection (a)~~
6 ~~of this section, the requirements of this section shall not be admissible or in any way be made~~
7 ~~known to a jury in determining an issue of liability for or extent of the debt or obligation or damages~~
8 ~~in question.~~

9 ~~(d) Insurance is reasonably available for the purpose of subsection (a) of this section if, at~~
10 ~~the time that the coverage would apply to the negligence, wrongful acts or misconduct in question,~~
11 ~~it was reasonably available to similar types of limited liability companies through the admitted or~~
12 ~~eligible surplus lines market.~~

13 ~~(e) A limited liability company is considered to be in compliance with subsection (a) of~~
14 ~~this section if the limited liability company provides five hundred thousand dollars (\$500,000) of~~
15 ~~funds specifically designated and segregated for the satisfaction of judgments against the limited-~~
16 ~~liability company based on the forms of negligence, wrongful acts and misconduct for which~~
17 ~~liability is limited by § 7-16-3.2 by:~~

18 ~~(1) Deposit in trust or in bank escrow of cash, bank certificate of deposit or United States~~
19 ~~Treasury obligations; or~~

20 ~~(2) A bank letter of credit or insurance company bonds.~~

21 ~~(f) To the extent that a limited liability company maintains liability insurance or segregated~~
22 ~~funds pursuant to the laws or regulations of another jurisdiction, the liability insurance or~~
23 ~~segregated funds shall be deemed to satisfy this section if the amount of them is equal to or greater~~
24 ~~than the amount specified in subsection (a) or subsection (e) of this section.~~

25 **7-16-4. Powers.**

26 Each limited liability company has the power:

27 ~~(1) To sue, be sued, complain and defend in its name in all courts;~~

28 ~~(2) To transact its business, carry on its operations and have and exercise the powers~~
29 ~~granted by this chapter in any state and in any foreign country;~~

30 ~~(3) To make contracts and guarantees, incur liabilities and borrow money, although not in~~
31 ~~furtherance of the limited liability company's purposes;~~

32 ~~(4) To sell, lease, exchange, transfer, convey, mortgage, pledge and otherwise dispose of~~
33 ~~all or any part of its property and assets although not in furtherance of the limited liability~~
34 ~~company's purposes;~~

1 ~~(5) To acquire by purchase or in any other manner, take, receive, own, hold, improve, use~~
2 ~~and otherwise deal in and with any interest in real or personal property, wherever situated;~~

3 ~~(6) To issue notes, bonds and other obligations and secure any of them by mortgage or deed~~
4 ~~of trust or security interest of any or all of its assets;~~

5 ~~(7) To purchase, take, receive, subscribe for or otherwise acquire, own, hold, vote, use,~~
6 ~~employ, sell, mortgage, lend, pledge or otherwise dispose of and otherwise use and deal in and with~~
7 ~~stock or other interests in and obligations of corporations, associations, general or limited~~
8 ~~partnerships, domestic or foreign limited liability companies, business trusts, and individuals or~~
9 ~~direct or indirect obligations of the United States or of any other government, state, territory,~~
10 ~~governmental district or municipality or of any of their instrumentalities;~~

11 ~~(8) To invest its surplus funds, lend money from time to time in any manner that is~~
12 ~~appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of~~
13 ~~organization and take and hold real property and personal property as security for the payment of~~
14 ~~the funds loaned or invested;~~

15 ~~(9) To elect or appoint agents and define their duties and fix their compensation;~~

16 ~~(10) To be a promoter, stockholder, partner, member, associate or agent of any corporation,~~
17 ~~general or limited partnership, domestic or foreign limited liability company, joint venture, trust or~~
18 ~~other enterprise;~~

19 ~~(11) To indemnify and advance expenses to any member, manager, agent or employee, past~~
20 ~~or present, to the same extent as a corporation formed under chapter 1.2 of this title may indemnify~~
21 ~~any of its directors, officers, employees or agents and subject to the standards and restrictions, if~~
22 ~~any, set forth in the articles of organization or operating agreement, and to purchase and maintain~~
23 ~~insurance on behalf of any member, manager, agent or employee against any liability asserted~~
24 ~~against him and incurred by the member, manager, agent or employee in that capacity or arising~~
25 ~~out of the member's, manager's, agent's or employee's status, whether or not the limited liability~~
26 ~~company would have the power to indemnify under the provisions of this section, the articles of~~
27 ~~organization or operating agreement;~~

28 ~~(12) To make and alter operating agreements, not inconsistent with its articles of~~
29 ~~organization or with the laws of this state, for the administration and regulation of the business and~~
30 ~~affairs of the limited liability company;~~

31 ~~(13) To lend money and to use its credit to assist its employees;~~

32 ~~(14) To make donations for the public welfare or for charitable, scientific or educational~~
33 ~~purposes;~~

34 ~~(15) To pay pensions and establish pension plans, pension trusts, profit sharing plans and~~

1 ~~other incentive and benefit plans for any or all of its agents and employees;~~

2 ~~(16) To provide insurance for its benefit on the life of any of its agents or employees or on~~
3 ~~the life of any individual member for the purpose of acquiring at the member's death the~~
4 ~~membership interest owned by the member;~~

5 ~~(17) To cease its activities and dissolve; and~~

6 ~~(18) To do every other act not inconsistent with law that is appropriate to promote and to~~
7 ~~attain its purposes.~~

8 **7-16-5. Formation.**

9 ~~(a) One or more persons may form a limited liability company by delivering or causing to~~
10 ~~be delivered executed articles of organization for filing with the secretary of state.~~

11 ~~(b) When the secretary of state accepts the articles of organization for filing and issues the~~
12 ~~certificate of organization, the limited liability company is formed under the name and subject to~~
13 ~~the conditions and provisions stated in its articles of organization.~~

14 **7-16-5.1. Conversion of certain entities to a limited liability company.**

15 ~~(a) As used in this section, the term "other entity" means a corporation, a business trust, or~~
16 ~~association, a real estate investment trust, a common law trust, a sole proprietorship or any other~~
17 ~~unincorporated business, or entity including a partnership, whether general or limited, (including a~~
18 ~~registered limited liability partnership) or a foreign limited liability company.~~

19 ~~(b) Any other entity may convert to a domestic limited liability company by complying~~
20 ~~with subsection (h) of this section and filing in the office of the secretary of state in accordance~~
21 ~~with § 7-16-8 articles of organization that comply with § 7-16-6 and have been executed by one or~~
22 ~~more authorized persons in accordance with § 7-16-7, accompanied by a certificate of conversion~~
23 ~~to a limited liability company duly executed by one or more persons authorized to act on behalf of~~
24 ~~the other entity and one or more persons authorized to sign a certificate of conversion on behalf of~~
25 ~~the limited liability company.~~

26 ~~(c) The certificate of conversion to limited liability company shall state:~~

27 ~~(1) The date on which and jurisdiction where the other entity was first created, formed, or~~
28 ~~otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion~~
29 ~~to a domestic limited liability company;~~

30 ~~(2) The name of the other entity immediately prior to the filing of the certificate of~~
31 ~~conversion to limited liability company;~~

32 ~~(3) The name of the limited liability company as set forth in its articles of organization~~
33 ~~filed in accordance with subsection (b) of this section; and~~

34 ~~(4) The future effective date or time (which is a date or time certain) of the conversion to~~

1 ~~a limited liability company if it is not to be effective upon the filing of the certificate of conversion~~
2 ~~to limited liability company and the articles of organization.~~

3 ~~(d) Upon the filing in the office of the secretary of state of the certificate of conversion to~~
4 ~~limited liability company and the articles of organization or upon the future effective date or time~~
5 ~~of the certificate of conversion to a limited liability company and the articles of organization, the~~
6 ~~other entity shall be converted into a domestic limited liability company and the limited liability~~
7 ~~company shall thereafter be subject to all of the provisions of this chapter, except that,~~
8 ~~notwithstanding § 7-16-5, the existence of the limited liability company shall be deemed to have~~
9 ~~commenced on the date the other entity commenced its existence in the jurisdiction in which the~~
10 ~~other entity was first created, formed, or otherwise came into being.~~

11 ~~(e) The conversion of any other entity into a domestic limited liability company shall not~~
12 ~~be deemed to affect any obligations or liabilities of the other entity incurred prior to its conversion~~
13 ~~to a domestic limited liability company or the personal liability of any person incurred prior to the~~
14 ~~conversion.~~

15 ~~(f) When any conversion shall have become effective under this section, for all purposes~~
16 ~~of the laws of the state of Rhode Island, all of the rights, privileges, and powers of the other entity~~
17 ~~that has converted, and all property, real, personal, and mixed, and all debts due to such other entity,~~
18 ~~as well as all other things and causes of action belonging to the other entity, shall be vested in the~~
19 ~~domestic limited liability company and shall thereafter be the property of the domestic limited-~~
20 ~~liability company as they were of the other entity that has converted, and the title to any real~~
21 ~~property vested by deed or otherwise in the other entity shall not revert or be in any way impaired~~
22 ~~by reason of this chapter, but all rights of creditors and all liens upon any property of such other~~
23 ~~entity shall be preserved unimpaired, and all debts, liabilities, and duties of the other entity that has~~
24 ~~converted shall thenceforth attach to the domestic limited liability company and may be enforced~~
25 ~~against it to the same extent as if those debts, liabilities, and duties had been incurred or contracted~~
26 ~~by it.~~

27 ~~(g) Unless otherwise agreed, or as required under applicable non-Rhode Island law, the~~
28 ~~converting other entity shall not be required to wind up its affairs or pay its liabilities and distribute~~
29 ~~its assets, and the conversion shall not be deemed to constitute a dissolution of the other entity and~~
30 ~~shall constitute a continuation of the existence of the converting other entity in the form of a~~
31 ~~domestic limited liability company.~~

32 ~~(h) Prior to filing a certificate of conversion to limited liability company with the office of~~
33 ~~the secretary of state, the conversion shall be approved in the manner provided for by the document,~~
34 ~~instrument, agreement, or other writing, as the case may be, governing the internal affairs of the~~

1 ~~other entity and the conduct of its business or by applicable law, as appropriate, and a limited-~~
2 ~~liability company agreement shall be approved by the same authorization required to approve the~~
3 ~~conversion.~~

4 ~~(i) In connection with a conversion hereunder, rights or securities of or interests in the other~~
5 ~~entity that is to be converted to a domestic limited liability company may be exchanged for or~~
6 ~~converted into cash, property, or rights or securities of or interests in such domestic limited liability~~
7 ~~company or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property,~~
8 ~~or rights or securities of or interests in another domestic limited liability company or other entity~~
9 ~~or may be cancelled.~~

10 ~~(j) The provisions of this section shall not be construed to limit the accomplishment of a~~
11 ~~change in the law governing, or the domicile of, an other entity to the state of Rhode Island by any~~
12 ~~other means provided for in a limited liability company agreement or other agreement or as~~
13 ~~otherwise permitted by law, including by the amendment of a limited liability company agreement~~
14 ~~or other agreement.~~

15 **7-16-5.2. Approval of conversion of a limited liability company.**

16 ~~(a) A domestic limited liability company may convert to a corporation, a business trust, or~~
17 ~~association, a real estate investment trust, a common law trust, a sole proprietorship, or any other~~
18 ~~unincorporated business or entity including a partnership (whether general or limited, including a~~
19 ~~registered limited liability partnership), or a foreign limited liability company upon the~~
20 ~~authorization of the conversion in accordance with this section.~~

21 ~~(b) If the limited liability company agreement specified the manner of authorizing a~~
22 ~~conversion of the limited liability company, the conversion shall be authorized as specified in the~~
23 ~~limited liability company agreement. If the limited liability company agreement does not specify~~
24 ~~the manner of authorizing a conversion of the limited liability company and does not prohibit a~~
25 ~~conversion of the limited liability company, the conversion shall be authorized in the same manner~~
26 ~~as is specified in the limited liability company agreement for authorizing a merger or consolidation~~
27 ~~that involves the limited liability company as a constituent party to the merger or consolidation. If~~
28 ~~the limited liability company agreement does not specify the manner of authorizing a conversion~~
29 ~~of the limited liability company or a merger or consolidation that involves the limited liability~~
30 ~~company as a constituent party and does not prohibit a conversion of the limited liability company,~~
31 ~~the conversion shall be authorized by the approval by the members or, if there is more than one~~
32 ~~class or group of members, then by each class or group of members, in either case, by members~~
33 ~~who own more than fifty percent (50%) of the then current percentage or other interest in the profits~~
34 ~~of the domestic limited liability company owned by all of the members or by the members in each~~

1 class or group, as appropriate.

2 ~~(e) Unless otherwise agreed, the conversion of a domestic limited liability company to~~
3 ~~another entity or business form pursuant to this section shall not require the limited liability~~
4 ~~company to wind up its affairs under § 7-16-45 or pay its liabilities and distribute its assets under~~
5 ~~§ 7-16-46, and the conversion shall not constitute a dissolution of the limited liability company.~~
6 ~~When a limited liability company has converted to another entity or business form pursuant to this~~
7 ~~section, for all purposes of the laws of the state of Rhode Island, the other entity or business form~~
8 ~~shall be deemed to be the same entity as the converting limited liability company and conversion~~
9 ~~shall constitute a continuation of the existence of the limited liability company in the form of such~~
10 ~~other entity or business form.~~

11 ~~(d) In connection with a conversion of a domestic limited liability company to another~~
12 ~~entity or business form pursuant to this section, rights or securities of or interests in the domestic~~
13 ~~limited liability company that is to be converted may be exchanged for or converted into cash,~~
14 ~~property, rights, or securities of or interests in the entity or business form into which the domestic~~
15 ~~limited liability company is being converted or, in addition to or in lieu thereof, may be exchanged~~
16 ~~for or converted into cash, property, rights, or securities of or interests in another entity or business~~
17 ~~form or may be cancelled.~~

18 ~~(e) If a limited liability company shall convert in accordance with this section to another~~
19 ~~entity or business form organized, formed, or created under the laws of a jurisdiction other than the~~
20 ~~state of Rhode Island or to a Rhode Island unincorporated “other entity”, a certificate of conversion~~
21 ~~to non-Rhode Island entity shall be filed in the office of the secretary of state. The certificate of~~
22 ~~conversion to non-Rhode Island entity shall state:~~

23 ~~(1) The name of the limited liability company and, if it has been changed, the name under~~
24 ~~which its certificate of formation was originally filed;~~

25 ~~(2) The date of filing of its original certificate of formation with the secretary of state;~~

26 ~~(3) The jurisdiction in which the entity or business form, to which the limited liability~~
27 ~~company shall be converted, is organized, formed, or created, and the name and type of such entity~~
28 ~~or business form;~~

29 ~~(4) The future effective date or time (which shall be a date or time certain) of the conversion~~
30 ~~if it is not to be effective upon the filing of the certificate of conversion to non-Rhode Island entity;~~

31 ~~(5) That the conversion has been approved in accordance with this section;~~

32 ~~(6) The agreement of the limited liability company that it may be served with process in~~
33 ~~the state of Rhode Island in any action, suit, or proceeding for enforcement of any obligation of the~~
34 ~~limited liability company arising while it was a limited liability company of the state of Rhode~~

1 ~~Island, and that it irrevocably appoints the secretary of state as its agent to accept service of process~~
2 ~~in any such action, suit, or proceeding.~~

3 ~~(f) Upon the filing in the office of the secretary of state of the certificate of conversion to~~
4 ~~non-Rhode Island entity or upon the future effective date or time of the certificate of conversion to~~
5 ~~non-Rhode Island entity and upon payment of all fees due by the limited liability company, the~~
6 ~~secretary of state shall certify that the limited liability company has filed all documents and paid~~
7 ~~all fees required by this chapter, and thereupon the limited liability company shall cease to exist as~~
8 ~~a limited liability company of the state of Rhode Island. Such certificate of the secretary of state~~
9 ~~shall be prima facie evidence of the conversion by the limited liability company out of the state of~~
10 ~~Rhode Island.~~

11 ~~(g) The conversion of a limited liability company out of the state of Rhode Island in~~
12 ~~accordance with this section and the resulting cessation of its existence as a limited liability~~
13 ~~company of the state of Rhode Island pursuant to a certificate of conversion to non-Rhode Island~~
14 ~~entity shall not be deemed to affect any obligations or liabilities of the limited liability company~~
15 ~~incurred prior to such conversion or the personal liability of any person incurred prior to such~~
16 ~~conversion, nor shall it be deemed to affect the choice of laws applicable to the limited liability~~
17 ~~company with respect to matters arising prior to such conversion.~~

18 ~~(h) When a limited liability company has been converted to another entity or business form~~
19 ~~pursuant to this section, the other entity or business form shall, for all purposes of the laws of the~~
20 ~~state of Rhode Island, be deemed to be the same entity as the limited liability company. When any~~
21 ~~conversion shall have become effective under this section, for all purposes of the laws of the state~~
22 ~~of Rhode Island, all of the rights, privileges, and powers of the limited liability company that has~~
23 ~~converted, and all property, real, personal, and mixed, and all such debts due to the limited liability~~
24 ~~company, as well as all other things and causes of action belonging to the limited liability company,~~
25 ~~shall remain vested in the other entity or business form to which the limited liability company has~~
26 ~~converted and shall be the property of the other entity or business form, and the title to any real~~
27 ~~property vested by deed or otherwise in the limited liability company shall not revert to the limited-~~
28 ~~liability company or be in any way impaired by reason of this chapter; but all rights of creditors~~
29 ~~and all liens upon any property of the limited liability company shall be preserved unimpaired, and~~
30 ~~all debts, liabilities, and duties of the limited liability company that has converted shall remain~~
31 ~~attached to the other entity or business form to which the limited liability company has converted,~~
32 ~~and may be enforced against it to the same extent as if said debts, liabilities, and duties had~~
33 ~~originally been incurred or contracted by it in its capacity as the other entity or business form. The~~
34 ~~rights, privileges, powers, and interests in property of the limited liability company that has~~

1 converted, as well as the debts, liabilities, and duties of the limited liability company, shall not be
2 deemed, as a consequence of the conversion, to have been transferred to the other entity or business
3 form to which the limited liability company has converted for any purpose of the laws of the state
4 of Rhode Island.

5 ~~**7-16-5.3, 7-16-5.4. [Repealed.]**~~

6 ~~**7-16-6. Articles of organization.**~~

7 ~~(a) The articles of organization shall set forth:~~

8 ~~(1) The name of the limited liability company;~~

9 ~~(2) The name and address of its resident agent in this state;~~

10 ~~(3) A statement whether, under the articles of organization and any written operating~~
11 ~~agreement made or intended to be made, the limited liability company is intended to be:~~

12 ~~(i) Treated as a partnership;~~

13 ~~(ii) As a corporation, or~~

14 ~~(iii) Disregarded as an entity separate from its member for purposes of federal income~~
15 ~~taxation;~~

16 ~~(4) The address of the principal office of the limited liability company if it is determined~~
17 ~~at the time of organization;~~

18 ~~(5) Any other provision, not inconsistent with law, that the members elect to set out in the~~
19 ~~articles, including, but not limited to, any limitation of the purposes or duration for which the~~
20 ~~limited liability company is formed, and any other provision that may be included in an operating~~
21 ~~agreement;~~

22 ~~(6) A statement of whether the limited liability company is to be managed by its members~~
23 ~~or by one or more managers, and if the limited liability company has managers at the time of its~~
24 ~~formation, the name and address of each manager;~~

25 ~~(7) The name and address of the person authorized to sign and who does sign the articles~~
26 ~~of organization.~~

27 ~~(b) It is not necessary to set out in the articles of organization any of the powers enumerated~~
28 ~~in this chapter.~~

29 ~~**7-16-7. Execution of articles.**~~

30 ~~(a) Articles required by this chapter to be filed with the secretary of state shall be executed~~
31 ~~in the following manner:~~

32 ~~(1) Articles of organization must be signed by at least one person who need not be a~~
33 ~~member of the limited liability company and who is authorized to do so by the persons forming the~~
34 ~~limited liability company; and~~

1 ~~(2) Articles of amendment, restated articles of organization, articles of merger or~~
2 ~~consolidation and articles of dissolution must be signed by an authorized person.~~

3 ~~(b) An attorney in fact may sign for any authorized person. Powers of attorney need not be~~
4 ~~sworn to, verified or acknowledged, and need not be filed with the secretary of state.~~

5 ~~(c) The execution of any articles under this chapter constitutes an affirmation that the facts~~
6 ~~stated are true.~~

7 **7-16-8. Filing.**

8 ~~(a) The secretary of state may not accept for filing any document under this chapter that~~
9 ~~does not conform with law.~~

10 ~~(b) The secretary of state may not accept for filing any organizational document,~~
11 ~~qualification, registration, change of resident agent report, service of process, notice, or other~~
12 ~~document until all required filing and other fees have been paid to the secretary of state.~~

13 ~~(c) The secretary of state may not accept for filing any article of dissolution, cancellation~~
14 ~~of registration, or article of merger until all required filing and other fees have been paid to the~~
15 ~~secretary of state and all fees and taxes have been paid.~~

16 ~~(d) The secretary of state may not accept for filing the reinstatement of a limited liability~~
17 ~~company's certificate of organization or registration until all required filing and other fees have~~
18 ~~been paid to the secretary of state and all fees and taxes have been paid, as evidenced by an~~
19 ~~appropriate certificate of good standing issued by the division of taxation.~~

20 ~~(e) The secretary of state may not accept for filing a certificate of conversion to a non-~~
21 ~~Rhode Island entity until all required filing and other fees have been paid to the secretary of state~~
22 ~~and all fees and taxes have been paid.~~

23 ~~(f) When the secretary of state accepts the articles of organization or a certificate of~~
24 ~~registration or any other document filed under this chapter, the secretary of state shall:~~

25 ~~(1) Endorse on the document the date and time of its acceptance for filing;~~

26 ~~(2) Promptly file the document; and~~

27 ~~(3) Issue a certificate or other evidence that establishes:~~

28 ~~(i) That the document was accepted for filing by the secretary of state; and~~

29 ~~(ii) The date and time of the acceptance for filing.~~

30 ~~(g) The document becomes effective upon the issuance of the certificate or other evidence~~
31 ~~or at any later date that is set forth within the document, not more than ninety (90) days after the~~
32 ~~filing of such document.~~

33 **7-16-9. Name — Fictitious business names.**

34 ~~(a) The name of each limited liability company as set forth in its articles of organization:~~

1 ~~(1) Shall end with either the words “limited liability company” or the upper or lower case~~
2 ~~letters “l.l.c.” with or without punctuation, or, if organized as a low profit, limited liability~~
3 ~~company, shall end with either the words “low profit, limited liability company” or the~~
4 ~~abbreviation “L3C” or “l3c”;~~

5 ~~(2) Shall be distinguishable upon the records of the secretary of state from:~~

6 ~~(i) The name of any corporation, non business corporation or other association, limited~~
7 ~~partnership or domestic or foreign limited liability company organized under the laws of, or~~
8 ~~registered or qualified to do business in, this state; or~~

9 ~~(ii) Any name that is filed, reserved, or registered under this title, subject to the following:~~

10 ~~(A) This provision shall not apply if the applicant files with the secretary of state a certified~~
11 ~~copy of a final decree of a court of competent jurisdiction establishing the prior right of the~~
12 ~~applicant to the use of the name in this state; and~~

13 ~~(B) The name may be the same as the name of a corporation, non business corporation, or~~
14 ~~other association, the certificate of incorporation or organization of which has been revoked by the~~
15 ~~secretary of state as permitted by law, and the revocation has not been withdrawn within one year~~
16 ~~from the date of the revocation.~~

17 ~~(C) Words or abbreviations that are required by statute to identify the particular type of~~
18 ~~business entity shall be disregarded when determining if a name is distinguishable upon the records~~
19 ~~of the secretary of state.~~

20 ~~(D) The secretary of state shall promulgate rules and regulations defining the term~~
21 ~~“distinguishable upon the record” for the administration of this chapter.~~

22 ~~(b)(1) Any domestic or foreign limited liability company organized under the laws of, or~~
23 ~~registered or qualified to do business in, this state may transact business in this state under a~~
24 ~~fictitious name provided that it files a fictitious business name statement in accordance with this~~
25 ~~subsection.~~

26 ~~(2) A fictitious business name statement shall be filed with the secretary of state and shall~~
27 ~~be executed by an authorized person of the domestic limited liability company or by a person with~~
28 ~~authority to do so under the laws of the state or other jurisdiction of the organization of the foreign~~
29 ~~limited liability company and shall set forth:~~

30 ~~(i) The fictitious business name to be used; and~~

31 ~~(ii) The name of the applicant limited liability company, the state or other jurisdiction in~~
32 ~~which the limited liability company is organized and date of the limited liability company’s~~
33 ~~organization.~~

34 ~~(3) The fictitious business name statement expires upon the filing of a statement of~~

1 ~~abandonment of use of a fictitious business name registered in accordance with this subsection or~~
2 ~~upon the dissolution of the applicant domestic limited liability company or the cancellation of~~
3 ~~registration of the applicant foreign limited liability company.~~

4 ~~(4) The statement of abandonment of use of a fictitious business name under this subsection~~
5 ~~shall be filed with the secretary of state, shall be executed in the same manner as provided in~~
6 ~~subdivision (2) above, and shall set forth:~~

7 ~~(i) The fictitious business name being abandoned;~~

8 ~~(ii) The date on which the original fictitious business name statement being abandoned was~~
9 ~~filed; and~~

10 ~~(iii) The information set forth in subsection (a)(2)(ii).~~

11 ~~(5) No domestic or foreign limited liability company transacting business under a fictitious~~
12 ~~business name contrary to the provisions of this section, or its assignee, may maintain any action~~
13 ~~upon or on account of any contract made, or transaction had, in the fictitious business name in any~~
14 ~~court of the state until a fictitious business name statement has been filed in accordance with this~~
15 ~~section.~~

16 ~~(6) No limited liability company may be permitted to transact business under a fictitious~~
17 ~~business name pursuant to this section that is the same as the name of any corporation, limited~~
18 ~~partnership or domestic or foreign limited liability company organized under the laws of, or~~
19 ~~registered or qualified to do business in, this state or any name that is filed, reserved, or registered~~
20 ~~under this title, subject to the following:~~

21 ~~(i) This provision does not apply if the applicant files with the secretary of state a certified~~
22 ~~copy of a final decree of a court of competent jurisdiction establishing the prior right of the~~
23 ~~applicant to the use of the name in this state; and~~

24 ~~(ii) The name may be the same as the name of a corporation, non-business corporation, or~~
25 ~~other association, the certificate of incorporation or organization of which has been revoked by the~~
26 ~~secretary of state as permitted by law and the revocation has not been withdrawn within one year~~
27 ~~from the date of revocation.~~

28 ~~(iii) Words or abbreviations that are required by statute to identify the particular type of~~
29 ~~business entity shall be disregarded when determining if a name is distinguishable upon the records~~
30 ~~of the secretary of state.~~

31 ~~(iv) The secretary of state shall promulgate rules and regulations defining the term~~
32 ~~“distinguishable upon the record” for the administration of this chapter.~~

33 ~~(7) A filing fee of fifty dollars (\$50.00) shall be collected by the secretary of state for each~~
34 ~~statement filed.~~

1 ~~**7-16-10. Reservation of name — Transfer of reserved name.**~~

2 ~~(a) The exclusive right to use a specified name for a domestic or foreign limited liability~~
3 ~~company may be reserved by:~~

4 ~~(1) A person who intends to organize a domestic limited liability company;~~

5 ~~(2) A domestic limited liability company or foreign limited liability company registered in~~
6 ~~this state which, in either case, proposes to change its name;~~

7 ~~(3) A foreign limited liability company that intends to register in this state; or~~

8 ~~(4) Any person intending to organize a foreign limited liability company and intending to~~
9 ~~have it registered in this state and adopt that name.~~

10 ~~(b) A person may reserve a specified name by filing a signed application with the secretary~~
11 ~~of state and, if the secretary of state finds that the name is available, the secretary of state shall~~
12 ~~reserve the name for one hundred twenty (120) days for the exclusive use of the applicant.~~

13 ~~(c) The exclusive right to use a reserved name may be transferred to another person by~~
14 ~~filing with the secretary of state a notice of the transfer which specifies the name and address of the~~
15 ~~transferee and is signed by the applicant for whom the name was reserved.~~

16 ~~**7-16-11. Resident agent.**~~

17 ~~(a) Each domestic or foreign registered limited liability company shall have a resident~~
18 ~~agent for service of process on the limited liability company who shall be either:~~

19 ~~(1) An individual resident of this state; or~~

20 ~~(2) A corporation, limited partnership, or limited liability company, and in each case either~~
21 ~~domestic or one authorized to transact business in this state.~~

22 ~~(b)(1) A domestic or foreign registered limited liability company may change its resident~~
23 ~~agent or the address of its resident agent by filing with the secretary of state a statement signed by~~
24 ~~any authorized person that authorizes the change.~~

25 ~~(2) A change of a resident agent or address of the resident agent for a domestic or foreign~~
26 ~~registered limited liability company under this subsection is effective when the secretary of state~~
27 ~~accepts the statement for filing.~~

28 ~~(c)(1) A resident agent that changes address in the state shall file with the secretary of state~~
29 ~~a statement of the change of address signed by the resident agent or on the resident agent's behalf.~~

30 ~~(2) The statement shall include:~~

31 ~~(i) The name of the limited liability company for which the change is effective;~~

32 ~~(ii) The old and new addresses of the resident agent; and~~

33 ~~(iii) The date on which the change is effective.~~

34 ~~(3) The change of address of the resident agent is effective when the secretary of state~~

1 ~~accepts the statement for filing.~~

2 ~~(d)(1) A resident agent may resign by filing with the secretary of state a counterpart or~~
3 ~~photocopy of the signed resignation, together with a statement that the resignation has been~~
4 ~~delivered or sent to the limited liability company.~~

5 ~~(2) Unless a later time is specified in the resignation, it is effective thirty (30) days after it~~
6 ~~is filed.~~

7 ~~(e) The secretary of state is appointed the agent of the domestic limited liability company~~
8 ~~for service of process if no resident agent has been appointed, if the resident agent's authority has~~
9 ~~been revoked, or if the resident agent cannot be found or served following the exercise of reasonable~~
10 ~~diligence.~~

11 ~~**7-16-12. Amendment and restatement of articles of organization.**~~

12 ~~(a) The articles of organization shall be amended when:~~

13 ~~(1) There is a change in the name of the limited liability company;~~

14 ~~(2) A company that did not previously have managers designates managers, or a company~~
15 ~~that previously did have managers is to be managed by its members; or~~

16 ~~(3) There is a change in the manager of record.~~

17 ~~(b) The articles of organization may be amended at any time and in any respect that is~~
18 ~~desired, as long as the articles of organization, as amended, contain only those provisions as are~~
19 ~~lawful under this chapter.~~

20 ~~(c) The articles of organization may be restated at any time. Any restatement may include~~
21 ~~additional amendments.~~

22 ~~**7-16-13. Certificates of correction.**~~

23 ~~(a) If any document filed with the secretary of state under this chapter contains any~~
24 ~~typographical error, error of transcription or other technical error or has been defectively executed,~~
25 ~~the document may be corrected by filing a certificate of correction.~~

26 ~~(b) A certificate of correction shall set forth:~~

27 ~~(1) The title of the document being corrected;~~

28 ~~(2) The name of each party to the document being corrected;~~

29 ~~(3) The date that the document being corrected was filed; and~~

30 ~~(4) The provision in the document as previously filed and as corrected and, if execution of~~
31 ~~the document was defective, the manner in which it was defective.~~

32 ~~(c) A certificate of correction may not make any other change or amendment that would~~
33 ~~not have complied in all respects with the requirements of this chapter at the time the document~~
34 ~~being corrected was filed.~~

1 ~~(d) A certificate of correction shall be executed in the same manner in which the document~~
2 ~~being corrected was required to be executed.~~

3 ~~(e) A certificate of correction may not:~~

4 ~~(1) Change the effective date of the document being corrected; or~~

5 ~~(2) Affect any right or liability accrued or incurred before its filing, except that any right~~
6 ~~or liability accrued or incurred by reason of the error or defect being corrected shall be extinguished~~
7 ~~by the filing if the person having the right or liability has not detrimentally relied on the original~~
8 ~~document.~~

9 **7-16-14. Management by members.**

10 ~~Unless the articles of organization or a written operating agreement provide for~~
11 ~~management by or under the authority of one or more managers in accordance with § 7-16-15, the~~
12 ~~business and affairs of the limited liability company shall be managed by the members. If~~
13 ~~management is vested in the members:~~

14 ~~(1) The members are deemed to be managers for purposes of applying the provisions of~~
15 ~~this chapter unless the context clearly requires otherwise; and~~

16 ~~(2) Each of the members has the power and authority and is subject to all duties and~~
17 ~~liabilities of managers.~~

18 **7-16-15. Managers.**

19 ~~(a) The articles of organization or a written operating agreement may deny, restrict or~~
20 ~~enlarge the management rights and duties of any member or group or class of member and may~~
21 ~~provide that the business and affairs of the limited liability company shall be managed by or under~~
22 ~~the authority of one or more managers who may, but need not be, members.~~

23 ~~(b) The articles of organization or written operating agreement may prescribe qualifications~~
24 ~~for managers.~~

25 ~~(c) The number of managers may be specified in or fixed in accordance with the articles of~~
26 ~~organization or written operating agreement.~~

27 **7-16-16. Election and removal of managers.**

28 ~~Unless otherwise provided in the articles of organization or operating agreement:~~

29 ~~(1) Election of managers to fill initial positions or vacancies shall be by majority vote of~~
30 ~~the members.~~

31 ~~(2) Any or all managers may be removed, with or without cause, by majority vote of the~~
32 ~~members.~~

33 **7-16-17. Duties of managers.**

34 ~~(a) A manager shall discharge his or her managerial duties in good faith, with the care that~~

1 ~~an ordinarily prudent person in a similar position would use under the circumstances, and in the~~
2 ~~manner the manager reasonably believes to be in the best interests of the limited liability company.~~

3 ~~(b) In discharging his or her duties, a manager is entitled to rely on information, opinions,~~
4 ~~reports or statements, including financial statements and other financial data, if prepared or~~
5 ~~presented by:~~

6 ~~(1) One or more employees of the limited liability company who the manager reasonably~~
7 ~~believes to be reliable and competent in the matters presented;~~

8 ~~(2) Legal counsel, public accountants or other persons as to matters the manager reasonably~~
9 ~~believes are within the person's professional or expert competence; or~~

10 ~~(3) A committee of managers of which the manager is not a member if the manager~~
11 ~~reasonably believes the committee merits confidence.~~

12 ~~(c) A manager is not acting in good faith if the manager has knowledge concerning the~~
13 ~~matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.~~

14 ~~(d) A manager is not liable for any action taken as a manager, or any failure to take any~~
15 ~~action, if the manager performed the duties of his or her office in compliance with this section.~~

16 ~~(e) Except as otherwise provided in the articles of organization or operating agreement,~~
17 ~~every manager must account to the limited liability company and hold as trustee for the limited-~~
18 ~~liability company any profit or benefit he or she derived without the informed consent of the~~
19 ~~members or a majority of the disinterested managers from any transaction connected with the~~
20 ~~conduct or winding up of the limited liability company or from any personal use by the manager~~
21 ~~of the limited liability company's property.~~

22 **7-16-18. Limitation of liability of managers.**

23 ~~(a) Subject to subsection (b), the articles of organization or operating agreement may~~
24 ~~eliminate or limit the personal liability of a manager to the limited liability company or to its~~
25 ~~members for monetary damages for breach of any duty provided for in § 7-16-17.~~

26 ~~(b) No provision permitted under subsection (a) limits or eliminates the liability of a~~
27 ~~manager for:~~

28 ~~(1) Breach of the manager's duty of loyalty to the limited liability company or its members;~~

29 ~~(2) Acts or omissions not in good faith or that involve intentional misconduct or a knowing~~
30 ~~violation of law;~~

31 ~~(3) The liability imposed pursuant to the provisions of § 7-16-32; or~~

32 ~~(4) Any transaction from which the manager derived an improper personal benefit, unless~~
33 ~~the transaction was with the informed consent of the members or a majority of the disinterested~~
34 ~~managers. No provision eliminating or limiting the personal liability of a manager will be effective~~

1 ~~with respect to causes of action arising prior to the inclusion of the provision in the articles of~~
2 ~~organization or operating agreement.~~

3 **7-16-19. Action by managers.**

4 ~~If the business and affairs of the limited liability company is managed by or under the~~
5 ~~authority of more than one manager under § 7-16-15, except as otherwise provided in this chapter,~~
6 ~~the articles of organization or operating agreement, the managers shall act by majority vote, with~~
7 ~~each manager being entitled to one vote.~~

8 **7-16-20. Agency power of managers.**

9 ~~(a) Every manager is an agent of the limited liability company for the purpose of its~~
10 ~~business and affairs, and the act of every manager, including the execution in the limited liability~~
11 ~~company's name of any instrument for apparently carrying on in the usual way the business and~~
12 ~~affairs of the limited liability company that the manager manages, binds the limited liability~~
13 ~~company unless:~~

14 ~~(1) The act is in contravention of the articles of organization or this chapter, or~~

15 ~~(2) The manager acting otherwise lacks the authority to act for the limited liability~~
16 ~~company and the person with whom the manager is dealing has knowledge of the fact that the~~
17 ~~manager has no authority.~~

18 ~~(b) Unless otherwise provided in the articles of organization, members of a limited liability~~
19 ~~company whose business and affairs is managed by or under the authority of one (1) or more~~
20 ~~managers pursuant to § 7-16-15 are not agents of the limited liability company and have no~~
21 ~~authority to bind the limited liability company unless they are also managers.~~

22 **7-16-21. Voting rights of members.**

23 ~~(a) Unless otherwise provided in the articles of organization or operating agreement, the~~
24 ~~members of a limited liability company, to the extent their membership interests have not been~~
25 ~~assigned, are entitled to vote in proportion to the capital value of the membership interests that have~~
26 ~~not been assigned.~~

27 ~~(b) Unless otherwise provided in the articles of organization or operating agreement, the~~
28 ~~affirmative vote of members entitled to vote, representing a majority of the capital values of all~~
29 ~~membership interests that have not been assigned, are required to approve the following matters:~~

30 ~~(1) The dissolution and winding up of the limited liability company;~~

31 ~~(2) The sale, exchange, lease, mortgage, pledge or other transfer of all or substantially all~~
32 ~~of the assets of the limited liability company;~~

33 ~~(3) The merger or consolidation of the limited liability company with another person; and~~

34 ~~(4) A transaction involving an actual or potential conflict of interest between a manager~~

1 ~~and the limited liability company;~~

2 ~~(5) An amendment to the articles of organization or operating agreement; and~~

3 ~~(6) Any restatement of the articles of organization that includes an additional amendment.~~

4 ~~(c) Any action required or permitted to be taken by the members or managers by this~~

5 ~~chapter, the articles of organization or operating agreement may be taken without a meeting if all~~

6 ~~the members entitled to vote or all the managers consent to it in writing.~~

7 ~~(d)(1) Except as otherwise provided in the articles of organization or operating agreement~~

8 ~~and except for actions pursuant to subsections (b)(1), (2), and (3) of this section, any action required~~

9 ~~or permitted to be taken by vote of the members may be taken without a meeting on the written~~

10 ~~consent of less than all the members entitled to vote on it, if the members who consent would be~~

11 ~~entitled to cast at least the minimum number of votes that would be required to take the action at a~~

12 ~~meeting at which all members entitled to vote on it are present.~~

13 ~~(2) Prompt notice of the action shall be given to all members who would have been entitled~~

14 ~~to vote on the action if the meeting were held.~~

15 ~~(e) Any action taken pursuant to this section has the same effect for all purposes as if the~~

16 ~~action had been taken at a meeting of the members.~~

17 ~~(f) The articles of organization or operating agreement may provide for any other voting~~

18 ~~rights of members.~~

19 **7-16-22. Records and information.**

20 ~~(a) Each limited liability company shall keep at its principal office the following:~~

21 ~~(1) A current list of the full name and last known business address of each member and~~

22 ~~manager;~~

23 ~~(2) Copies of records that would enable a member to determine the capital values and the~~

24 ~~relative voting rights of the members;~~

25 ~~(3) A copy of the articles of organization and any restatements of the articles and~~

26 ~~amendments;~~

27 ~~(4) Executed copies of any powers of attorney pursuant to which any certificate has been~~

28 ~~executed;~~

29 ~~(5) Copies of the limited liability company's federal, state and local income tax returns and~~

30 ~~reports, if any, for the five most recent years;~~

31 ~~(6) A copy of any written operating agreement;~~

32 ~~(7) Any written records of proceedings of the members or managers; and~~

33 ~~(8) Copies of any financial statements of the limited liability company for the five most~~

34 ~~recent years.~~

1 ~~(b) A member may:~~

2 ~~(1) At the member's own expense, inspect and copy any limited liability company records~~
3 ~~required to be kept under this section upon reasonable request during ordinary business hours; and~~

4 ~~(2) Obtain from time to time, upon reasonable request, information regarding the state of~~
5 ~~the business and financial condition of the limited liability company.~~

6 ~~(c) The current list of names and addresses of the members shall be made available to the~~
7 ~~secretary of state, the director of the department of business regulation, or the attorney general, as~~
8 ~~applicable, within five (5) business days of receipt of a written request by the secretary, director,~~
9 ~~or attorney general stating that the information is required in connection with an investigatory or~~
10 ~~enforcement proceeding.~~

11 ~~**7-16-23. Liability of members and managers.**~~

12 ~~A member or manager of a limited liability company is not liable for the obligations of the~~
13 ~~limited liability company solely by reason of being a member or manager.~~

14 ~~**7-16-24. Contributions to capital.**~~

15 ~~The contribution of a member to a limited liability company must be a capital contribution.~~

16 ~~**7-16-25. Liability for contribution.**~~

17 ~~(a) A promise by a member to make a capital contribution to the limited liability company~~
18 ~~is not enforceable unless set out in a writing signed by the member.~~

19 ~~(b) Except as provided in the operating agreement, a member's obligation to make his or~~
20 ~~her capital contribution is not excused because of death, disability or other reason.~~

21 ~~(c) If a member does not make a capital contribution of property or services as and when~~
22 ~~promised, the member is obligated, at the option of the limited liability company, to contribute cash~~
23 ~~equal to that portion of the value of the capital contribution that has not been made.~~

24 ~~(d)(1) Unless otherwise provided in the operating agreement, the obligation of a member~~
25 ~~to make a capital contribution may be compromised only with the unanimous consent of the~~
26 ~~members.~~

27 ~~(2) Notwithstanding the compromise, a creditor of a limited liability company who extends~~
28 ~~credit or otherwise acts in reliance on that obligation after the member signs a writing that reflects~~
29 ~~the obligation and before the compromise may enforce the original obligation.~~

30 ~~**7-16-26. Sharing of profits and losses.**~~

31 ~~Unless otherwise provided in the articles of organization or the operating agreement, the~~
32 ~~profits and losses of a limited liability company shall be allocated to each member on the basis of~~
33 ~~the member's capital value.~~

34 ~~**7-16-27. Sharing of distributions.**~~

1 ~~Unless otherwise provided in the articles of organization or operating agreement,~~
2 ~~distributions of cash or other assets of a limited liability company shall be allocated to each member~~
3 ~~on the basis of the member's capital value.~~

4 ~~**7-16-28. Interim distributions.**~~

5 ~~Except as provided in this chapter, a member is entitled to receive distributions from a~~
6 ~~limited liability company before the withdrawal of the member from the limited liability company~~
7 ~~and before the dissolution and winding up of the limited liability company to the extent and at the~~
8 ~~times or upon the happening of the events upon which the members unanimously agree or as~~
9 ~~provided in the operating agreement.~~

10 ~~**7-16-29. Distributions upon withdrawal.**~~

11 ~~Upon the withdrawal of a member, except as otherwise provided in writing in an operating~~
12 ~~agreement, the withdrawn member and his or her legal representatives, successors and assigns do~~
13 ~~not have the right to receive any distribution by reason of the withdrawal but have only the rights~~
14 ~~of an assignee to receive distributions as to the withdrawn member's interest during any~~
15 ~~continuation of the business of the limited liability company and upon completion of winding up~~
16 ~~less any damages recoverable against the withdrawn member if the event of withdrawal violated~~
17 ~~the limited liability company's operating agreement.~~

18 ~~**7-16-30. Distribution in kind.**~~

19 ~~Except as provided in the operating agreement:~~

20 ~~(1) A member has no right to demand and receive any distribution from a limited liability~~
21 ~~company in any form other than cash; and~~

22 ~~(2) No member may be compelled to accept from a limited liability company a distribution~~
23 ~~of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds~~
24 ~~the percentage of that asset which is equal to the percentage in which the member shares~~
25 ~~distributions from the limited liability company.~~

26 ~~**7-16-31. Restrictions on making distributions.**~~

27 ~~(a) No distribution may be made to a member if, after giving effect to the distribution:~~

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

30 ~~(2) The limited liability company's total assets would be less than the sum of its total~~
31 ~~liabilities plus, unless the operating agreement provides otherwise, the amount that would be~~
32 ~~needed, if the limited liability company were to be dissolved at the time of the distribution, to~~
33 ~~satisfy the preferential rights of other members upon dissolution that are superior to the rights of~~
34 ~~the member receiving the distribution.~~

1 ~~(b) The limited liability company may base a determination that a distribution is not~~
2 ~~prohibited under subsection (a) on:~~

3 ~~(1) Financial statements prepared on the basis of accounting practices and principles that~~
4 ~~are reasonable under the circumstances; or~~

5 ~~(2) A fair valuation or other method that is reasonable under the circumstances.~~

6 ~~(c) The effect of a distribution under subsection (a) is measured as of:~~

7 ~~(1) The date the distribution is authorized if the payment occurs within one hundred and~~
8 ~~twenty (120) days after the date of authorization; or~~

9 ~~(2) The date payment is made if it occurs more than one hundred and twenty (120) days~~
10 ~~after the date of authorization.~~

11 ~~**7-16-32. Liability upon wrongful distribution.**~~

12 ~~(a) A member or manager who votes for or assents to a distribution in violation of the~~
13 ~~operating agreement or of § 7-16-31 is personally liable to the limited liability company for the~~
14 ~~amount of the distribution that exceeds what could have been distributed without violating the~~
15 ~~operating agreement or § 7-16-31.~~

16 ~~(b) Each member or manager held liable under subsection (a) for an unlawful distribution~~
17 ~~is entitled to contribution:~~

18 ~~(1) From each other member or manager who could be held liable under subsection (a) for~~
19 ~~the unlawful distribution; and~~

20 ~~(2) From each member for the amount the member received knowing that the distribution~~
21 ~~was made in violation of the operating agreement or § 7-16-31.~~

22 ~~(c) A proceeding under this section is barred unless it is commenced within two (2) years~~
23 ~~after the date on which the effect of the distribution is measured under § 7-16-31.~~

24 ~~**7-16-33. Right to distribution.**~~

25 ~~Unless otherwise provided in the operating agreement, at the time a member becomes~~
26 ~~entitled to receive a distribution, the member has the status of, and is entitled to all remedies~~
27 ~~available to, a creditor of the limited liability company with respect to the distribution.~~

28 ~~**7-16-34. Nature of membership interest.**~~

29 ~~A membership interest is personal property. A member has no interest in specific limited-~~
30 ~~liability company property.~~

31 ~~**7-16-35. Assignment of membership interest.**~~

32 ~~(a) Unless otherwise provided in the articles of organization or a written operating~~
33 ~~agreement:~~

34 ~~(1) A membership interest is assignable in whole or in part;~~

1 ~~(2) An assignment of a membership interest does not of itself dissolve a limited liability~~
2 ~~company or entitle the assignee to participate in the management and affairs of the limited liability~~
3 ~~company or to become a member or to exercise any rights or powers of a member;~~

4 ~~(3) An assignment entitles the assignee to receive, to the extent assigned, only the~~
5 ~~distributions to which the assignor would be entitled; and~~

6 ~~(4) A member ceases to be a member and to have the power to exercise any rights or powers~~
7 ~~of a member on assignment of all of the member's membership interest.~~

8 ~~(b) Unless otherwise provided in the articles of organization or an operating agreement, the~~
9 ~~pledge of or granting of a security interest, lien or other encumbrance in or against any or all of the~~
10 ~~membership interest of a member is not deemed an assignment of a membership interest.~~

11 ~~(c) Unless otherwise provided in the articles of organization or an operating agreement and~~
12 ~~except to the extent provided in a written agreement signed by an assignee, until an assignee of a~~
13 ~~membership interest becomes a member, the assignee has no liability as a member solely as a result~~
14 ~~of the assignment.~~

15 ~~**7-16-36. Right of assignee to become a member.**~~

16 ~~(a) Except as otherwise provided in a written operating agreement, an assignee of an~~
17 ~~interest in a limited liability company may become a member only if the other members~~
18 ~~unanimously consent. The consent of a member may be evidenced in any manner specified in an~~
19 ~~operating agreement, but in the absence of specification, consent is evidenced by a written~~
20 ~~instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of the~~
21 ~~members called in accordance with the operating agreement and maintained with the records of the~~
22 ~~limited liability company.~~

23 ~~(b) An assignee who becomes a member has, to the extent assigned, the rights and powers,~~
24 ~~and is subject to the restrictions and liabilities, of a member under the articles of organization, any~~
25 ~~operating agreement and this chapter.~~

26 ~~(c) An assignee who becomes a member is liable for any obligations of the assignor to~~
27 ~~make contributions and to return distributions under this chapter.~~

28 ~~(d) Whether or not an assignee of a membership interest becomes a member, the assignor~~
29 ~~is not released from the assignor's liability to the limited liability company under § 7-16-25 and §~~
30 ~~7-16-32.~~

31 ~~**7-16-37. Rights of judgment creditor.**~~

32 ~~On application to a court of competent jurisdiction by any judgment creditor of a member,~~
33 ~~the court may charge the membership interest of the member with payment of the unsatisfied~~
34 ~~amount of judgment with interest. To the extent charged, the judgment creditor has only the rights~~

1 of an assignee of the membership interest. This chapter does not deprive any member of the benefit
2 of any exemption laws applicable to that member's membership interest.

3 **7-16-38. Powers of estate of a member.**

4 (a) ~~If a member who is an individual dies or a court of competent jurisdiction adjudges the~~
5 ~~member to be incompetent to manage the member's person or property, the member's executor,~~
6 ~~administrator, guardian, conservator or other legal representative may exercise all of the member's~~
7 ~~rights for the purpose of settling the estate or administering property, including any power under~~
8 ~~the articles of organization or a written operating agreement permitting an assignee to become a~~
9 ~~member.~~

10 (b) ~~If a member is a corporation, partnership, limited partnership, domestic or foreign~~
11 ~~limited liability company, trust, estate, association or other entity and is dissolved or terminated,~~
12 ~~the powers of that member may be exercised by its legal representative or successor.~~

13 **7-16-39. Dissolution.**

14 A limited liability company is dissolved and its affairs shall be wound up upon the
15 happening of the first to occur of the following:

16 (1) ~~At any time specified in the articles of organization;~~

17 (2) ~~An event specified in the articles of organization or a written operating agreement to~~
18 ~~cause dissolution;~~

19 (3) ~~By action of members taken pursuant to § 7-16-21(b)(1);~~

20 (4) ~~On the written consent of a majority of the capital values of the remaining members~~
21 ~~after the death, withdrawal, expulsion, bankruptcy, or dissolution of a member, or the occurrence~~
22 ~~of any other event that terminates the continued membership of a member in the limited liability~~
23 ~~company, unless otherwise provided in the articles of organization or a written operating~~
24 ~~agreement;~~

25 (5) ~~Unless otherwise provided in the articles of incorporation or a written operating~~
26 ~~agreement, on the death, withdrawal, expulsion, bankruptcy or dissolution of the last remaining~~
27 ~~member or any other event that terminates the continued membership of the last remaining member,~~
28 ~~unless within ninety (90) days the successor(s) in interest of the last remaining member and any~~
29 ~~assignees of the member's interest and of any other member's interest agree in writing to admit at~~
30 ~~least one (1) member to continue the business of the limited liability company; or~~

31 (6) ~~Entry of a decree of judicial dissolution under § 7-16-40.~~

32 **7-16-40. Judicial dissolution.**

33 On application by or on behalf of a member, the superior court may decree dissolution of
34 a limited liability company whenever it is not reasonably practicable to carry on the business in

1 ~~conformity with the articles of organization or operating agreement.~~

2 ~~**7-16-41. Revocation of certificate of organization or certificate of registration.**~~

3 ~~(a) The certificate of organization or certificate of registration of a limited liability~~
4 ~~company may be revoked by the secretary of state under the conditions prescribed in this section~~
5 ~~when it is established that:~~

6 ~~(1) The limited liability company procured its articles of organization through fraud;~~

7 ~~(2) The limited liability company has continued to exceed or abuse the authority conferred~~
8 ~~upon it by law;~~

9 ~~(3) The limited liability company has failed to file its annual report within the time required~~
10 ~~by this chapter, or with respect to any limited liability company in good company standing on the~~
11 ~~records of the secretary of state on or after July 1, 2019, has failed to pay any required fees to the~~
12 ~~secretary of state when they have become due and payable, or the secretary of state has received~~
13 ~~notice from the division of taxation, in accordance with § 7-16-67.1, that the limited liability~~
14 ~~company has failed to pay any fees or taxes due this state;~~

15 ~~(4) The limited liability company has failed for thirty (30) days to appoint and maintain a~~
16 ~~resident agent in this state as required by this chapter;~~

17 ~~(5) The limited liability company has failed, after change of its resident agent, to file in the~~
18 ~~office of the secretary of state a statement of the change as required by this chapter;~~

19 ~~(6) The limited liability company has failed to file in the office of the secretary of state any~~
20 ~~amendment to its articles of organization or certificate of registration or any articles of dissolution,~~
21 ~~cancellation of registration, merger, or consolidation as prescribed by this chapter; or~~

22 ~~(7) A misrepresentation has been made of any material matter in any application, report,~~
23 ~~affidavit, or other document submitted by the limited liability company pursuant to this chapter.~~

24 ~~(b) No certificate of organization or certificate of registration of a limited liability company~~
25 ~~shall be revoked by the secretary of state unless:~~

26 ~~(1) The secretary of state shall have given the limited liability company notice thereof not~~
27 ~~less than sixty (60) days prior to such revocation by regular mail addressed to the resident agent in~~
28 ~~this state on file with the secretary of state's office, which notice shall specify the basis for the~~
29 ~~revocation; provided, however, that if a prior mailing addressed to the address of the resident agent~~
30 ~~of the limited liability company in this state currently on file with the secretary of state's office has~~
31 ~~been returned as undeliverable by the United States Postal Service for any reason, or if the~~
32 ~~revocation notice is returned as undeliverable by the United States Postal Service for any reason,~~
33 ~~the secretary of state shall give notice as follows:~~

34 ~~(i) To the limited liability company, domestic or foreign, at its principal office of record as~~

1 ~~shown in its most recent annual report, and no further notice shall be required; or~~

2 ~~(ii) In the case of a limited liability company that has not yet filed an annual report, then~~
3 ~~to the domestic limited liability company at the principal office in the articles of organization or to~~
4 ~~the authorized person listed on the articles of organization, or to the foreign limited liability~~
5 ~~company at the office required to be maintained by the limited liability company in its state of~~
6 ~~organization, and no further notice shall be required; and~~

7 ~~(2) The limited liability company fails prior to revocation to file the annual report, pay the~~
8 ~~fees or taxes, file the required statement of change of resident agent, file the articles of amendment~~
9 ~~or amendment to its registration or articles of dissolution, cancellation of registration, merger, or~~
10 ~~consolidation, or correct the misrepresentation.~~

11 ~~**7-16-42. Issuance of certificates of revocation.**~~

12 ~~(a) Upon revoking any such certificate of organization or certificate of registration of the~~
13 ~~limited liability company, the secretary of state shall:~~

14 ~~(1) Issue a certificate of revocation in duplicate;~~

15 ~~(2) File one of the certificates in the secretary of state's office;~~

16 ~~(3) Send to the limited liability company by regular mail a certificate of revocation,~~
17 ~~addressed to the resident agent of the limited liability company in this state on file with the secretary~~
18 ~~of state's office; provided, however, that if a prior mailing addressed to the address of the resident~~
19 ~~agent of the limited liability company in this state currently on file with the secretary of state's~~
20 ~~office has been returned to the secretary of state as undeliverable by the United States Postal Service~~
21 ~~for any reason, or if the revocation certificate is returned as undeliverable to the secretary of state's~~
22 ~~office by the United States Postal Service for any reason, the secretary of state shall give notice as~~
23 ~~follows:~~

24 ~~(i) To the limited liability company, domestic or foreign, at its principal office of record as~~
25 ~~shown in its most recent annual report, and no further notice shall be required; or~~

26 ~~(ii) In the case of a limited liability company that has not yet filed an annual report, then~~
27 ~~to the domestic limited liability company at the principal office in the articles of organization or to~~
28 ~~the authorized person listed on the articles of organization, or to the foreign limited liability~~
29 ~~company at the office required to be maintained by the limited liability company in its state of~~
30 ~~organization, and no further notice shall be required.~~

31 ~~(b) Upon the issuance of the certificate of revocation, the authority of the limited liability~~
32 ~~company to transact business in this state ceases.~~

33 ~~**7-16-43. Withdrawal of certificate of revocation.**~~

34 ~~(a) Within twenty (20) years after issuing a certificate of revocation as provided in § 7-16-~~

1 ~~42, the secretary of state may withdraw the certificate of revocation and retroactively reinstate the~~
2 ~~limited liability company in good standing as if its certificate of organization or certificate of~~
3 ~~registration had not been revoked except as subsequently provided:~~

4 (1) ~~On the filing by the limited liability company of the documents it had previously failed~~
5 ~~to file as set forth in subdivisions (3) — (6) of § 7-16-41(a);~~

6 (2) ~~On the payment by the limited liability company of a penalty in the amount of fifty~~
7 ~~dollars (\$50.00) for each year or part of year that has elapsed since the issuance of the certificate~~
8 ~~of revocation; and~~

9 (3) ~~Upon the filing by the limited liability company of a certificate of good standing from~~
10 ~~the Rhode Island division of taxation.~~

11 (b) ~~If, as permitted by the provisions of this chapter or chapters 1.2, 6, 12, or 13 of this title,~~
12 ~~another limited liability company, business or nonprofit corporation, registered limited liability~~
13 ~~partnership or a limited partnership, or in each case domestic or foreign, authorized and qualified~~
14 ~~to transact business in this state, bears or has filed a fictitious business name statement as to or~~
15 ~~reserved or registered a name that is the same as, the name of the limited liability company with~~
16 ~~respect to which the certificate of revocation is proposed to be withdrawn, then the secretary of~~
17 ~~state shall condition the withdrawal of the certificate of revocation on the reinstated limited liability~~
18 ~~company's amending its articles of organization or certificate of registration so as to designate a~~
19 ~~name that is not the same as its former name.~~

20 **7-16-44. Appeal from revocation of certificate of organization.**

21 (a) ~~Any limited liability company aggrieved by the action of the secretary of state in~~
22 ~~revoking its articles of organization may appeal from the revocation to the superior court by filing~~
23 ~~with the clerk of the court a petition setting forth the action of the secretary of state.~~

24 (b) ~~The matter shall be tried de novo by the superior court, which shall either sustain the~~
25 ~~action of the secretary of state or direct the secretary of state to take any action that the superior~~
26 ~~court deems proper.~~

27 (c) ~~Appeals from all final orders and judgments entered by the superior court under this~~
28 ~~section in review of action of the secretary of state may be taken as in other civil actions.~~

29 **7-16-45. Winding up.**

30 (a) ~~Except as otherwise provided in the articles of organization or operating agreement, the~~
31 ~~members who have not wrongfully dissolved a limited liability company may wind up the limited-~~
32 ~~liability company's business and affairs.~~

33 (b) ~~On application by or on behalf of a member, the member's legal representative or~~
34 ~~assignee, the superior court may wind up the limited liability company's business and affairs.~~

1 **7-16-46. Distribution of assets.**

2 On the winding up of a limited liability company, the assets shall be distributed as follows:

3 (1) To creditors, including members who are creditors, to the extent permitted by law, in
4 satisfaction of liabilities of the limited liability company other than liabilities for distributions to
5 members under § 7-16-28 or § 7-16-29;

6 (2) Except as provided in the articles of organization or written operating agreement, to
7 members or former members in satisfaction of liabilities for distributions under § 7-16-28 or § 7-
8 16-29; and

9 (3) Except as provided in the articles of organization or a written operating agreement, to
10 members and former members first to return their capital values and second in proportions in which
11 the members share in distributions.

12 **7-16-47. Articles of dissolution.**

13 Not later than thirty (30) days following the dissolution and winding up of the limited-
14 liability company for any cause other than that set forth in § 7-16-39(1), articles of dissolution shall
15 be filed in the office of the secretary of state and set forth:

16 (1) The name of the limited liability company;

17 (2) The date of filing of the original articles of organization;

18 (3) The date of filing of all amendments to the original articles of organization or the most
19 recent restatement, if any, and all subsequent amendments to the articles of organization;

20 (4) The reason for filing the articles of dissolution;

21 (5) The effective date, which shall be a date certain, of the dissolution; and

22 (6) Any other information or provision, not inconsistent with law, that the members or
23 authorized person signing the articles of dissolution elect to set forth.

24 **7-16-48. Law governing foreign limited liability companies.**

25 (a) Subject to the constitution of this state:

26 (1) The laws of the state or other jurisdiction under which a foreign limited liability
27 company is organized govern its organization and internal affairs and the liability of its members;
28 and

29 (2) A foreign limited liability company may not be denied registration by reason of any
30 difference between those laws and the laws of this state.

31 (b) A foreign limited liability company holding a valid registration in this state has no
32 greater rights and privileges than a domestic limited liability company. The registration shall not
33 be deemed to authorize the foreign limited liability company to exercise any of its powers or
34 conduct any business that a domestic limited liability company is not permitted by law to exercise

1 ~~or conduct in this state.~~

2 ~~**7-16-49. Registration of foreign limited liability company.**~~

3 ~~(a) Before transacting business in this state, a foreign limited liability company shall~~
4 ~~register with the secretary of state.~~

5 ~~(b) In order to register, a foreign limited liability company shall submit to the secretary of~~
6 ~~state, in duplicate, an application for registration as a foreign limited liability company, signed by~~
7 ~~a person with authority to do so under the laws of the state or other jurisdiction of its organization~~
8 ~~and setting forth:~~

9 ~~(1) The name of the foreign limited liability company and, if different, the name under~~
10 ~~which it proposes to register and transact business in this state;~~

11 ~~(2) The state or other jurisdiction in which the foreign limited liability company is~~
12 ~~organized and date of the foreign limited liability company's organization;~~

13 ~~(3) The name and address of the resident agent required by § 7-16-11;~~

14 ~~(4) A statement that the secretary of state is appointed the agent of the foreign limited-~~
15 ~~liability company for service of process if at any time there is no resident agent or if the resident~~
16 ~~agent cannot be found or served following the exercise of reasonable diligence;~~

17 ~~(5) The address of any office required to be maintained in the state or other jurisdiction of~~
18 ~~its organization by the laws of that state or jurisdiction;~~

19 ~~(6) A mailing address for the foreign limited liability company;~~

20 ~~(7) A statement of whether the limited liability company is to be managed by its members~~
21 ~~or by one or more managers, and if the limited liability company has managers at the time of its~~
22 ~~application, the name and address of each manager;~~

23 ~~(8) Any additional information that may be necessary or appropriate in order to enable the~~
24 ~~secretary of state to determine whether the foreign limited liability company is entitled to transact~~
25 ~~business in this state; and~~

26 ~~(9) A statement indicating whether the company has been duly organized in its state of~~
27 ~~formation as a low profit limited liability company.~~

28 ~~**7-16-50. Issuance of registration of foreign limited liability company.**~~

29 ~~If the secretary of state accepts the application for filing under § 7-16-8, the secretary of~~
30 ~~state shall issue a certificate of registration to the foreign limited liability company. Upon the~~
31 ~~issuance of a certificate of registration by the secretary of state, the company is authorized to~~
32 ~~transact business in this state, subject, however, to the right of this state to suspend or revoke the~~
33 ~~authority as provided in this chapter.~~

34 ~~**7-16-50.1. Service of process on foreign limited liability company.**~~

1 ~~(a) The resident agent appointed by a foreign limited liability company authorized to~~
2 ~~transact business in this state is an agent of the limited liability company upon whom any process,~~
3 ~~notice, or demand required or permitted by law to be served upon the corporation may be served.~~

4 ~~(b) Whenever a foreign limited liability company authorized to transact business in this~~
5 ~~state fails to appoint or maintain a resident agent in this state; or whenever any resident agent cannot~~
6 ~~with reasonable diligence be found at the registered office; or whenever the certificate of authority~~
7 ~~of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of~~
8 ~~the foreign limited liability company upon whom any process, notice, or demand may be served.~~
9 ~~Service on the secretary of state of any process, notice, or demand must be made by delivering to~~
10 ~~and leaving with him or her, or with any clerk having charge of the corporation department of his~~
11 ~~or her office, duplicate copies of the process, notice, or demand. In the event any process, notice,~~
12 ~~or demand is served on the secretary of state, the secretary of state shall immediately forward one~~
13 ~~of the copies by registered mail, addressed to the foreign limited liability company at its principal~~
14 ~~office if known to him or her, in the state or country under the laws of which it was organized. Any~~
15 ~~service had in this manner on the secretary of state is returnable in not less than thirty (30) days.~~

16 ~~(c) Every foreign limited liability company as a condition precedent to carrying on~~
17 ~~business in this state must, and by so carrying on business in this state does, consent that any~~
18 ~~process, including the process of garnishment, may be served upon the secretary of state in the~~
19 ~~manner provided by this section, except that notice of the service must be given by the plaintiff or~~
20 ~~his or her attorney in the manner as the court in which the action is commenced or pending orders~~
21 ~~as affording the corporation reasonable opportunity to defend the action or to learn of the~~
22 ~~garnishment. Notwithstanding the preceding requirements, however, once service has been made~~
23 ~~on the secretary of state as provided, the court has the authority in the event of failure to comply~~
24 ~~with the requirement of notice to the foreign limited liability company to order notice that is~~
25 ~~sufficient to apprise it of the pendency of the action against it, and additionally, may extend the~~
26 ~~time for answering by the foreign limited liability company.~~

27 ~~(d) The secretary of state shall keep a record of all processes, notices, and demands served~~
28 ~~upon him or her under this section, and record in the record the time of the service and his or her~~
29 ~~action on it. The secretary of state shall not be required to retain such information for a period~~
30 ~~longer than five (5) years from receipt of the service of process.~~

31 ~~(e) Nothing contained in these provisions limits or affects the right to serve any process,~~
32 ~~notice or demand, required or permitted by law to be served upon a foreign limited liability~~
33 ~~company in any manner now or subsequently permitted by law.~~

34 **7-16-51. Name registration by foreign limited liability company.**

1 A foreign limited liability company may register with the secretary of state under any name
2 permitted under § 7-16-9, whether or not it is the name under which it is registered in its state or
3 other jurisdiction of organization.

4 **7-16-52. Amendments to registration of foreign limited liability company.**

5 If a statement in the application for registration of a foreign limited liability company
6 was inaccurate when made or a change has occurred, other than a change of mailing address or a
7 change of the name and/or address of the resident agent, the foreign limited liability company shall
8 promptly file in the office of the secretary of state a certificate signed by a person with authority to
9 do so under the laws of the state or other jurisdiction of its organization correcting the inaccuracy
10 or indicating the change.

11 **7-16-52.1. Foreign application for transfer of authority.**

12 (a) A duly authorized foreign limited liability company in the state of Rhode Island that
13 converts into any other form of foreign entity subject to the provisions of title 7 and the resulting
14 entity is required to file for authority to transact business in this state may apply for a transfer of
15 authority in the office of the secretary of state by filing:

16 (1) An application of transfer of authority that has been executed and filed in accordance
17 with § 7-16-8;

18 (2) An application for authority to transact business in the state of Rhode Island for the
19 resulting entity type; and

20 (3) A certificate of legal existence or good standing issued by the proper officer of the state
21 or country under the laws of which the resulting entity has been formed.

22 (b) The application for transfer of authority shall state:

23 (1) The name of the limited liability company;

24 (2) The type of other entity into which it has been converted; and

25 (3) The jurisdiction whose laws govern its internal affairs.

26 (c) Upon the effective time and date of the application for transfer of authority, the authority
27 of the limited liability company authorized to transact business under this chapter shall be
28 transferred without interruption to the other entity which shall thereafter hold such authority subject
29 to the provisions of the Rhode Island general laws which apply to that type of resulting entity.

30 **7-16-53. Cancellation of registration of foreign limited liability company.**

31 A foreign limited liability company may cancel its registration by filing with the secretary
32 of state a certificate of cancellation signed by a person with authority to do so under the laws of the
33 state or other jurisdiction of its organization, or, if the foreign limited liability company is under
34 the supervision of a receiver or trustee, by the receiver or trustee on behalf of the foreign limited-

1 ~~liability company. In filing a certificate of cancellation, the foreign limited liability company~~
2 ~~revokes the authority of its resident agent to accept service of process and consents that service of~~
3 ~~process in any action, suit, or proceeding based upon any cause of action arising in this state during~~
4 ~~the time the foreign limited liability company was authorized to transact business in this state may~~
5 ~~subsequently be made on the foreign limited liability company by service on the secretary of state.~~
6 ~~The certificate of cancellation must include the post office address to which the secretary of state~~
7 ~~may mail a copy of any process against the foreign limited liability company that is served on the~~
8 ~~secretary of state.~~

9 ~~**7-16-54. Transaction of business by foreign limited liability company without**~~
10 ~~**registration.**~~

11 ~~(a) A foreign limited liability company transacting business in this state may not maintain~~
12 ~~any action, suit, or proceeding in any court of this state until it has registered in this state.~~

13 ~~(b) The failure of a foreign limited liability company to register in this state does not impair~~
14 ~~the validity of any contract or act of the foreign limited liability company or prevent the foreign~~
15 ~~limited liability company from defending any action, suit or proceeding in any court of this state.~~

16 ~~(c) A foreign limited liability company, by transacting business in this state without~~
17 ~~registration, appoints the secretary of state as its agent for service of process as to claims for relief~~
18 ~~or causes of action arising out of the transaction of business in this state.~~

19 ~~(d) A member of a foreign limited liability company is not liable for the debts and~~
20 ~~obligations of the limited liability company solely by reason of the company's having transacted~~
21 ~~business in this state without a valid certificate of registration.~~

22 ~~(e) Without excluding other activities that may not constitute transacting business in this~~
23 ~~state, a foreign limited liability company is not considered to be transacting business in this state,~~
24 ~~for the purposes of this chapter, by reason of carrying on in this state any one or more of the~~
25 ~~following activities:~~

26 ~~(1) Maintaining or defending any action or suit or any administrative or arbitration~~
27 ~~proceeding or effecting its settlement or the settlement of claims or disputes;~~

28 ~~(2) Holding meetings of its members or carrying on any other activities concerning its~~
29 ~~internal affairs;~~

30 ~~(3) Maintaining bank accounts;~~

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

34 ~~(5) Effecting sales through independent contractors;~~

1 ~~(6) Soliciting or obtaining orders, whether by mail or through employees or agents or~~
2 ~~otherwise, where the orders require acceptance outside this state before becoming binding~~
3 ~~contracts;~~

4 ~~(7) Creating as borrower or lender or acquiring evidences of debt, mortgages, security~~
5 ~~interests or liens on real or personal property;~~

6 ~~(8) Securing or collecting debts or enforcing any rights in property securing the debts;~~

7 ~~(9) Transacting any business in interstate commerce;~~

8 ~~(10) Conducting an isolated transaction completed within a period of thirty (30) days and~~
9 ~~not in the course of a number of repeated transactions of like nature;~~

10 ~~(11) Acting as a general partner of a limited partnership that has filed a certificate of~~
11 ~~limited partnership as provided in § 7-13-8 or has registered with the secretary of state as provided~~
12 ~~in § 7-13-49; and~~

13 ~~(12) Acting as a member of a limited liability company or of a foreign limited liability~~
14 ~~company that has registered with the secretary of state as provided in § 7-16-49.~~

15 ~~**7-16-55. Action to restrain foreign limited liability company.**~~

16 ~~The attorney general of this state may maintain an action in the superior court to restrain~~
17 ~~any foreign limited liability company or any of its agents from transacting any business in this state~~
18 ~~in violation of this chapter or if the limited liability company has failed to comply with any section~~
19 ~~of this chapter applicable to it or if the limited liability company has secured a certificate of the~~
20 ~~secretary of state under § 7-16-50 on the basis of an inaccurate statement.~~

21 ~~**7-16-56. Right of member to bring derivative action.**~~

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

24 ~~(1) The member does not have the authority to cause the limited liability company to sue~~
25 ~~in its own right under the provisions of an operating agreement;~~

26 ~~(2) The members or managers with this authority have wrongfully refused to bring the~~
27 ~~action or, after adequate time to consider the demand, have failed to respond to the demand or if an~~
28 ~~effort to cause those members or managers to bring the action is not likely to succeed;~~

29 ~~(3) The plaintiff:~~

30 ~~(i) Is a member of the limited liability company at the time of bringing the action; and~~

31 ~~(ii) Was a member of the limited liability company at the time of the transaction~~
32 ~~complained of, or the plaintiff's status as a member of the limited liability company subsequently~~
33 ~~devolved to the plaintiff pursuant to the terms of the operating agreement from a person who was~~
34 ~~a member at that time; and~~

1 ~~(4) The plaintiff fairly and adequately represents the interests of the members in enforcing~~
2 ~~the right of the limited liability company.~~

3 ~~**7-16-57. Pleading in derivative action.**~~

4 ~~In a derivative action, the complaint shall set forth with particularity the effort of the~~
5 ~~plaintiff to secure initiation of the action by the managers or the members who would otherwise~~
6 ~~have the authority to cause the limited liability company to sue in its own right or why such effort~~
7 ~~was not likely to succeed.~~

8 ~~**7-16-58. Expenses in derivative action.**~~

9 ~~(a) If a derivative action is successful, in whole or in part, or if anything is received by the~~
10 ~~plaintiff as a result of a judgment, compromise or settlement of an action or claim, the court may~~
11 ~~award the plaintiff reasonable expenses, including legal fees, and shall direct him or her to remit to~~
12 ~~the limited liability company the remainder of those proceeds received by him or her.~~

13 ~~(b) In any action subsequently instituted on behalf of any limited liability company by a~~
14 ~~member or members of the company, the court having jurisdiction, upon final judgment and a~~
15 ~~finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs~~
16 ~~to pay to the parties named as defendants the reasonable expenses, including legal fees, incurred~~
17 ~~by them in the defense of the action.~~

18 ~~**7-16-59. Merger or consolidation.**~~

19 ~~Any provision of chapters 1.2 and 1.3 of this title to the contrary notwithstanding:~~

20 ~~(1) Any one or more domestic or foreign limited liability companies may merge or~~
21 ~~consolidate with or into any one or more domestic or foreign limited liability companies, limited~~
22 ~~partnerships or corporations; and~~

23 ~~(2) Any one or more limited partnerships or corporations may merge or consolidate with~~
24 ~~or into any one or more domestic or foreign limited liability companies.~~

25 ~~**7-16-60. Plan of merger or consolidation.**~~

26 ~~(a) Each constituent entity shall enter into a written plan of merger or consolidation, which~~
27 ~~shall be approved by each domestic constituent entity in accordance with § 7-16-61.~~

28 ~~(b) The plan of merger or consolidation shall set forth:~~

29 ~~(1) The name of each limited liability company, corporation and limited partnership that is~~
30 ~~a constituent entity in the merger or consolidation and the name of the surviving entity into which~~
31 ~~each other constituent entity proposes to merge or the new entity into which each constituent entity~~
32 ~~proposes to consolidate;~~

33 ~~(2) The terms and conditions of the proposed merger or consolidation;~~

34 ~~(3) The manner and basis of converting the interests in each limited liability company, the~~

1 ~~shares of stock or other interests in each corporation and the interests in each limited partnership~~
2 ~~that is a constituent entity in the merger or consolidation, other than those, in the case of a merger,~~
3 ~~held by the surviving entity into interests, shares, or other securities or obligations of the surviving~~
4 ~~entity or the new entity, or of any other limited liability company, corporation, limited partnership,~~
5 ~~or other entity, or, in whole or in part, into cash or other property;~~

6 ~~(4) In the case of a merger where the surviving entity is domestic, any amendments to the~~
7 ~~articles of organization of a limited liability company, articles of incorporation of a corporation or~~
8 ~~certificate of limited partnership of a limited partnership of the surviving entity that are to be~~
9 ~~effected by the merger, or that no changes are desired;~~

10 ~~(5) In the case of a consolidation where the new entity is domestic, all of the statements~~
11 ~~required to be set forth in articles of organization of any new entity that is a limited liability~~
12 ~~company, articles of incorporation of any new entity that is a corporation, or certificate of limited~~
13 ~~partnership of any new entity that is a limited partnership; and~~

14 ~~(6) Any other provisions relating to the proposed merger or consolidation that are deemed~~
15 ~~necessary or desirable.~~

16 **7-16-61. Approval of merger or consolidation.**

17 ~~(a) A proposed plan of merger or consolidation complying with the requirements of § 7-~~
18 ~~16-60 shall be approved by the domestic constituent entities in the manner provided by this section:~~

19 ~~(1) A limited liability company party to a proposed merger or consolidation shall have the~~
20 ~~plan of merger or consolidation authorized and approved in the manner and by the vote required~~
21 ~~by § 7-16-21;~~

22 ~~(2) A domestic corporation party to a proposed merger or consolidation shall have the plan~~
23 ~~of merger or consolidation authorized and approved in the manner and by the vote required by the~~
24 ~~laws of this state for mergers of corporations with other corporations;~~

25 ~~(3) A domestic limited partnership party to a proposed merger or consolidation shall have~~
26 ~~the plan of merger or consolidation, unless otherwise provided in the limited partnership agreement,~~
27 ~~authorized and approved in the manner and by the vote required by the laws of this state for mergers~~
28 ~~or consolidations of a domestic limited partnership with other limited partnerships or other business~~
29 ~~entities.~~

30 ~~(b) After a merger or consolidation is authorized, unless the plan of merger or consolidation~~
31 ~~provides otherwise, and at any time before articles of merger or consolidation are filed under § 7-~~
32 ~~16-62, the plan of merger or consolidation may be abandoned, subject to any contractual rights, in~~
33 ~~accordance with the procedure set forth in the plan of merger or consolidation or, if none is set~~
34 ~~forth, as follows:~~

1 ~~(1) By the unanimous consent of the members of each limited liability company that is a~~
2 ~~constituent entity, unless the operating agreement of the limited liability company provides~~
3 ~~otherwise;~~

4 ~~(2) By the vote of the board of directors of any corporation that is a constituent entity;~~

5 ~~(3) By the approval of all general partners and all limited partners of any limited partnership~~
6 ~~that is a constituent entity unless the limited partnership agreement provides otherwise.~~

7 **7-16-62. Articles of merger or consolidation.**

8 ~~(a) After a plan of merger or consolidation is approved by all domestic constituent entities~~
9 ~~as provided in § 7-16-61, the surviving entity or the new entity shall deliver in duplicate to the~~
10 ~~secretary of state for filing articles of merger or consolidation duly executed by each constituent~~
11 ~~entity setting forth:~~

12 ~~(1) The identity of each constituent entity by name, type and state or other jurisdiction~~
13 ~~under whose laws it is organized or formed;~~

14 ~~(2) The plan of merger or consolidation;~~

15 ~~(3) The effective date of the merger or consolidation if later than the date of filing of the~~
16 ~~articles of merger or consolidation;~~

17 ~~(4) The identity of the surviving entity or the new entity by name, type and state or other~~
18 ~~jurisdiction under whose laws it is organized or formed; and~~

19 ~~(5) A statement that the plan of merger was authorized and approved by each constituent~~
20 ~~entity.~~

21 ~~(b) A merger or consolidation takes effect on the later of the effective date of the filing of~~
22 ~~the articles of merger or consolidation or the date set forth in the plan of merger or consolidation.~~

23 ~~(c) Articles of merger or consolidation shall act as a certificate of cancellation for each~~
24 ~~domestic limited partnership party to the merger or consolidation that is not the surviving entity or~~
25 ~~the new entity.~~

26 **7-16-63. Effects of merger or consolidation.**

27 ~~Following the consummation of a merger or consolidation in which the surviving entity or~~
28 ~~the new entity is to be governed by the laws of this state:~~

29 ~~(1) The constituent entities party to the plan of merger or consolidation shall be a single~~
30 ~~entity, which, in the case of a merger shall be the entity designated in the plan of merger as the~~
31 ~~surviving entity, and, in the case of a consolidation, shall be the new entity provided for in the plan~~
32 ~~of consolidation.~~

33 ~~(2) The separate existence of each constituent entity party to the plan of merger or~~
34 ~~consolidation, except the surviving entity or the new entity, shall cease.~~

1 ~~(3) The surviving entity or the new entity shall at that time and subsequently possess all~~
2 ~~the rights, privileges, immunities, powers, and franchises, of a public as well as a private nature, of~~
3 ~~each constituent entity and is subject to all the restrictions, disabilities, and duties of each of the~~
4 ~~constituent entities to the extent the rights, privileges, immunities, powers, franchises, restrictions,~~
5 ~~disabilities, and duties are applicable to the form of existence of the surviving entity or the new~~
6 ~~entity.~~

7 ~~(4) All property, real, personal and mixed, and all debts due on whatever account, including~~
8 ~~promises to make capital contributions and subscriptions for shares, and all other choices in action,~~
9 ~~and all and every other interest of or belonging to or due to each of the constituent entities are~~
10 ~~vested in the surviving entity or the new entity without further act or deed.~~

11 ~~(5) The title to all real estate and any interest in real estate vested in any constituent entity~~
12 ~~does not revert or become in any way impaired because of the merger or consolidation.~~

13 ~~(6) The surviving entity or the new entity is responsible and liable for all liabilities and~~
14 ~~obligations of each of the merged or consolidated constituent entities, and any claim existing or~~
15 ~~action or proceeding pending by or against any constituent entity may be prosecuted as if the merger~~
16 ~~or consolidation had not taken place, or the surviving entity or the new entity may be substituted in~~
17 ~~the action.~~

18 ~~(7) Neither the rights of creditors nor any liens on the property of any constituent entity are~~
19 ~~impaired by the merger or consolidation.~~

20 ~~(8) In the case of a merger, depending upon whether the surviving entity is a limited-~~
21 ~~liability company, a domestic corporation, or a domestic limited partnership, the articles of~~
22 ~~organization of the limited liability company, articles of incorporation of the corporation, or~~
23 ~~certificate of limited partnership of the limited partnership shall be amended to the extent provided~~
24 ~~in the articles of merger.~~

25 ~~(9) In the case of a consolidation where the new entity is domestic, the statements set forth~~
26 ~~in the articles of consolidation and that are required or permitted to be set forth in the articles of~~
27 ~~organization, articles of incorporation, or certificate of limited partnership of the new domestic~~
28 ~~entity, are deemed to be the original articles of organization, articles of incorporation, or certificate~~
29 ~~of limited partnership of the new domestic entity.~~

30 ~~(10) Unless otherwise agreed in the partnership agreement of a domestic limited~~
31 ~~partnership, a merger or consolidation in which a domestic limited partnership is a constituent~~
32 ~~entity, including a merger or consolidation in which a domestic limited partnership is not the~~
33 ~~surviving entity or the new entity, does not require the domestic limited partnership to wind up its~~
34 ~~affairs under § 7-13-46 or pay its liabilities and distribute its assets under § 7-13-47.~~

1 ~~(11) The membership or other interests in a limited liability company, shares or other~~
2 ~~interests in a corporation, partnership or other interests in a limited partnership that is a constituent~~
3 ~~entity that are to be converted or exchanged into interests, shares or other securities, cash,~~
4 ~~obligations or other property under the terms of the articles of merger or consolidation are~~
5 ~~converted, and their former holders are entitled only to the rights provided in the articles of merger~~
6 ~~or consolidation or the rights otherwise provided by law.~~

7 ~~(12) Nothing in this chapter abridges or impairs any rights that may otherwise be available~~
8 ~~to the members or shareholders or other holders of an interest in any constituent entity under~~
9 ~~applicable law.~~

10 ~~**7-16-64. Merger or consolidation with foreign entity.**~~

11 ~~(a) Any merger or consolidation that includes a foreign limited liability company, foreign~~
12 ~~corporation or foreign limited partnership as a constituent entity is subject to the additional~~
13 ~~requirements that the merger or consolidation is permitted by the law of the state or jurisdiction~~
14 ~~under whose laws each foreign constituent entity is organized or formed and each foreign~~
15 ~~constituent entity complies with that law in effecting the merger or consolidation.~~

16 ~~(b) If the surviving entity or the new entity is to be governed by the laws of any jurisdiction~~
17 ~~other than this state, then the articles of merger or consolidation required by § 7-16-62 shall also~~
18 ~~set forth:~~

19 ~~(1) The agreement of the surviving entity or the new entity that it may be served with~~
20 ~~process in this state in any proceeding for enforcement of any obligation of any constituent entity~~
21 ~~party to the merger or consolidation that was organized under the laws of this state, as well as for~~
22 ~~enforcement of any obligation of the surviving entity or the new entity arising from the merger or~~
23 ~~consolidation; and~~

24 ~~(2) The irrevocable appointment of the secretary of state as an agent for service of process~~
25 ~~in the proceeding, and the surviving entity or the new entity shall specify the address to which a~~
26 ~~copy of the process shall be mailed to it by the secretary of state.~~

27 ~~(c) The effect of the merger or consolidation in which the surviving entity or the new entity~~
28 ~~is to be governed by the laws of any jurisdiction other than this state, shall be the same as provided~~
29 ~~in § 7-16-63, except insofar as the laws of the other jurisdiction provide otherwise.~~

30 ~~**7-16-65. Filing, service, and copying fees.**~~

31 ~~The secretary of state shall charge and collect:~~

32 ~~(1) For filing the original articles of organization, a fee of one hundred fifty dollars (\$150);~~

33 ~~(2) For amending, restating, or amending and restating the articles of organization, a fee of~~
34 ~~fifty dollars (\$50.00);~~

- 1 ~~(3) For filing articles of merger or consolidation and issuing a certificate, a fee of one~~
2 ~~hundred dollars (\$100);~~
- 3 ~~(4) For filing articles of dissolution, a fee of fifty dollars (\$50.00);~~
- 4 ~~(5) For issuing a certificate of good standing/letter of status, a fee of twenty dollars~~
5 ~~(\$20.00);~~
- 6 ~~(6) For issuing a certificate of fact, a fee of thirty dollars (\$30.00);~~
- 7 ~~(7) For furnishing a certified copy of any document, instrument, or paper relating to a~~
8 ~~domestic or foreign limited liability company, a fee of fifteen cents (\$.15) per page and ten dollars~~
9 ~~(\$10.00) for the certificate and affirming the seal to it;~~
- 10 ~~(8) For accepting an application for reservation of a name, or for filing a notice of the~~
11 ~~transfer or cancellation of any name reservation, a fee of fifty dollars (\$50.00);~~
- 12 ~~(9) For filing a fictitious business name statement or abandonment of use of a fictitious~~
13 ~~business name, a fee of fifty dollars (\$50.00);~~
- 14 ~~(10) For filing a statement of change of resident agent and address of registered agent, a~~
15 ~~fee of twenty dollars (\$20.00);~~
- 16 ~~(11) For filing a statement of change of address only for a resident agent, no fee;~~
- 17 ~~(12) For any service of notice, demand, or process on the registered agent of a foreign or~~
18 ~~domestic limited liability company, a fee of fifteen dollars (\$15.00), which amount may be~~
19 ~~recovered as taxable costs by the party to the suit, action, or proceeding causing the service to be~~
20 ~~made if the party prevails in the suit;~~
- 21 ~~(13) For filing an annual report, a fee of fifty dollars (\$50.00);~~
- 22 ~~(14) For filing a certificate of correction, a fee of fifty dollars (\$50.00);~~
- 23 ~~(15) For filing an application for registration as a foreign limited liability company, a fee~~
24 ~~of one hundred fifty dollars (\$150);~~
- 25 ~~(16) For filing a certificate of amendment to the registration of a foreign limited liability~~
26 ~~company, a fee of fifty dollars (\$50.00);~~
- 27 ~~(17) For filing a certificate of cancellation of a foreign limited liability company, a fee of~~
28 ~~seventy five dollars (\$75.00);~~
- 29 ~~(18) At the time of any service of process upon the secretary of state as a resident agent of~~
30 ~~a limited liability company, fifteen dollars (\$15.00), which amount may be recovered as a taxable~~
31 ~~cost by the party to the suit or action making the service if the party prevails in the suit or action;~~
- 32 ~~(19) For filing any other statement or report, except an annual report, of a domestic or~~
33 ~~foreign limited liability company, a fee of ten dollars (\$10.00); and~~
- 34 ~~(20) For filing a certificate of conversion to a non-Rhode Island entity, a fee of fifty dollars~~

1 ~~(\$50.00).~~

2 ~~**7-16-66. Annual report of domestic and foreign limited liability companies.**~~

3 ~~(a) Each domestic limited liability company and each foreign limited liability company~~
4 ~~authorized to transact business in this state, shall file, between the first day of February and the first~~
5 ~~day of May in each year following the calendar year in which its original articles of organization~~
6 ~~or application for registration were filed with the secretary of state, an annual report setting forth:~~

7 ~~(1) The name and address of the principal office of the limited liability company;~~

8 ~~(2) The state or other jurisdiction under the laws of which it is formed;~~

9 ~~(3) [Deleted by P.L. 2021, ch. 137, § 3 and P.L. 2021, ch. 138, § 3.]~~

10 ~~(4) The current mailing address of the limited liability company and the name or title of a~~
11 ~~person to whom communications may be directed;~~

12 ~~(5) A brief statement of the character of the business in which the limited liability company~~
13 ~~is actually engaged in this state; and~~

14 ~~(6) Any additional information required by the secretary of state.~~

15 ~~(7) [Deleted by P.L. 2021, ch. 137, § 3 and P.L. 2021, ch. 138, § 3.]~~

16 ~~(b) The information in the annual report shall be given as of the date of the execution of~~
17 ~~the report. It shall be executed by an authorized person of the domestic limited liability company~~
18 ~~and by a person with authority to do so under the laws of the state or other jurisdiction of~~
19 ~~organization of a foreign limited liability company. Proof to the satisfaction of the secretary of state~~
20 ~~that prior to May 1 the report was deposited in the United States mail in a sealed envelope, properly~~
21 ~~addressed, with postage prepaid, is deemed to be timely filed.~~

22 ~~(c) If the secretary of state finds that the annual report conforms to the requirements of this~~
23 ~~chapter, the secretary of state shall file the report. If the secretary of state finds that it does not~~
24 ~~conform, the secretary of state shall promptly return the report to the limited liability company for~~
25 ~~any necessary corrections, in which event the penalties subsequently prescribed for failure to file~~
26 ~~the report within the time previously provided do not apply if the report is corrected to conform to~~
27 ~~the requirements of this chapter and returned to the secretary of state within thirty (30) days from~~
28 ~~the date on which it was mailed to the limited liability company by the secretary of state.~~

29 ~~(d) Each limited liability company, domestic or foreign, that fails or refuses to file its~~
30 ~~annual report for any year within thirty (30) days after the time prescribed by this chapter is subject~~
31 ~~to a penalty of twenty five dollars (\$25.00) per year.~~

32 ~~**7-16-67. Filing of returns with the tax administrator — Annual charge.**~~

33 ~~(a) A return, in the form and containing the information as the tax administrator may~~
34 ~~prescribe, shall be filed with the tax administrator by the limited liability company:~~

1 ~~(1) In case the fiscal year of the limited liability company is the calendar year, on or before~~
2 ~~the fifteenth day of March in the year following the close of the fiscal year; and~~

3 ~~(2) In case the fiscal year of the limited liability company is not a calendar year, on or~~
4 ~~before the fifteenth day of the third month following the close of the fiscal year.~~

5 ~~(b) For tax years on or after January 1, 2016, a return, in the form and containing the~~
6 ~~information as the tax administrator may prescribe, shall be filed with the tax administrator by the~~
7 ~~limited liability company and shall be filed on or before the date a federal tax return is due to be~~
8 ~~filed, without regard to extension.~~

9 ~~(c) An annual charge shall be due on the filing of the limited liability company's return~~
10 ~~filed with the tax administrator and shall be paid to the division of taxation as follows:~~

11 ~~(1) If the limited liability company is treated as a corporation for purposes of federal~~
12 ~~income taxation, it shall pay the taxes as provided in chapters 11 and 12 [repealed] of title 44; or~~

13 ~~(2) If the limited liability company is not treated as a corporation for purposes of federal~~
14 ~~income taxation, it shall pay a fee in an amount equal to the minimum tax imposed upon a~~
15 ~~corporation under § 44-11-2(e). The due date for a limited liability company that is not treated as~~
16 ~~a corporation for purposes of federal income taxation shall be on or before the fifteenth day of the~~
17 ~~fourth month following the close of the fiscal year.~~

18 ~~(d) For tax years on or after January 1, 2016, a return, in the form and containing the~~
19 ~~information as the tax administrator may prescribe, shall be filed with the tax administrator by the~~
20 ~~limited liability company and shall be filed on or before the date a federal tax return is due to be~~
21 ~~filed, without regard to extension.~~

22 ~~(e) The annual charge is delinquent if not paid by the due date for the filing of the return~~
23 ~~and an addition of one hundred dollars (\$100) to the charge is then due.~~

24 ~~**7-16-67.1. Revocation of articles or authority to transact business for nonpayment of**~~
25 ~~**fee.**~~

26 ~~(a) The tax administrator may, after July 15 of each year, make up a list of all limited-~~
27 ~~liability companies that have failed to pay the fee defined in § 7-16-67 for one year after the fee~~
28 ~~became due and payable, and the failure is not the subject of a pending appeal. The tax administrator~~
29 ~~shall certify to the correctness of the list. Upon receipt of the certified list, the secretary of state~~
30 ~~may initiate revocation proceedings as defined in § 7-16-41.~~

31 ~~(b) With respect to any information provided by the division of taxation to the secretary of~~
32 ~~state pursuant to this chapter, the secretary of state, together with the employees or agents thereof,~~
33 ~~shall be subject to all state and federal tax confidentiality laws applying to the division of taxation~~
34 ~~and the officers, agents, and employees thereof, and which restrict the acquisition, use, storage,~~

1 ~~dissemination, or publication of confidential taxpayer data.~~

2 ~~**7-16-68. Limited liability company property.**~~

3 ~~Real and personal property owned, purchased, or leased by a limited liability company~~
4 ~~shall be held, owned, and conveyed in the limited liability company name. Instruments and~~
5 ~~documents providing for the acquisition, mortgage or disposition of property of the limited liability~~
6 ~~company are valid and binding on the limited liability company if executed by one or more~~
7 ~~managers of a limited liability company having a manager or managers or one or more members~~
8 ~~of a limited liability company in which management has been retained in the members.~~

9 ~~**7-16-69. Certificates and certified copies to be received in evidence.**~~

10 ~~All certificates issued by the secretary of state in accordance with the provisions of this~~
11 ~~chapter, and all copies of documents filed in the secretary of state's office in accordance with the~~
12 ~~provisions of this chapter when certified by the secretary of state, shall be taken and received in all~~
13 ~~courts.~~

14 ~~**7-16-70. Parties to actions.**~~

15 ~~A member of a limited liability company is not a proper party to proceedings by or against~~
16 ~~a limited liability company, except for an action brought under § 7-16-56 and except where the~~
17 ~~object is to enforce a member's right against or liability to the limited liability company.~~

18 ~~**7-16-71. Unauthorized assumption of powers.**~~

19 ~~All persons who assume to act as a limited liability company without authority to do so are~~
20 ~~jointly and severally liable for all debts and liabilities.~~

21 ~~**7-16-72. Severability.**~~

22 ~~If any provision of this chapter or its application to any person or circumstance is held~~
23 ~~invalid, the invalidity does not affect other provisions or applications of this chapter that can be~~
24 ~~given effect without the invalid provision or application. To this end, the provisions of this chapter~~
25 ~~are severable.~~

26 ~~**7-16-73. Construction with other laws.**~~

27 ~~(a) Unless the provisions of this chapter or the context indicate otherwise, each reference~~
28 ~~in the general laws to a "person" is deemed to include a limited liability company, and each~~
29 ~~reference to a "corporation", except for references in the Rhode Island Business and Nonprofit~~
30 ~~Corporation Acts, and except with respect to taxation, is deemed to include a limited liability~~
31 ~~company.~~

32 ~~(b) As to taxation, a domestic or foreign limited liability company shall be treated in the~~
33 ~~same manner as it is treated under federal income tax law.~~

34 ~~(c) If a domestic or foreign limited liability company is treated as a partnership for~~

1 ~~purposes of federal income taxation:~~

2 ~~(1) Any member of the limited liability company during any part of the limited liability~~
3 ~~company's taxable year shall file a Rhode Island income tax return and shall include in Rhode~~
4 ~~Island gross income that portion of the limited liability company's Rhode Island income allocable~~
5 ~~to the member's interest in the limited liability company.~~

6 ~~(2) Any member of the limited liability company who is a non resident shall execute and~~
7 ~~forward to the limited liability company before the original due date of the Rhode Island limited-~~
8 ~~liability company return an agreement that states that the member will file a Rhode Island income~~
9 ~~tax return and pay income tax on the non resident member's share of the limited liability~~
10 ~~company's income that was derived from or attributable to sources within this state, and the~~
11 ~~agreement shall be attached to the limited liability company's Rhode Island return for the taxable~~
12 ~~year.~~

13 ~~(3) In the event that the non resident member's executed agreement is not attached to the~~
14 ~~Rhode Island limited liability company return or the agreement set forth above is attached to the~~
15 ~~limited liability company return and subsequently the non resident member fails to file a timely~~
16 ~~income tax return, then within thirty (30) days of the date of notice by the Tax Administrator to the~~
17 ~~limited liability company, the limited liability company shall remit to the Tax Administrator the~~
18 ~~non resident member's tax on the member's share of the limited liability company's income that~~
19 ~~was derived from or attributable to sources within this state, which tax shall be computed at the~~
20 ~~statutory rate applicable to corporations.~~

21 ~~(4) A non resident member is required to file a Rhode Island income tax return even though~~
22 ~~the member's only source of Rhode Island income was that member's share of the limited liability~~
23 ~~company's income that was derived from or attributable to sources within this state, and the amount~~
24 ~~of remittance by the limited liability company on behalf of the non resident member shall be~~
25 ~~allowed as a credit against that member's Rhode Island income tax liability.~~

26 **7-16-74. Forms to be furnished by secretary of state.**

27 ~~All documents required by this chapter to be filed in the office of the secretary of state shall~~
28 ~~be made on forms that shall be prescribed by the secretary of state. Forms for all documents to be~~
29 ~~filed in the office of the secretary of state may be furnished by the secretary of state upon request,~~
30 ~~but their use, unless otherwise specifically prescribed in this chapter, is not mandatory.~~

31 **7-16-75. Reservation of power.**

32 ~~The general assembly shall at all times have power to prescribe any regulations, provisions~~
33 ~~and limitations that it deems advisable, which regulations, provisions and limitations are binding~~
34 ~~on any limited liability companies subject to the provisions of this chapter, and the general~~

1 ~~assembly has power to amend, repeal or modify this chapter at pleasure.~~

2 ~~**7-16-76. Low-profit limited liability company.**~~

3 ~~(a) A low profit limited liability company shall at all times significantly further the~~
4 ~~accomplishment of one or more charitable or educational purposes within the meaning of §~~
5 ~~170(e)(2)(B) of the Internal Revenue Code of 1986, 26 U.S.C. § 170(e)(2)(B), or its successor, and~~
6 ~~would not have been formed but for the entity's relationship to the accomplishment of charitable~~
7 ~~or educational purposes.~~

8 ~~(b) A limited liability company that intends to qualify as a low profit limited liability~~
9 ~~company pursuant to the provisions of this section shall so indicate in its articles of organization,~~
10 ~~shall organize under the provisions of § 7-16-6, and shall further state that:~~

11 ~~(1) No significant purpose of the entity is the production of income or the appreciation of~~
12 ~~property; provided, however, that the fact that an entity produces significant income or capital~~
13 ~~appreciation shall not, in the absence of other factors, be conclusive evidence of a significant~~
14 ~~purpose involving the production of income or the appreciation of property.~~

15 ~~(2) No purpose of the entity is to accomplish one or more political or legislative purposes~~
16 ~~within the meaning of § 170(e)(2)(D) of the Internal Revenue Code of 1986, 26 U.S.C. §~~
17 ~~170(e)(2)(D), or its successor.~~

18 ~~(c) If an entity that met the requirements of this section at its formation at any time ceases~~
19 ~~to satisfy any one of the requirements, it shall immediately cease to be a low profit limited liability~~
20 ~~company, but by continuing to meet all the other requirements of this chapter, will continue to exist~~
21 ~~as a limited liability company. The name of the entity must be changed to be in conformance with~~
22 ~~§ 7-16-9.~~

23 ~~(d) Nothing in this section shall prevent a limited liability company that is not organized~~
24 ~~under it from electing a charitable or educational purpose in whole or in part for doing business~~
25 ~~under this chapter.~~

26 ~~(e) Except as otherwise provided in this section, all provisions of the Rhode Island Limited~~
27 ~~Liability Act, chapter 16 of this title, applicable to domestic limited liability companies are~~
28 ~~applicable to low profit limited liability companies.~~

29 SECTION 2. Title 7 of the General Laws entitled "CORPORATIONS, ASSOCIATIONS,
30 AND PARTNERSHIPS" is hereby amended by adding thereto the following chapter:

31 CHAPTER 16.1

32 THE RHODE ISLAND LIMITED LIABILITY COMPANY ACT

33 ARTICLE 1

34 GENERAL PROVISIONS

35 **7-16.1-101. Short title.**

1 This chapter shall be known and may be cited as the "Uniform Limited Liability Company
2 Act".

3 **7-16.1-102. Definitions.**

4 As used in this chapter:

5 (1) "Certificate of organization" means the certificate required by § 7-16.1-201. The term
6 includes the certificate as amended or restated.

7 (2) "Contribution", except in the phrase "right of contribution", means property or a benefit
8 described in § 7-16.1-402 which is provided by a person to a limited liability company to become
9 a member or in the person's capacity as a member.

10 (3) "Debtor in bankruptcy" means a person that is the subject of:

11 (i) An order for relief under Title 11 of the United States Code or a comparable order under
12 a successor statute of general application; or

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

14 (4) "Distribution" means a transfer of money or other property from a limited liability
15 company to a person on account of a transferable interest or in the person's capacity as a member.

16 The term:

17 (i) Includes:

18 (A) A redemption or other purchase by a limited liability company of a transferable
19 interest; and

20 (B) A transfer to a member in return for the member's relinquishment of any right to
21 participate as a member in the management or conduct of the company's activities and affairs or to
22 have access to records or other information concerning the company's activities and affairs; and

23 (ii) Does not include amounts constituting reasonable compensation for present or past
24 service or payments made in the ordinary course of business under a bona fide retirement plan or
25 other bona fide benefits program.

26 (5) "Foreign limited liability company" means an unincorporated entity formed under the
27 law of a jurisdiction other than this state which would be a limited liability company if formed
28 under the law of this state.

29 (6) "Jurisdiction", used to refer to a political entity, means the United States, a state, a
30 foreign county, or a political subdivision of a foreign country.

31 (7) "Jurisdiction of formation" means the jurisdiction whose law governs the internal
32 affairs of an entity.

33 (8) "Limited liability company", except in the phrase "foreign limited liability company"
34 and in Article 10, means an entity formed under this chapter or which becomes subject to this

1 chapter under Article 10 or § 7-16.1-110.

2 (9) “Manager” means a person that under the operating agreement of a manager-managed
3 limited liability company is responsible, alone or in concert with others, for performing the
4 management functions stated in § 7-16.1-407(c).

5 (10) “Manager-managed limited liability company” means a limited liability company that
6 qualifies under § 7-16.1-407(a).

7 (11) “Member” means a person that:

8 (i) Has become a member of a limited liability company under § 7-16.1-401 or was a
9 member in a company when the company became subject to this chapter under § 7-16.1-110; and

10 (ii) Has not dissociated under § 7-16.1-602.

11 (12) “Member-managed limited liability company” means a limited liability company that
12 is not a manager-managed limited liability company.

13 (13) “Operating agreement” means the agreement, whether or not referred to as an
14 operating agreement and whether oral, implied, in a record, or in any combination thereof, of all
15 the members of a limited liability company, including a sole member, concerning the matters
16 described in § 7-16.1-105(a). The term includes the agreement as amended or restated.

17 (14) “Organizer” means a person that acts under § 7-16.1-201 to form a limited liability
18 company.

19 (15) “Person” means an individual, business corporation, nonprofit corporation,
20 partnership, limited partnership, limited liability company, general cooperative association, limited
21 cooperative association, unincorporated nonprofit association, statutory trust, business trust,
22 common-law business trust, estate, trust, association, joint venture, public corporation, government
23 or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

24 (16) “Principal office” means the principal executive office of a limited liability company
25 or foreign limited liability company, whether or not the office is located in this state.

26 (17) “Property” means all property, whether real, personal, or mixed or tangible or
27 intangible, or any right or interest therein.

28 (18) “Record”, used as a noun, means information that is inscribed on a tangible medium
29 or that is stored in an electronic or other medium and is retrievable in perceivable form.

30 (19) “Registered agent” means an agent of a limited liability company or foreign limited
31 liability company which is authorized to receive service of any process, notice, or demand required
32 or permitted by law to be served on the company.

33 (20) “Registered foreign limited liability company” means a foreign limited liability
34 company that is registered to do business in this state pursuant to a statement of registration filed

1 by the secretary of state.

2 (21) “Sign” means, with present intent to authenticate or adopt a record:

3 (i) To execute or adopt a tangible symbol; or

4 (ii) To attach to or logically associate with the record an electronic symbol, sound, or
5 process.

6 (22) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
7 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the
8 United States.

9 (23) “Transfer” includes:

10 (i) An assignment;

11 (ii) A conveyance;

12 (iii) A sale;

13 (iv) A lease;

14 (v) An encumbrance, including a mortgage or security interest;

15 (vi) A gift; and

16 (vii) A transfer by operation of law.

17 (24) “Transferable interest” means the right, as initially owned by a person in the person’s
18 capacity as a member, to receive distributions from a limited liability company, whether or not the
19 person remains a member or continues to own any part of the right. The term applies to any fraction
20 of the interest, by whomever owned.

21 (25) “Transferee” means a person to which all or part of a transferable interest has been
22 transferred, whether or not the transferor is a member. The term includes a person that owns a
23 transferable interest under § 7-16.1-603(a)(3).

24 **7-16.1-103. Knowledge - notice.**

25 (a) A person knows a fact if the person:

26 (1) Has actual knowledge of it; or

27 (2) Is deemed to know it under subsection (d)(1) of this section or law other than this
28 chapter.

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

30 (1) Has reason to know the fact from all the facts known to the person at the time in
31 question; or

32 (2) Is deemed to have notice of the fact under subsection (d)(2) of this section.

33 (c) Subject to § 7-16.1-210(f), a person notifies another person of a fact by taking steps
34 reasonably required to inform the other person in ordinary course, whether or not those steps cause

1 the other person to know the fact.
2 (d) A person not a member is deemed:
3 (1) To know of a limitation on authority to transfer real property as provided in § 7-16.1-
4 302(g); and
5 (2) To have notice of a limited liability company's:
6 (i) Dissolution ninety (90) days after a statement of dissolution under § 7-16.1-702(b)(2)(i)
7 becomes effective;
8 (ii) Termination ninety (90) days after a statement of termination under § 7-16.1-
9 702(b)(2)(vi) becomes effective; and
10 (iii) Participation in a merger, interest exchange, conversion, or domestication, ninety (90)
11 days after articles of merger, interest exchange, conversion, or domestication under Article 10
12 become effective.

13 **7-16.1-104. Governing law.**

14 The law of this state governs:

15 (1) The internal affairs of a limited liability company; and
16 (2) The liability of a member as member and a manager as manager for a debt, obligation,
17 or other liability of a limited liability company.

18 **7-16.1-105. Operating agreement – Scope, function and limitations.**

19 (a) Except as otherwise provided in subsections (c) and (d) of this section, the operating
20 agreement governs:

21 (1) Relations among the members as members and between the members and the limited
22 liability company;

23 (2) The rights and duties under this chapter of a person in the capacity of manager;

24 (3) The activities and affairs of the company and the conduct of those activities and affairs;
25 and

26 (4) The means and conditions for amending the operating agreement.

27 (b) To the extent the operating agreement does not provide for a matter described in
28 subsection (a) of this section, this chapter governs the matter.

29 (c) An operating agreement may not:

30 (1) Vary the law applicable under § 7-16.1-104;

31 (2) Vary a limited liability company's capacity under § 7-16.1-109 to sue and be sued in
32 its own name;

33 (3) Vary any requirement, procedure, or other provision of this chapter pertaining to:

34 (i) Registered agents; or

1 (ii) The secretary of state, including provisions pertaining to records authorized or required
2 to be delivered to the secretary of state for filing under this chapter;
3 (4) Vary the provisions of § 7-16.1-204;
4 (5) Alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided
5 in subsection (d) of this section;
6 (6) Eliminate the contractual obligation of good faith and fair dealing under § 7-16.1-
7 409(d), but the operating agreement may prescribe the standards, if not manifestly unreasonable,
8 by which the performance of the obligation is to be measured;
9 (7) Relieve or exonerate a person from liability for conduct involving bad faith, willful or
10 intentional misconduct, or knowing violation of law;
11 (8) Unreasonably restrict the duties and rights under § 7-16.1-410, but the operating
12 agreement may impose reasonable restrictions on the availability and use of information obtained
13 under that section and may define appropriate remedies, including liquidated damages, for a breach
14 of any reasonable restriction on use;
15 (9) Vary the causes of dissolution specified in § 7-16.1-701(a)(4);
16 (10) Vary the requirement to wind up the company’s activities and affairs as specified in
17 §§ 7-16.1-702(a), (b)(1), and (e);
18 (11) Unreasonably restrict the right of a member to maintain an action under Article 8;
19 (12) Vary the provisions of § 7-16.1-805, but the operating agreement may provide that the
20 company may not have a special litigation committee;
21 (13) Vary the right of a member to approve a merger, interest exchange, conversion, or
22 domestication under § 7-16.1-1023(a)(2), § 7-16.1-1033(a)(2), § 7-16.1-1043(a)(2), or § 7-16.1-
23 1053(a)(2);
24 (14) Vary the required contents of a plan of merger under § 7-16.1-1022(a), plan of interest
25 exchange under § 7-16.1-1032(a), plan of conversion under § 7-16.1-1042(a), or plan of
26 domestication under § 7-16.1-1052(a); or
27 (15) Except as otherwise provided in §§ 106 and 107(b) of this chapter, restrict the rights
28 under this chapter of a person other than a member or manager.
29 (d) Subject to subsection (c)(7) of this section, without limiting other terms that may be
30 included in an operating agreement, the following rules apply:
31 (1) The operating agreement may:
32 (i) Specify the method by which a specific act or transaction that would otherwise violate
33 the duty of loyalty may be authorized or ratified by one or more disinterested and independent
34 persons after full disclosure of all material facts; and

1 (ii) Alter the prohibition in § 7-16.1-405(a)(2) in order that the prohibition requires only
2 that the company's total assets not be less than the sum of its total liabilities.

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

8 (3) If not manifestly unreasonable, the operating agreement may:

9 (i) Alter or eliminate the aspects of the duty of loyalty stated in § 7-16.1-409(b) and (i);

10 (ii) Identify specific types or categories of activities that do not violate the duty of loyalty;

11 (iii) Alter the duty of care, but may not authorize conduct involving bad faith, willful or
12 intentional misconduct, or knowing violation of law; and

13 (iv) Alter or eliminate any other fiduciary duty.

14 (e) The court shall decide as a matter of law whether a term of an operating agreement is
15 manifestly unreasonable under subsections (c)(6) or (d)(3) of this section. The court:

16 (1) Shall make its determination as of the time the challenged term became part of the
17 operating agreement and by considering only circumstances existing at that time; and

18 (2) May invalidate the term only if, in light of the purposes, activities, and affairs of the
19 limited liability company, it is readily apparent that:

20 (i) The objective of the term is unreasonable; or

21 (ii) The term is an unreasonable means to achieve the term's objective.

22 **7-16.1-106. Operating agreement - Effect on limited liability company and person**
23 **becoming member - Preformation agreement.**

24 (a) A limited liability company is bound by and may enforce the operating agreement,
25 whether or not the company has itself manifested assent to the operating agreement.

26 (b) A person that becomes a member is deemed to assent to the operating agreement.

27 (c) Two (2) or more persons intending to become the initial members of a limited liability
28 company may make an agreement providing that upon the formation of the company the agreement
29 will become the operating agreement. One person intending to become the initial member of a
30 limited liability company may assent to terms providing that upon the formation of the company
31 the terms will become the operating agreement.

32 **7-16.1-107. Operating agreement - Effect on third parties and relationship to records**
33 **effective on behalf of limited liability company.**

34 (a) An operating agreement may specify that its amendment requires the approval of a

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

3 (b) The obligations of a limited liability company and its members to a person in the
4 person's capacity as a transferee or a person dissociated as a member are governed by the operating
5 agreement. Subject only to a court order issued under § 7-16.1-503(b)(2) to effectuate a charging
6 order, an amendment to the operating agreement made after a person becomes a transferee or is
7 dissociated as a member:

8 (1) Is effective with regard to any debt, obligation, or other liability of the limited liability
9 company or its members to the person in the person's capacity as a transferee or person dissociated
10 as a member; and

11 (2) Is not effective to the extent the amendment imposes a new debt, obligation, or other
12 liability on the transferee or person dissociated as a member.

13 (c) If a record delivered by a limited liability company to the secretary of state for filing
14 becomes effective and contains a provision that would be ineffective under §§ 7-16.1-105(c) or
15 (d)(3) if contained in the operating agreement, the provision is ineffective in the record.

16 (d) Subject to subsection (c) of this section, if a record delivered by a limited liability
17 company to the secretary of state for filing becomes effective and conflicts with a provision of the
18 operating agreement:

19 (1) The agreement prevails as to members, persons dissociated as members, transferees,
20 and managers; and

21 (2) The record prevails as to other persons to the extent they reasonably rely on the record.

22 **7-16.1-108. Nature, purpose, and duration of limited liability company.**

23 (a) A limited liability company is an entity distinct from its member or members.

24 (b) A limited liability company may have any lawful purpose, regardless of whether for
25 profit.

26 (c) A limited liability company has perpetual duration.

27 **7-16.1-109. Powers.**

28 A limited liability company has the capacity to sue and be sued in its own name and the
29 power to do all things necessary or convenient to carry on its activities and affairs.

30 **7-16.1-110. Application to existing relationships.**

31 (a) Before January 1, 2025, this chapter governs only:

32 (1) A limited liability company formed on or after the effective date of this chapter; and

33 (2) Except as otherwise provided in subsection (c) of this section, a limited liability
34 company formed before the effective date of this chapter which elects, in the manner provided in

1 its operating agreement or by law for amending the operating agreement, to be subject to this
2 chapter.

3 (b) Except as otherwise provided in subsection (c) of this section, on and after January 1,
4 2025 this chapter governs all limited liability companies.

5 (c) For purposes of applying this chapter to a limited liability company formed before the
6 effective date of this chapter:

7 (1) The company's articles of organization are deemed to be the company's certificate of
8 organization; and

9 (2) For purposes of applying § 7-16.1-102(10) and subject to § 7-16.1-107(d), language in
10 the company's articles of organization designating the company's management structure operates
11 as if that language were in the operating agreement.

12 **7-16.1-111. Supplemental principles of law.**

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

15 **7-16.1-112. Permitted names.**

16 (a) The name of a limited liability company shall contain the phrase "limited liability
17 company" or "limited company" or the abbreviation "L.L.C.", "LLC", "L.C.", or "LC". "Limited"
18 may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co."

19 (b) Except as otherwise provided in subsection (d) of this section, the name of a limited
20 liability company, and the name under which a foreign limited liability company may register to
21 do business in this state, shall be distinguishable on the records of the secretary of state from any:

22 (1) Name of an existing person whose formation required the filing of a record by the
23 secretary of state and which is not at the time administratively dissolved;

24 (2) Name of a limited liability partnership whose statement of qualification is in effect;

25 (3) Name under which a person is registered to do business in this state by the filing of a
26 record by the secretary of state;

27 (4) Name reserved under § 7-16.1-113 or other law of this state providing for the
28 reservation of a name by the filing of a record by the secretary of state;

29 (5) Name registered under § 7-16.1-114 or other law of this state providing for the
30 registration of a name by the filing of a record by the secretary of state; and

31 (6) Name registered under § 7-16.1-112.1.

32 (c) If a person consents in a record to the use of its name and submits an undertaking in a
33 form satisfactory to the secretary of state to change its name to a name that is distinguishable on
34 the records of the secretary of state from any name in any category of names in subsection (b) of

1 this section, the name of the consenting person may be used by the person to which the consent
2 was given.

3 (d) Except as otherwise provided in subsection (e) of this section, in determining whether
4 a name is the same as or not distinguishable on the records of the secretary of state from the name
5 of another person, words, phrases, or abbreviations indicating a type of person, such as
6 “corporation”, “corp.”, “incorporated”, “Inc.”, “professional corporation”, “P.C.”, “PC”,
7 “professional association”, “P.A.”, “PA”, “Limited”, “Ltd.”, “limited partnership”, “L.P.”, “LP”,
8 “limited liability partnership”, “L.L.P.”, “LLP”, “registered limited liability partnership”,
9 “R.L.L.P.”, “RLLP”, “limited liability limited partnership”, “L.L.L.P.”, “LLLLP”, “registered
10 limited liability limited partnership”, “R.L.L.L.P.”, “RLLLLP”, “limited liability company”,
11 “L.L.C.”, “LLC”, “limited cooperative association”, “limited cooperative”, or “L.C.A.”, or “LCA”
12 may not be taken into account.

13 (e) A person may consent in a record to the use of a name that is not distinguishable on the
14 records of the secretary of state from its name except for the addition of a word, phrase, or
15 abbreviation indicating the type of person as provided in subsection (d) of this section. In such a
16 case, the person need not change its name pursuant to subsection (c) of this section.

17 (f) The name of a limited liability company or foreign limited liability company shall not
18 contain any obscene language, any language that indicates or implies the entity is connected to or
19 associated with a government agency, or any language that implies the entity is organized for illegal
20 or impermissible purposes.

21 (g) A limited liability company or foreign limited liability company may use a name that
22 is not distinguishable from a name described in subsections (b)(1) through (b)(6) of this section if
23 the company delivers to the secretary of state a certified copy of a final judgment of a court of
24 competent jurisdiction establishing the right of the company to use the name in this state.

25 **7-16.1-112.1. Fictitious business name.**

26 (a) Any domestic or foreign limited liability company organized under the laws of, or
27 registered or qualified to do business in, this state may transact business in this state under a
28 fictitious name provided that it files a fictitious business name statement in accordance with this
29 section.

30 (b) A fictitious business name statement shall be filed with the secretary of state and shall
31 be executed by an authorized person of the domestic limited liability company or by a person with
32 authority to do so under the laws of the state or other jurisdiction of the organization of the foreign
33 limited liability company and shall set forth:

34 (1) The fictitious business name to be used; and

1 (2) The name of the applicant limited liability company, the state or other jurisdiction in
2 which the limited liability company is organized and date of the limited liability company's
3 organization.

4 (c) The fictitious business name statement expires upon the filing of a statement of
5 abandonment of use of a fictitious business name registered in accordance with this section or upon
6 the dissolution of the applicant domestic limited liability company or the cancellation of registration
7 of the applicant foreign limited liability company.

8 (d) The statement of abandonment of use of a fictitious business name under this section
9 shall be filed with the secretary of state, shall be executed in the same manner as provided in
10 subsection (b) of this section, and shall set forth:

11 (1) The fictitious business name being abandoned;

12 (2) The date on which the original fictitious business name statement being abandoned was
13 filed; and

14 (3) The information set forth in section (b)(2) of this section.

15 (e) No domestic or foreign limited liability company transacting business under a fictitious
16 business name contrary to the provisions of this section, or its assignee, shall maintain any action
17 upon or on account of any contract made, or transaction had, in the fictitious business name in any
18 court of the state until a fictitious business name statement has been filed in accordance with this
19 section.

20 (f) No limited liability company shall be permitted to transact business under a fictitious
21 business name pursuant to this section that is the same as the name of any corporation, limited
22 partnership or domestic or foreign limited liability company organized under the laws of, or
23 registered or qualified to do business in, this state or any name that is filed, reserved, or registered
24 under this chapter, subject to the following:

25 (1) This subsection does not apply if the applicant files with the secretary of state a certified
26 copy of a final decree of a court of competent jurisdiction establishing the prior right of the
27 applicant to the use of the name in this state; and

28 (2) The name may be the same as the name of a corporation, non-business corporation, or
29 other entity, the certificate of incorporation or organization of which has been revoked by the
30 secretary of state as permitted by law and the revocation has not been withdrawn within one year
31 from the date of revocation.

32 (3) Words or abbreviations that are required by statute to identify the particular type of
33 entity shall be disregarded when determining if a name is distinguishable upon the records of the
34 secretary of state.

1 (g) The secretary of state shall promulgate rules and regulations defining the term
2 “distinguishable upon the record” for the administration of this chapter.

3 (h) A filing fee of fifty dollars (\$50.00) shall be collected by the secretary of state for each
4 statement filed.

5 **7-16.1-113. Reservation of name.**

6 (a) A person may reserve the exclusive use of a name that complies with § 7-16.1-112 by
7 delivering an application to the secretary of state for filing. The application shall state the name and
8 address of the applicant and the name to be reserved. If the secretary of state finds that the name is
9 available, the secretary of state shall reserve the name for the applicant’s exclusive use for one
10 hundred twenty (120) days.

11 (b) The owner of a reserved name may transfer the reservation to another person by
12 delivering to the secretary of state a signed notice in a record of the transfer which states the name
13 and address of the person to which the reservation is being transferred.

14 **7-16.1-114. Registration of name.**

15 (a) A foreign limited liability company not registered to do business in this state under
16 Article 9 may register its name, or an alternate name adopted pursuant to § 7-16.1-906, if the name
17 is distinguishable on the records of the secretary of state from the names that are not available under
18 § 7-16.1-112.

19 (b) To register its name or an alternate name adopted pursuant to § 7-16.1-906, a foreign
20 limited liability company shall deliver to the secretary of state for filing an application stating the
21 company’s name, the jurisdiction and date of its formation, and any alternate name adopted
22 pursuant to § 7-16.1-906. If the secretary of state finds that the name applied for is available, the
23 secretary of state shall register the name for the applicant’s exclusive use.

24 (c) The registration of a name under this section is effective for one year after the date of
25 registration.

26 (d) A foreign limited liability company whose name registration is effective may renew the
27 registration for successive one-year periods by delivering, not earlier than three (3) months before
28 the expiration of the registration, to the secretary of state for filing a renewal application that
29 complies with this section. When filed, the renewal application renews the registration for a
30 succeeding one-year period.

31 (e) A foreign limited liability company whose name registration is effective may register
32 as a foreign limited liability company under the registered name or consent in a signed record to
33 the use of that name by another person that is not an individual.

34 **7-16.1-115. Registered agent.**

1 (a) Each limited liability company and each registered foreign limited liability company
2 shall designate and maintain a registered agent in this state. The designation of a registered agent
3 is an affirmation of fact by the limited liability company or registered foreign limited liability
4 company that the agent has consented to serve.

5 (b) A registered agent for a limited liability company or registered foreign limited liability
6 company shall have a place of business in this state.

7 (c) The only duties under this chapter of a registered agent that has complied with this
8 chapter are:

9 (1) To forward to the limited liability company or registered foreign limited liability
10 company at the address most recently supplied to the agent by the company or foreign company
11 any process, notice, or demand pertaining to the company or foreign company which is served on
12 or received by the agent;

13 (2) If the registered agent resigns, to provide the notice required by § 7-16.1-117(c) to the
14 company or foreign company at the address most recently supplied to the agent by the company or
15 foreign company; and

16 (3) To keep current the information with respect to the agent in the certificate of
17 organization or foreign registration statement.

18 **7-16.1-116. Change of registered agent or address for registered agent by limited**
19 **liability company.**

20 (a) A limited liability company or registered foreign limited liability company may change
21 its registered agent or the address of its registered agent by delivering to the secretary of state for
22 filing a statement of change that states:

23 (1) The name of the company or foreign company; and

24 (2) The information that is to be in effect as a result of the filing of the statement of change.

25 (b) The members or managers of a limited liability company need not approve the delivery
26 to the secretary of state filing of:

27 (1) A statement of change under this section; or

28 (2) A similar filing changing the registered agent or registered office, if any, of the
29 company in any other jurisdiction.

30 (c) A statement of change under this section designating a new registered agent is an
31 affirmation of fact by the limited liability company or registered foreign limited liability company
32 that the agent has consented to serve.

33 (d) As an alternative to using the procedure in this section, a limited liability company may
34 amend its certificate of organization.

1 **7-16.1-117. Resignation of registered agent.**

2 (a) A registered agent may resign as an agent for a limited liability company or registered
3 foreign limited liability company by delivering to the secretary of state for filing a statement of
4 resignation that states:

5 (1) The name of the company or foreign company;

6 (2) The name of the agent;

7 (3) That the agent resigns from serving as registered agent for the company or foreign
8 company; and

9 (4) The address of the company or foreign company to which the agent will send the notice
10 required by subsection (c) of this section.

11 (b) A statement of resignation takes effect on the earlier of:

12 (1) The thirty-first day after the day on which it is filed by the secretary of state; or

13 (2) The designation of a new registered agent for the limited liability company or registered
14 foreign limited liability company.

15 (c) A registered agent promptly shall furnish to the limited liability company or registered
16 foreign limited liability company notice in a record of the date on which a statement of resignation
17 was filed.

18 (d) When a statement of resignation takes effect, the registered agent ceases to have
19 responsibility under this chapter for any matter thereafter tendered to it as agent for the limited
20 liability company or registered foreign limited liability company. The resignation does not affect
21 any contractual rights the company or foreign company has against the agent or that the agent has
22 against the company or foreign company.

23 (e) A registered agent may resign with respect to a limited liability company or registered
24 foreign limited liability company whether or not the company or foreign company is in good
25 standing.

26 **7-16.1-118. Change of name or address by registered agent.**

27 (a) If a registered agent changes its name or address, the agent may deliver to the secretary
28 of state for filing a statement of change that states:

29 (1) The name of the limited liability company or registered foreign limited liability
30 company represented by the registered agent;

31 (2) The name of the agent as currently shown in the records of the secretary of state for the
32 company or foreign company;

33 (3) If the name of the agent has changed, its new name; and

34 (4) If the address of the agent has changed, its new address.

1 (b) A registered agent promptly shall furnish notice to the represented limited liability
2 company or registered foreign limited liability company of the filing by the secretary of state of the
3 statement of change and the changes made by the statement.

4 **7-16.1-119. Service of process, notice, or demand.**

5 (a) A limited liability company or registered foreign limited liability company may be
6 served with any process, notice, or demand required or permitted by law by serving its registered
7 agent.

8 (b) If a limited liability company or registered foreign limited liability company ceases to
9 have a registered agent, or if its registered agent cannot with reasonable diligence be served, the
10 company or foreign company may be served by registered or certified mail, return receipt
11 requested, or by similar commercial delivery service, addressed to the company or foreign company
12 at its principal office. The address of the principal office shall be as shown on the company's or
13 foreign company's most recent annual report filed by the secretary of state. Service is affected
14 under this subsection on the earliest of:

15 (1) The date the company or foreign company receives the mail or delivery by the
16 commercial delivery service;

17 (2) The date shown on the return receipt, if signed by the company or foreign company; or

18 (3) Five (5) days after its deposit with the United States Postal Service, or with the
19 commercial delivery service, if correctly addressed and with sufficient postage or payment.

20 (c) If process, notice, or demand cannot be served on a limited liability company or
21 registered foreign limited liability company pursuant to subsections (a) or (b) of this section, service
22 may be made by handing a copy to the individual in charge of any regular place of business or
23 activity of the company or foreign company if the individual served is not a plaintiff in the action.

24 (d) Service of process, notice, or demand on a registered agent shall be in a written record.

25 (e) Service of process, notice, or demand may be made by other means under law other
26 than this chapter.

27 **7-16.1-120. Delivery of record.**

28 (a) Except as otherwise provided in this chapter, permissible means of delivery of a record
29 include delivery by hand, mail, conventional commercial practice, and electronic transmission.

30 (b) Delivery to the secretary of state is effective only when a record is received by the
31 secretary of state.

32 **7-16.1-121. Reservation of power to amend or repeal.**

33 The general assembly has power to amend or repeal all or part of this chapter at any time,
34 and all limited liability companies and foreign limited liability companies subject to this chapter

1 are governed by the amendment or repeal.

2 ARTICLE 2

3 FORMATION - CERTIFICATE OF ORGANIZATION AND OTHER FILINGS

4 **7-16.1-201. Formation of limited liability company - Certificate of organization.**

5 (a) One or more persons may act as organizers to form a limited liability company by
6 delivering to the secretary of state for filing a certificate of organization.

7 (b) A certificate of organization shall state:

8 (1) The name of the limited liability company, which shall comply with § 7-16.1-112;

9 (2) The street and mailing addresses of the company's principal office; and

10 (3) The name and street and mailing addresses in this state of the company's registered
11 agent.

12 (c) A certificate of organization may contain statements as to matters other than those
13 required by subsection (b) of this section, but may not vary or otherwise affect the provisions
14 specified in §§ 7-16.1-105(c) and (d) in a manner inconsistent with that section. However, a
15 statement in a certificate of organization is not effective as a statement of authority.

16 (d) A limited liability company is formed when the certificate of organization becomes
17 effective and at least one person has become a member.

18 **7-16.1-202. Amendment or restatement of certificate of organization.**

19 (a) A certificate of organization may be amended or restated at any time.

20 (b) To amend its certificate of organization, a limited liability company shall deliver to the
21 secretary of state for filing an amendment stating:

22 (1) The name of the company;

23 (2) The date of filing of its initial certificate; and

24 (3) The text of the amendment.

25 (c) To restate its certificate of organization, a limited liability company shall deliver to the
26 secretary of state for filing a restatement, designated as such in its heading.

27 (d) If a member of a member-managed limited liability company, or a manager of a
28 manager-managed limited liability company, knows that any information in a filed certificate of
29 organization was inaccurate when the certificate was filed or has become inaccurate due to changed
30 circumstances, the member or manager shall promptly:

31 (1) Cause the certificate to be amended; or

32 (2) If appropriate, deliver to the secretary of state for filing a statement of change under §
33 7-16.1-116 or a statement of correction under § 7-16.1-209.

34 **7-16.1-203. Signing of records to be delivered for filing to secretary of state.**

1 (a) A record delivered to the secretary of state for filing pursuant to this chapter shall be
2 signed as follows:

3 (1) Except as otherwise provided in subsections (a)(2) and (a)(3) of this section, a record
4 signed by a limited liability company shall be signed by a person authorized by the company.

5 (2) A company's initial certificate of organization shall be signed by at least one person
6 acting as an organizer.

7 (3) A record delivered on behalf of a dissolved company that has no member shall be signed
8 by the person winding up the company's activities and affairs under § 7-16.1-702(c) or a person
9 appointed under § 7-16.1-702(d) to wind up the activities and affairs.

10 (4) A statement of denial by a person under § 7-16.1-303 shall be signed by that person.

11 (5) Any other record delivered on behalf of a person to the secretary of state for filing shall
12 be signed by that person.

13 (b) A record delivered for filing under this chapter may be signed by an agent. Whenever
14 this chapter requires a particular individual to sign a record and the individual is deceased or
15 incompetent, the record may be signed by a legal representative of the individual.

16 (c) A person that signs a record as an agent or legal representative affirms as a fact that the
17 person is authorized to sign the record.

18 **7-16.1-204. Signing and filing pursuant to judicial order.**

19 (a) If a person required by this chapter to sign a record or deliver a record to the secretary
20 of state for filing under this chapter does not do so, any other person that is aggrieved may petition
21 the superior court to order:

22 (1) The person to sign the record;

23 (2) The person to deliver the record to the secretary of state for filing; or

24 (3) The secretary of state to file the record unsigned.

25 (b) If a petitioner under subsection (a) of this section is not the limited liability company
26 or foreign limited liability company to which the record pertains, the petitioner shall make the
27 company or foreign company a party to the action.

28 (c) A record filed under subsection (a)(3) of this section is effective without being signed.

29 **7-16.1-205. Liability for inaccurate information in filed record.**

30 (a) If a record delivered to the secretary of state for filing under this chapter and filed by
31 the secretary of state contains inaccurate information, a person that suffers loss by reliance on the
32 information may recover damages for the loss from:

33 (1) A person that signed the record, or caused another to sign it on the person's behalf, and
34 knew the information to be inaccurate at the time the record was signed; and

1 (2) Subject to subsection (b) of this section, a member of a member-managed limited
2 liability company or a manager of a manager-managed limited liability company if:

3 (i) The record was delivered for filing on behalf of the company; and

4 (ii) The member or manager knew or had notice of the inaccuracy for a reasonably
5 sufficient time before the information was relied upon so that, before the reliance, the member or
6 manager reasonably could have:

7 (A) Effected an amendment under § 7-16.1-202;

8 (B) Filed a petition under § 7-16.1-204; or

9 (C) Delivered to the secretary of state for filing a statement of change under § 7-16.1-116
10 or a statement of correction under § 7-16.1-209.

11 (b) To the extent the operating agreement of a member-managed limited liability company
12 expressly relieves a member of responsibility for maintaining the accuracy of information
13 contained in records delivered on behalf of the company to the secretary of state for filing under
14 this chapter and imposes that responsibility on one or more other members, the liability stated in
15 subsection (a)(2) of this section applies to those other members and not to the member that the
16 operating agreement relieves of the responsibility.

17 (c) An individual who signs a record authorized or required to be filed under this chapter
18 affirms under penalty of perjury that the information stated in the record is accurate.

19 **7-16.1-206. Filing requirements.**

20 (a) To be filed by the secretary of state pursuant to this chapter, a record shall be received
21 by the secretary of state, comply with this chapter, and satisfy the following:

22 (1) The filing of the record shall be required or permitted by this chapter.

23 (2) The record shall be physically delivered in written form unless and to the extent the
24 secretary of state permits electronic delivery of records.

25 (3) The words in the record shall be in English, and numbers must be in Arabic or Roman
26 numerals, but the name of an entity need not be in English if written in English letters or Arabic or
27 Roman numerals.

28 (4) The record shall be signed by a person authorized or required under this chapter to sign
29 the record.

30 (5) The record shall state the name and capacity, if any, of each individual who signed it,
31 either on behalf of the individual or the person authorized or required to sign the record, but need
32 not contain a seal, attestation, acknowledgment, or verification.

33 (b) If law other than this chapter prohibits the disclosure by the secretary of state of
34 information contained in a record delivered to the secretary of state for filing, the secretary of state

1 shall file the record if the record otherwise complies with this chapter but may redact the
2 information.

3 (c) When a record is delivered to the secretary of state for filing, any fee required under
4 this chapter and any fee, tax, interest, or penalty required to be paid under this chapter or law other
5 than this chapter must be paid in a manner permitted by the secretary of state or by that law.

6 (d) The secretary of state shall require that a record delivered in written form be
7 accompanied by an identical or conformed copy.

8 (e) The secretary of state shall provide forms for filings required or permitted to be made
9 by this chapter, but, except as otherwise provided in subsection (f) of this section, their use is not
10 required.

11 (f) The secretary of state shall require that a cover sheet for a filing be on a form prescribed
12 by the secretary of state.

13 **7-16.1-207. Effective date and time.**

14 Except as otherwise provided in § 7-16.1-208 and subject to § 7-16.1-209(d), a record filed
15 under this chapter is effective:

16 (1) On the date and at the time of its filing by the secretary of state, as provided in § 7-
17 16.1-210(b);

18 (2) On the date of filing and at the time specified in the record as its effective time, if later
19 than the time under subsection (1) of this section;

20 (3) At a specified delayed effective date and time, which may not be more than ninety (90)
21 days after the date of filing; or

22 (4) If a delayed effective date is specified, but no time is specified, at 12:01 a.m. on the
23 date specified, which shall not be more than ninety (90) days after the date of filing.

24 **7-16.1-208. Withdrawal of filed record before effectiveness.**

25 (a) Except as otherwise provided in §§ 7-16.1-1024, 7-16.1-1034, 7-16.1-1044, and 7-16.1-
26 1054, a record delivered to the secretary of state for filing may be withdrawn before it takes effect
27 by delivering to the secretary of state for filing a statement of withdrawal.

28 (b) A statement of withdrawal shall:

29 (1) Be signed by each person that signed the record being withdrawn, except as otherwise
30 agreed by those persons;

31 (2) Identify the record to be withdrawn; and

32 (3) If signed by fewer than all the persons that signed the record being withdrawn, state
33 that the record is withdrawn in accordance with the agreement of all the persons that signed the
34 record.

1 (c) On filing by the secretary of state of a statement of withdrawal, the action or transaction
2 evidenced by the original record does not take effect.

3 **7-16.1-209. Correcting filed record.**

4 (a) A person on whose behalf a filed record was delivered to the secretary of state for filing
5 may correct the record if:

6 (1) The record at the time of filing was inaccurate;

7 (2) The record was defectively signed; or

8 (3) The electronic transmission of the record to the secretary of state was defective.

9 (b) To correct a filed record, a person on whose behalf the record was delivered to the
10 secretary of state shall deliver to the secretary of state for filing a statement of correction.

11 (c) A statement of correction:

12 (1) Shall not state a delayed effective date;

13 (2) Shall be signed by the person correcting the filed record;

14 (3) Shall identify the filed record to be corrected;

15 (4) Shall specify the inaccuracy or defect to be corrected; and

16 (5) Shall correct the inaccuracy or defect.

17 (d) A statement of correction is effective as of the effective date of the filed record that it
18 corrects except for purposes of § 7-16.1-103(d) and as to persons relying on the uncorrected filed
19 record and adversely affected by the correction. For those purposes and as to those persons, the
20 statement of correction is effective when filed.

21 **7-16.1-210. Duty of secretary of state to file - Review of refusal to file - Delivery of**
22 **record by secretary of state.**

23 (a) The secretary of state shall file a record delivered to the secretary of state for filing
24 which satisfies this chapter. The duty of the secretary of state under this section is ministerial.

25 (b) When the secretary of state files a record, the secretary of state shall record it as filed
26 on the date and at the time of its delivery. After filing a record, the secretary of state shall deliver
27 to the person that submitted the record a copy of the record with an acknowledgment of the date
28 and time of filing and, in the case of a statement of denial, also to the limited liability company to
29 which the statement pertains.

30 (c) If the secretary of state refuses to file a record, the secretary of state shall, not later than
31 fifteen (15) business days after the record is delivered:

32 (1) Return the record or notify the person that submitted the record of the refusal; and

33 (2) Provide a brief explanation in a record of the reason for the refusal.

34 (d) If the secretary of state refuses to file a record, the person that submitted the record may

1 petition the superior court to compel filing of the record. The record and the explanation of the
2 secretary of state of the refusal to file shall be attached to the petition. The court may decide the
3 matter in a summary proceeding.

4 (e) The filing of or refusal to file a record does not:

5 (1) Affect the validity or invalidity of the record in whole or in part; or

6 (2) Create a presumption that the information contained in the record is correct or incorrect.

7 (f) Except as otherwise provided by § 7-16.1-119 or by law other than this chapter, the
8 secretary of state may deliver any record to a person by delivering it:

9 (1) In person to the person that submitted it;

10 (2) To the address of the person's registered agent;

11 (3) To the principal office of the person; or

12 (4) To another address the person provides to the secretary of state for delivery.

13 **7-16.1-211. Certificate of good standing or registration.**

14 (a) On request of any person, the secretary of state shall issue a certificate of good standing
15 for a limited liability company or a certificate of registration for a registered foreign limited liability
16 company.

17 (b) A certificate under subsection (a) of this section shall state:

18 (1) The limited liability company's name or the registered foreign limited liability
19 company's name used in this state;

20 (2) In the case of a limited liability company:

21 (i) That a certificate of organization has been filed and has taken effect;

22 (ii) The date the certificate became effective;

23 (iii) The period of the company's duration if the records of the secretary of state reflect that
24 its period of duration is less than perpetual; and

25 (iv) That:

26 (A) No statement of dissolution, statement of administrative dissolution, or statement of
27 termination has been filed;

28 (B) The records of the secretary of state do not otherwise reflect that the company has been
29 dissolved or terminated; and

30 (C) A proceeding is not pending under § 7-16.1-708;

31 (3) In the case of a registered foreign limited liability company, that it is registered to do
32 business in this state:

33 (i) That all fees, taxes, interest, and penalties owed to this state by the limited liability
34 company or foreign limited liability company and collected through the secretary of state have been

1 paid, if:

2 (A) Payment is reflected in the records of the secretary of state; and

3 (B) Nonpayment affects the good standing or registration of the company or foreign
4 company;

5 (ii) That the most recent annual report required by § 7-16.1-212 has been delivered to the
6 secretary of state for filing; and

7 (iii) Other facts reflected in the records of the secretary of state pertaining to the limited
8 liability company or foreign limited liability company which the person requesting the certificate
9 reasonably requests.

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

13 **7-16.1-212. Annual report for secretary of state.**

14 (a) A limited liability company or registered foreign limited liability company shall deliver
15 to the secretary of state for filing an annual report that states:

16 (1) The name of the company or foreign company;

17 (2) The name and street and mailing addresses of its registered agent in this state;

18 (3) The street and mailing addresses of its principal office;

19 (4) If the company is member managed, the name of at least one member;

20 (5) If the company is manager managed, the name of at least one manager; and

21 (6) In the case of a foreign company, its jurisdiction of formation and any alternate name
22 adopted under § 7-16.1-906(a).

23 (b) Information in the annual report shall be current as of the date the report is signed by
24 the limited liability company or registered foreign limited liability company.

25 (c) The first annual report shall be delivered to the secretary of state for filing between the
26 first day of February and the first day of May of the year following the calendar year in which the
27 limited liability company's certificate of organization became effective or the registered foreign
28 limited liability company registered to do business in this state. Subsequent annual reports must be
29 delivered to the secretary of state for filing between the first day of February and the first day of
30 May of each calendar year thereafter.

31 (d) If an annual report does not contain the information required by this section, the
32 secretary of state promptly shall notify the reporting limited liability company or registered foreign
33 limited liability company in a record and return the report for correction.

34 (e) If an annual report contains the name or address of a registered agent which differs from

1 the information shown in the records of the secretary of state immediately before the report
2 becomes effective, the differing information in the report is considered a statement of change under
3 § 7-16.1-116.

4 ARTICLE 3

5 RELATIONS OF MEMBERS AND MANAGERS TO PERSONS DEALING WITH LIMITED 6 LIABILITY COMPANY

7 **7-16.1-301. No agency power of member as member.**

8 (a) A member is not an agent of a limited liability company solely by reason of being a
9 member.

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

12 **7-16.1-302. Statement of limited liability company authority.**

13 (a) A limited liability company may deliver to the secretary of state for filing a statement
14 of authority. The statement:

15 (1) Shall include the name of the company and the name and street and mailing addresses
16 of its registered agent;

17 (2) With respect to any position that exists in or with respect to the company, shall state
18 the authority, or limitations on the authority, of all persons holding the position to:

19 (i) Sign an instrument transferring real property held in the name of the company; or

20 (ii) Enter into other transactions on behalf of, or otherwise act for or bind, the company;

21 and

22 (3) Shall state the authority, or limitations on the authority, of a specific person to:

23 (i) Sign an instrument transferring real property held in the name of the company; or

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

25 (b) To amend or cancel a statement of authority filed by the secretary of state, a limited
26 liability company shall deliver to the secretary of state for filing an amendment or cancellation
27 stating:

28 (1) The name of the company;

29 (2) The name and street and mailing addresses of the company's registered agent;

30 (3) The date the statement being affected became effective; and

31 (4) The contents of the amendment or a declaration that the statement is canceled.

32 (c) A statement of authority affects only the power of a person to bind a limited liability
33 company to persons that are not members.

34 (d) Subject to subsection (c) of this section and § 7-16.1-103(d), and except as otherwise

1 provided in subsections (f), (g), and (h) of this section, a limitation on the authority of a person or
2 a position contained in an effective statement of authority is not by itself evidence of any person's
3 knowledge or notice of the limitation.

4 (e) Subject to subsection (c) of this section, a grant of authority not pertaining to transfers
5 of real property and contained in an effective statement of authority is conclusive in favor of a
6 person that gives value in reliance on the grant, except to the extent that when the person gives
7 value:

8 (1) The person has knowledge to the contrary;

9 (2) The statement has been canceled or restrictively amended under subsection (b) of this
10 section; or

11 (3) A limitation on the grant is contained in another statement of authority that became
12 effective after the statement containing the grant became effective.

13 (f) Subject to subsection (c) of this section, an effective statement of authority that grants
14 authority to transfer real property held in the name of the limited liability company, a certified copy
15 of which statement is recorded in the office for recording transfers of the real property, is conclusive
16 in favor of a person that gives value in reliance on the grant without knowledge to the contrary,
17 except to the extent that when the person gives value:

18 (1) The statement has been canceled or restrictively amended under subsection (b) of this
19 section, and a certified copy of the cancellation or restrictive amendment has been recorded in the
20 office for recording transfers of the real property; or

21 (2) A limitation on the grant is contained in another statement of authority that became
22 effective after the statement containing the grant became effective, and a certified copy of the later-
23 effective statement is recorded in the office for recording transfers of the real property.

24 (g) Subject to subsection (c) of this section, if a certified copy of an effective statement
25 containing a limitation on the authority to transfer real property held in the name of a limited
26 liability company is recorded in the office for recording transfers of that real property, all persons
27 are deemed to know of the limitation.

28 (h) Subject to subsection (i) of this section, an effective statement of dissolution or
29 termination is a cancellation of any filed statement of authority for the purposes of subsection (f)
30 of this section and is a limitation on authority for the purposes of subsection (g) of this section.

31 (i) After a statement of dissolution becomes effective, a limited liability company shall
32 deliver to the secretary of state for filing and, if appropriate, shall record a statement of authority
33 that is designated as a post-dissolution statement of authority. The statement operates as provided
34 in subsections (f) and (g) of this section.

1 (j) Unless earlier canceled, an effective statement of authority is canceled by operation of
2 law five (5) years after the date on which the statement, or its most recent amendment, becomes
3 effective. This cancellation operates without need for any recording under subsections (f) or (g) of
4 this section.

5 (k) An effective statement of denial operates as a restrictive amendment under this section
6 and shall be recorded by certified copy for purposes of subsection (f)(1) of this section.

7 **7-16.1-303. Statement of denial.**

8 A person named in a filed statement of authority granting that person authority shall deliver
9 to the secretary of state for filing a statement of denial that:

10 (1) Provides the name of the limited liability company and the caption of the statement of
11 authority to which the statement of denial pertains; and

12 (2) Denies the grant of authority.

13 **7-16.1-304. Liability of members and managers.**

14 (a) A debt, obligation, or other liability of a limited liability company is solely the debt,
15 obligation, or other liability of the company. A member or manager is not personally liable, directly
16 or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the
17 company solely by reason of being or acting as a member or manager. This subsection applies
18 regardless of the dissolution of the company.

19 (b) The failure of a limited liability company to observe formalities relating to the exercise
20 of its powers or management of its activities and affairs is not a ground for imposing liability on a
21 member or manager for a debt, obligation, or other liability of the company.

22 ARTICLE 4

23 RELATIONS OF MEMBERS TO EACH OTHER AND TO LIMITED LIABILITY COMPANY

24 **7-16.1-401. Becoming a member.**

25 (a) If a limited liability company is to have only one member upon formation, the person
26 becomes a member as agreed by that person and the organizer of the company. That person and the
27 organizer may be, but need not be, different persons. If different, the organizer acts on behalf of
28 the initial member.

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

33 (c) After formation of a limited liability company, a person becomes a member:

34 (1) As provided in the operating agreement;

- 1 (2) As the result of a transaction effective under Article 10;
2 (3) With the affirmative vote or consent of all the members; or
3 (4) As provided in § 7-16.1-701(a)(3).

4 (d) A person may become a member without:

- 5 (1) Acquiring a transferable interest; or
6 (2) Making or being obligated to make a contribution to the limited liability company.

7 **7-16.1-402. Form of contribution.**

8 A contribution may consist of property transferred to, services performed for, or another
9 benefit provided to the limited liability company or an agreement to transfer property to, perform
10 services for, or provide another benefit to the company.

11 **7-16.1-403. Liability for contributions.**

12 (a) A person's obligation to make a contribution to a limited liability company is not
13 excused by the person's death, disability, termination, or other inability to perform personally.

14 (b) If a person does not fulfill an obligation to make a contribution other than money, the
15 person is obligated at the option of the limited liability company to contribute money equal to the
16 value of the part of the contribution which has not been made.

17 (c) The obligation of a person to make a contribution may be compromised only by the
18 affirmative vote or consent of all the members. If a creditor of a limited liability company extends
19 credit or otherwise acts in reliance on an obligation described in subsection (a) of this section
20 without knowledge or notice of a compromise under this subsection, the creditor may enforce the
21 obligation.

22 **7-16.1-404. Sharing of and right to distributions before dissolution.**

23 (a) Any distribution made by a limited liability company before its dissolution and winding
24 up shall be in equal shares among members and persons dissociated as members, except to the
25 extent necessary to comply with a transfer effective under § 7-16.1-502 or charging order in effect
26 under § 7-16.1-503.

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

30 (c) A person does not have a right to demand or receive a distribution from a limited
31 liability company in any form other than money. Except as otherwise provided in § 7-16.1-707(d),
32 a company may distribute an asset in kind only if each part of the asset is fungible with each other
33 part and each person receives a percentage of the asset equal in value to the person's share of
34 distributions.

1 (d) If a member or transferee becomes entitled to receive a distribution, the member or
2 transferee has the status of, and is entitled to all remedies available to, a creditor of the limited
3 liability company with respect to the distribution. However, the company's obligation to make a
4 distribution is subject to offset for any amount owed to the company by the member or a person
5 dissociated as a member on whose account the distribution is made.

6 **7-16.1-405. Limitations on distributions.**

7 (a) A limited liability company shall not make a distribution, including a distribution under
8 § 7-16.1-707, if after the distribution:

9 (1) The company would not be able to pay its debts as they become due in the ordinary
10 course of the company's activities and affairs; or

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

15 (b) A limited liability company may base a determination that a distribution is not
16 prohibited under subsection (a) of this section on:

17 (1) Financial statements prepared on the basis of accounting practices and principles that
18 are reasonable in the circumstances; or

19 (2) A fair valuation or other method that is reasonable under the circumstances.

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

22 (1) In the case of a distribution as defined in § 7-16.1-102(4)(A), as of the earlier of:

23 (i) The date money or other property is transferred or debt is incurred by the limited liability
24 company; or

25 (ii) The date the person entitled to the distribution ceases to own the interest or right being
26 acquired by the company in return for the distribution;

27 (2) In the case of any other distribution of indebtedness, as of the date the indebtedness is
28 distributed; and

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

30 (i) The distribution is authorized, if the payment occurs not later than one hundred twenty
31 (120) days after that date; or

32 (ii) The payment is made, if the payment occurs more than one hundred twenty (120) days
33 after the distribution is authorized.

34 (d) A limited liability company's indebtedness to a member or transferee incurred by

1 reason of a distribution made in accordance with this section is at parity with the company's
2 indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement.

3 (e) A limited liability company's indebtedness, including indebtedness issued as a
4 distribution, is not a liability for purposes of subsection (a) of this section if the terms of the
5 indebtedness provide that payment of principal and interest is made only if and to the extent that
6 payment of a distribution could then be made under this section. If the indebtedness is issued as a
7 distribution, each payment of principal or interest is treated as a distribution, the effect of which is
8 measured on the date the payment is made.

9 (f) In measuring the effect of a distribution under § 7-16.1-707, the liabilities of a dissolved
10 limited liability company do not include any claim that has been disposed of under §§ 7-16.1-704,
11 7-16.1-705, or 7-16.1-706.

12 **7-16.1-406. Liability for improper distributions.**

13 (a) Except as otherwise provided in subsection (b) of this section, if a member of a member-
14 managed limited liability company or manager of a manager-managed limited liability company
15 consents to a distribution made in violation of § 7-16.1-405 and in consenting to the distribution
16 fails to comply with § 7-16.1-409, the member or manager is personally liable to the company for
17 the amount of the distribution which exceeds the amount that could have been distributed without
18 the violation of § 7-16.1-405.

19 (b) To the extent the operating agreement of a member-managed limited liability company
20 expressly relieves a member of the authority and responsibility to consent to distributions and
21 imposes that authority and responsibility on one or more other members, the liability stated in
22 subsection (a) of this section applies to the other members and not the member that the operating
23 agreement relieves of the authority and responsibility.

24 (c) A person that receives a distribution knowing that the distribution violated § 7-16.1-
25 405 is personally liable to the limited liability company but only to the extent that the distribution
26 received by the person exceeded the amount that could have been properly paid under § 7-16.1-
27 405.

28 (d) A person against which an action is commenced because the person is liable under
29 subsection (a) of this section may:

30 (1) Implead any other person that is liable under subsection (a) of this section and seek to
31 enforce a right of contribution from the person; and

32 (2) Implead any person that received a distribution in violation of subsection (c) of this
33 section and seek to enforce a right of contribution from the person in the amount the person received
34 in violation of subsection (c) of this section.

1 (e) An action under this section is barred unless commenced not later than two (2) years
2 after the distribution.

3 **7-16.1-407. Management of limited liability company.**

4 (a) A limited liability company is a member-managed limited liability company unless the
5 operating agreement:

6 (1) Expressly provides that:

7 (i) The company is or will be “manager-managed”;

8 (ii) The company is or will be “managed by managers”; or

9 (iii) Management of the company is or will be “vested in managers”; or

10 (2) Includes words of similar import.

11 (b) In a member-managed limited liability company, the following rules apply:

12 (1) Except as expressly provided in this chapter, the management and conduct of the
13 company are vested in the members.

14 (2) Each member has equal rights in the management and conduct of the company’s
15 activities and affairs.

16 (3) A difference arising among members as to a matter in the ordinary course of the
17 activities and affairs of the company may be decided by a majority of the members.

18 (4) The affirmative vote or consent of all the members is required to:

19 (i) Undertake an act outside the ordinary course of the activities and affairs of the company;
20 or

21 (ii) Amend the operating agreement.

22 (c) In a manager-managed limited liability company, the following rules apply:

23 (1) Except as expressly provided in this chapter, any matter relating to the activities and
24 affairs of the company is decided exclusively by the manager, or, if there is more than one manager,
25 by a majority of the managers.

26 (2) Each manager has equal rights in the management and conduct of the company’s
27 activities and affairs.

28 (3) The affirmative vote or consent of all members is required to:

29 (i) Undertake an act outside the ordinary course of the company’s activities and affairs; or

30 (ii) Amend the operating agreement.

31 (4) A manager may be chosen at any time by the affirmative vote or consent of a majority
32 of the members and remains a manager until a successor has been chosen, unless the manager at an
33 earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual,
34 terminates. A manager may be removed at any time by the affirmative vote or consent of a majority

1 of the members without notice or cause.

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

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

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

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

13 (f) A limited liability company shall reimburse a member for an advance to the company
14 beyond the amount of capital the member agreed to contribute.

15 (g) A payment or advance made by a member which gives rise to a limited liability
16 company obligation under subsection (f) of this section or § 7-16.1-408(a) constitutes a loan to the
17 company which accrues interest from the date of the payment or advance.

18 (h) A member is not entitled to remuneration for services performed for a member-
19 managed limited liability company, except for reasonable compensation for services rendered in
20 winding up the activities of the company.

21 **7-16.1-408. Reimbursement – Indemnification – Advancement - Insurance.**

22 (a) A limited liability company shall reimburse a member of a member-managed company
23 or the manager of a manager-managed company for any payment made by the member or manager
24 in the course of the member's or manager's activities on behalf of the company, if the member or
25 manager complied with §§ 7-16.1-405, 7-16.1-407, and 7-16.1-409 in making the payment.

26 (b) A limited liability company shall indemnify and hold harmless a person with respect to
27 any claim or demand against the person and any debt, obligation, or other liability incurred by the
28 person by reason of the person's former or present capacity as a member or manager, if the claim,
29 demand, debt, obligation, or other liability does not arise from the person's breach of §§ 7-16.1-
30 405, 7-16.1-407, or 7-16.1-409.

31 (c) In the ordinary course of its activities and affairs, a limited liability company may
32 advance reasonable expenses, including attorneys' fees and costs, incurred by a person in
33 connection with a claim or demand against the person by reason of the person's former or present
34 capacity as a member or manager, if the person promises to repay the company if the person

1 ultimately is determined not to be entitled to be indemnified under subsection (b) of this section.

2 (d) A limited liability company may purchase and maintain insurance on behalf of a
3 member or manager against liability asserted against or incurred by the member or manager in that
4 capacity or arising from that status even if, under § 7-16.1-105(c)(7), the operating agreement could
5 not eliminate or limit the person's liability to the company for the conduct giving rise to the liability.

6 **7-16.1-409. Standards of conduct for members and managers.**

7 (a) A member of a member-managed limited liability company owes to the company and,
8 subject to § 7-16.1-801, the other members the duties of loyalty and care stated in subsections (b)
9 and (c) of this section.

10 (b) The fiduciary duty of loyalty of a member in a member-managed limited liability
11 company includes the duties:

12 (1) To account to the company and hold as trustee for it any property, profit, or benefit
13 derived by the member:

14 (i) In the conduct or winding up of the company's activities and affairs;

15 (ii) From a use by the member of the company's property; or

16 (iii) From the appropriation of a company opportunity;

17 (2) To refrain from dealing with the company in the conduct or winding up of the
18 company's activities and affairs as or on behalf of a person having an interest adverse to the
19 company; and

20 (3) To refrain from competing with the company in the conduct of the company's activities
21 and affairs before the dissolution of the company.

22 (c) The duty of care of a member of a member-managed limited liability company in the
23 conduct or winding up of the company's activities and affairs is to refrain from engaging in grossly
24 negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law.

25 (d) A member shall discharge the duties and obligations under this chapter or under the
26 operating agreement and exercise any rights consistently with the contractual obligation of good
27 faith and fair dealing.

28 (e) A member does not violate a duty or obligation under this chapter or under the operating
29 agreement solely because the member's conduct furthers the member's own interest.

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

33 (g) It is a defense to a claim under subsection (b)(2) of this section and any comparable
34 claim in equity or at common law that the transaction was fair to the limited liability company.

1 (h) If, as permitted by subsections (f) or (i)(6) of this section or the operating agreement, a
2 member enters into a transaction with the limited liability company which otherwise would be
3 prohibited by subsection (b)(2) of this section, the member's rights and obligations arising from
4 the transaction are the same as those of a person that is not a member.

5 (i) In a manager-managed limited liability company, the following rules apply:

6 (1) Subsections (a), (b), (c), and (g) of this section apply to the manager or managers and
7 not the members.

8 (2) The duty stated under subsection (b)(3) of this section continues until winding up is
9 completed.

10 (3) Subsection (d) of this section applies to managers and members.

11 (4) Subsection (e) of this section applies only to members.

12 (5) The power to ratify under subsection (f) of this section applies only to the members.

13 (6) Subject to subsection (d) of this section, a member does not have any duty to the
14 company or to any other member solely by reason of being a member.

15 **7-16.1-410. Rights to information of member, manager, and person dissociated as**
16 **member.**

17 (a) In a member-managed limited liability company, the following rules apply:

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

23 (2) The company shall furnish to each member:

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

29 (ii) On demand, any other information concerning the company's activities, affairs,
30 financial condition, and other circumstances, except to the extent the demand for the information
31 demand is unreasonable or otherwise improper under the circumstances.

32 (3) The duty to furnish information under subsection (a)(2) of this section also applies to
33 each member to the extent the member knows any of the information described in subsection (a)(2)
34 of this section.

1 (b) In a manager-managed limited liability company, the following rules apply:

2 (1) The informational rights stated in subsection (a) of this section and the duty stated in
3 subsection (a)(3) of this section apply to the managers and not the members.

4 (2) During regular business hours and at a reasonable location specified by the company, a
5 member shall inspect and copy information regarding the activities, affairs, financial condition, and
6 other circumstances of the company as is just and reasonable if:

7 (i) The member seeks the information for a purpose reasonably related to the member's
8 interest as a member;

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

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

12 (3) Not later than ten (10) days after receiving a demand pursuant to subsection (a)(2)(ii)
13 of this section, the company shall inform in a record the member that made the demand of:

14 (i) What information the company will provide in response to the demand and when and
15 where the company will provide the information; and

16 (ii) The company's reasons for declining, if the company declines to provide any demanded
17 information.

18 (4) Whenever this chapter or an operating agreement provides for a member to vote on or
19 give or withhold consent to a matter, before the vote is cast or consent is given or withheld, the
20 company shall, without demand, provide the member with all information that is known to the
21 company and is material to the member's decision.

22 (c) Subject to subsection (h) of this section, on ten (10) days' demand made in a record
23 received by a limited liability company, a person dissociated as a member shall have access to the
24 information to which the person was entitled while a member if:

25 (1) The information pertains to the period during which the person was a member;

26 (2) The person seeks the information in good faith; and

27 (3) The person satisfies the requirements imposed on a member by subsection (b)(2) of this
28 section.

29 (d) A limited liability company shall respond to a demand made pursuant to subsection (c)
30 of this section in the manner provided in subsection (b)(3) of this section.

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

33 (f) A member or person dissociated as a member may exercise the rights under this section
34 through an agent or, in the case of an individual under legal disability, a legal representative. Any

1 restriction or condition imposed by the operating agreement or under subsection (h) of this section
2 applies both to the agent or legal representative and to the member or person dissociated as a
3 member.

4 (g) Subject to § 7-16.1-504, the rights under this section do not extend to a person as
5 transferee.

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

12 ARTICLE 5

13 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

14 **7-16.1-501. Nature of transferable interest.**

15 A transferable interest is personal property.

16 **7-16.1-502. Transfer of transferable interest.**

17 (a) Subject to § 7-16.1-503(f), a transfer, in whole or in part, of a transferable interest:

18 (1) Is permissible;

19 (2) Does not by itself cause a person's dissociation as a member or a dissolution and
20 winding up of the limited liability company's activities and affairs; and

21 (3) Subject to § 7-16.1-504, does not entitle the transferee to:

22 (i) Participate in the management or conduct of the company's activities and affairs; or

23 (ii) Except as otherwise provided in subsection (c) of this section, have access to records
24 or other information concerning the company's activities and affairs.

25 (b) A transferee has the right to receive, in accordance with the transfer, distributions to
26 which the transferor would otherwise be entitled.

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

29 (d) A transferable interest may be evidenced by a certificate of the interest issued by a
30 limited liability company in a record, and, subject to this section, the interest represented by the
31 certificate may be transferred by a transfer of the certificate.

32 (e) A limited liability company need not give effect to a transferee's rights under this
33 section until the company knows or has notice of the transfer.

34 (f) A transfer of a transferable interest in violation of a restriction on transfer contained in

1 the operating agreement is ineffective if the intended transferee has knowledge or notice of the
2 restriction at the time of transfer.

3 (g) Except as otherwise provided in § 7-16.1-602(5)(ii), if a member transfers a transferable
4 interest, the transferor retains the rights of a member other than the transferable interest transferred
5 and retains all the duties and obligations of a member.

6 (h) If a member transfers a transferable interest to a person that becomes a member with
7 respect to the transferred interest, the transferee is liable for the member's obligations under §§ 7-
8 16.1-403 and 17-16.1-406 known to the transferee when the transferee becomes a member.

9 **7-16.1-503. Charging order.**

10 (a) On application by a judgment creditor of a member or transferee, a court may enter a
11 charging order against the transferable interest of the judgment debtor for the unsatisfied amount
12 of the judgment. Except as otherwise provided in subsection (f) of this section, a charging order
13 constitutes a lien on a judgment debtor's transferable interest and requires the limited liability
14 company to pay over to the person to which the charging order was issued any distribution that
15 otherwise would be paid to the judgment debtor.

16 (b) To the extent necessary to effectuate the collection of distributions pursuant to a
17 charging order in effect under subsection (a) of this section, the court may:

18 (1) Appoint a receiver of the distributions subject to the charging order, with the power to
19 make all inquiries the judgment debtor might have made; and

20 (2) Make all other orders necessary to give effect to the charging order.

21 (c) Upon a showing that distributions under a charging order will not pay the judgment
22 debt within a reasonable time, the court may foreclose the lien and order the sale of the transferable
23 interest. Except as otherwise provided in subsection (f) of this section, the purchaser at the
24 foreclosure sale obtains only the transferable interest, does not thereby become a member, and is
25 subject to § 7-16.1-502.

26 (d) At any time before foreclosure under subsection (c) of this section, the member or
27 transferee whose transferable interest is subject to a charging order under subsection (a) of this
28 section may extinguish the charging order by satisfying the judgment and filing a certified copy of
29 the satisfaction with the court that issued the charging order.

30 (e) At any time before foreclosure under subsection (c) of this section, a limited liability
31 company or one or more members whose transferable interests are not subject to the charging order
32 may pay to the judgment creditor the full amount due under the judgment and thereby succeed to
33 the rights of the judgment creditor, including the charging order.

34 (f) If a court orders foreclosure of a charging order lien against the sole member of a limited

1 liability company:

2 (1) The court shall confirm the sale;

3 (2) The purchaser at the sale obtains the member's entire interest, not only the member's
4 transferable interest;

5 (3) The purchaser thereby becomes a member; and

6 (4) The person whose interest was subject to the foreclosed charging order is dissociated
7 as a member.

8 (g) This chapter does not deprive any member or transferee of the benefit of any exemption
9 law applicable to the transferable interest of the member or transferee.

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

13 **7-16.1-504. Power of legal representative of deceased member.**

14 If a member dies, the deceased member's legal representative may exercise:

15 (1) The rights of a transferee provided in § 7-16.1-502(c); and

16 (2) For the purposes of settling the estate, the rights the deceased member had under § 7-
17 16.1-410.

18 ARTICLE 6

19 DISSOCIATION

20 **7-16.1-601. Power to dissociate as member - Wrongful dissociation.**

21 (a) A person has the power to dissociate as a member at any time, rightfully or wrongfully,
22 by withdrawing as a member by express will under § 7-16.1-602(1).

23 (b) A person's dissociation as a member is wrongful only if the dissociation:

24 (1) Is in breach of an express provision of the operating agreement; or

25 (2) Occurs before the completion of the winding up of the limited liability company and:

26 (i) The person withdraws as a member by express will;

27 (ii) The person is expelled as a member by judicial order under § 7-16.1-602(6);

28 (iii) The person is dissociated under § 7-16.1-602(8); or

29 (iv) In the case of a person that is not a trust other than a business trust, an estate, or an
30 individual, the person is expelled or otherwise dissociated as a member because it willfully
31 dissolved or terminated.

32 (c) A person that wrongfully dissociates as a member is liable to the limited liability
33 company and, subject to § 7-16.1-801, to the other members for damages caused by the
34 dissociation. The liability is in addition to any debt, obligation, or other liability of the member to

1 the company or the other members.

2 **7-16.1-602. Events causing dissociation.**

3 A person is dissociated as a member when:

4 (1) The limited liability company knows or has notice of the person's express will to
5 withdraw as a member; provided, however, if the person has specified a withdrawal date later than
6 the date the company knew or had notice, on that later date;

7 (2) An event stated in the operating agreement as causing the person's dissociation occurs;

8 (3) The person's entire interest is transferred in a foreclosure sale under § 7-16.1-503(f);

9 (4) The person is expelled as a member pursuant to the operating agreement;

10 (5) The person is expelled as a member by the affirmative vote or consent of all the other
11 members if:

12 (i) It is unlawful to carry on the limited liability company's activities and affairs with the
13 person as a member;

14 (ii) There has been a transfer of all the person's transferable interest in the company, other
15 than:

16 (A) A transfer for security purposes; or

17 (B) A charging order in effect under § 7-16.1-503 which has not been foreclosed;

18 (C) The person is an entity and:

19 (I) The company notifies the person that it will be expelled as a member because the person
20 has filed a statement of dissolution or the equivalent, the person has been administratively
21 dissolved, the person's charter or the equivalent has been revoked, or the person's right to conduct
22 business has been suspended by the person's jurisdiction of formation; and

23 (II) Not later than ninety (90) days after the notification, the statement of dissolution or the
24 equivalent has not been withdrawn, rescinded, or revoked, the person has not been reinstated, or
25 the person's charter or the equivalent or right to conduct business has not been reinstated; or

26 (D) The person is an unincorporated entity that has been dissolved and whose activities
27 and affairs are being wound up;

28 (6) On application by the limited liability company or a member in a direct action under §
29 7-16.1-801, the person is expelled as a member by judicial order because the person:

30 (i) Has engaged or is engaging in wrongful conduct that has affected adversely and
31 materially, or will affect adversely and materially, the company's activities and affairs;

32 (ii) Has committed willfully or persistently, or is committing willfully or persistently, a
33 material breach of the operating agreement or a duty or obligation under § 7-16.1-409; or

34 (iii) Has engaged or is engaging in conduct relating to the company's activities and affairs

1 which makes it not reasonably practicable to carry on the activities and affairs with the person as a
2 member;

3 (7) In the case of an individual:

4 (i) The individual dies; or

5 (ii) In a member-managed limited liability company:

6 (A) A guardian or general conservator for the individual is appointed; or

7 (B) A court orders that the individual has otherwise become incapable of performing the
8 individual's duties as a member under this chapter or the operating agreement;

9 (8) In a member-managed limited liability company, the person:

10 (i) Becomes a debtor in bankruptcy;

11 (ii) Signs an assignment for the benefit of creditors; or

12 (iii) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator
13 of the person or of all or substantially all the person's property;

14 (9) In the case of a person that is a testamentary or inter vivos trust or is acting as a member
15 by virtue of being a trustee of such a trust, the trust's entire transferable interest in the limited
16 liability company is distributed;

17 (10) In the case of a person that is an estate or is acting as a member by virtue of being a
18 personal representative of an estate, the estate's entire transferable interest in the limited liability
19 company is distributed;

20 (11) In the case of a person that is not an individual, the existence of the person terminates;

21 (12) The limited liability company participates in a merger under Article 10 and:

22 (i) The company is not the surviving entity; or

23 (ii) Otherwise as a result of the merger, the person ceases to be a member;

24 (13) The limited liability company participates in an interest exchange under Article 10
25 and, as a result of the interest exchange, the person ceases to be a member;

26 (14) The limited liability company participates in a conversion under Article 10;

27 (15) The limited liability company participates in a domestication under Article 10 and, as
28 a result of the domestication, the person ceases to be a member; or

29 (16) The limited liability company dissolves and completes winding up.

30 **7-16.1-603. Effect of dissociation.**

31 (a) If a person is dissociated as a member:

32 (1) The person's right to participate as a member in the management and conduct of the
33 limited liability company's activities and affairs terminates;

34 (2) The person's duties and obligations under § 7-16.1-409 as a member end with regard

1 to matters arising and events occurring after the person's dissociation; and

2 (3) Subject to § 7-16.1-504 and Article 10, any transferable interest owned by the person
3 in the person's capacity as a member immediately before dissociation is owned by the person solely
4 as a transferee.

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

8 ARTICLE 7

9 DISSOLUTION AND WINDING UP

10 **7-16.1-701. Events causing dissolution.**

11 (a) A limited liability company is dissolved, and its activities and affairs shall be wound
12 up, upon the occurrence of any of the following:

13 (1) An event or circumstance that the operating agreement states causes dissolution;

14 (2) The affirmative vote or consent of all the members;

15 (3) The passage of ninety (90) consecutive days during which the company has no members
16 unless before the end of the period:

17 (i) Consent to admit at least one specified person as a member is given by transferees
18 owning the rights to receive a majority of distributions as transferees at the time the consent is to
19 be effective; and

20 (ii) At least one person becomes a member in accordance with the consent;

21 (4) On application by a member, the entry by the superior court of an order dissolving the
22 company on the grounds that:

23 (i) The conduct of all or substantially all the company's activities and affairs is unlawful;

24 (ii) It is not reasonably practicable to carry on the company's activities and affairs in
25 conformity with the certificate of organization and the operating agreement; or

26 (iii) The managers or those members in control of the company:

27 (A) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

28 (B) Have acted or are acting in a manner that is oppressive and was, is, or will be directly
29 harmful to the applicant; or

30 (5) The signing and filing of a statement of administrative dissolution by the secretary of
31 state under § 7-16.1-708.

32 (b) In a proceeding brought under subsection (a)(4)(iii) of this section, the court may order
33 a remedy other than dissolution.

34 **7-16.1-702. Winding up.**

1 (a) A dissolved limited liability company shall wind up its activities and affairs and, except
2 as otherwise provided in § 7-16.1-703, the company continues after dissolution only for the purpose
3 of winding up.

4 (b) In winding up its activities and affairs, a limited liability company:

5 (1) Shall discharge the company's debts, obligations, and other liabilities, settle and close
6 the company's activities and affairs, and marshal and distribute the assets of the company; and

7 (2) May:

8 (i) Deliver to the secretary of state for filing a statement of dissolution stating the name of
9 the company and that the company is dissolved;

10 (ii) Preserve the company activities, affairs, and property as a going concern for a
11 reasonable time;

12 (iii) Prosecute and defend actions and proceedings, whether civil, criminal, or
13 administrative;

14 (iv) Transfer the company's property;

15 (v) Settle disputes by mediation or arbitration;

16 (vi) Deliver to the secretary of state for filing a statement of termination stating the name
17 of the company and that the company is terminated; and

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

19 (c) If a dissolved limited liability company has no members, the legal representative of the
20 last person to have been a member may wind up the activities and affairs of the company. If the
21 person does so, the person has the powers of a sole manager under § 7-16.1-407(c) and is deemed
22 to be a manager for the purposes of § 7-16.1-304(a).

23 (d) If the legal representative under subsection (c) of this section declines or fails to wind
24 up the limited liability company's activities and affairs, a person may be appointed to do so by the
25 consent of transferees owning a majority of the rights to receive distributions as transferees at the
26 time the consent is to be effective. A person appointed under this subsection:

27 (1) Has the powers of a sole manager under § 7-16.1-407(c) and is deemed to be a manager
28 for the purposes of § 7-16.1-304(a); and

29 (2) Shall deliver promptly to the secretary of state for filing an amendment to the
30 company's certificate of organization stating:

31 (i) That the company has no members;

32 (ii) The name and street and mailing addresses of the person; and

33 (iii) That the person has been appointed pursuant to this subsection to wind up the company.

34 (e) The superior court may order judicial supervision of the winding up of a dissolved

1 limited liability company, including the appointment of a person to wind up the company's
2 activities and affairs:

3 (1) On the application of a member, if the applicant establishes good cause;

4 (2) On the application of a transferee, if:

5 (i) The company does not have any members;

6 (ii) The legal representative of the last person to have been a member declines or fails to
7 wind up the company's activities; and

8 (iii) Within a reasonable time following the dissolution, a person has not been appointed
9 pursuant to subsection (c) of this section; or

10 (3) In connection with a proceeding under § 7-16.1-701(a)(4).

11 **7-16.1-703. Rescinding dissolution.**

12 (a) A limited liability company may rescind its dissolution, unless a statement of
13 termination applicable to the company has become effective, the superior court has entered an order
14 under § 7-16.1-701(a)(4) dissolving the company, or the secretary of state has dissolved the
15 company under § 7-16.1-708.

16 (b) Rescinding dissolution under this section requires:

17 (1) The affirmative vote or consent of each member; and

18 (2) If the limited liability company has delivered to the secretary of state for filing a
19 statement of dissolution and:

20 (i) The statement has not become effective, delivery to the secretary of state for filing of a
21 statement of withdrawal under § 7-16.1-208 applicable to the statement of dissolution; or

22 (ii) If the statement of dissolution has become effective, delivery to the secretary of state
23 for filing of a statement of rescission stating the name of the company and that dissolution has been
24 rescinded under this section.

25 (c) If a limited liability company rescinds its dissolution:

26 (1) The company resumes carrying on its activities and affairs as if dissolution had never
27 occurred;

28 (2) Subject to subsection (c)(3) of this section, any liability incurred by the company after
29 the dissolution and before the rescission has becomes effective is determined as if dissolution had
30 never occurred; and

31 (3) The rights of a third party arising out of conduct in reliance on the dissolution before
32 the third party knew or had notice of the rescission may not be adversely affected.

33 **7-16.1-704. Known claims against dissolved limited liability company.**

34 (a) Except as otherwise provided in subsection (d) of this section, a dissolved limited

1 liability company may give notice of a known claim under subsection (b) of this section, which has
2 the effect provided in subsection (c) of this section.

3 (b) A dissolved limited liability company may in a record notify its known claimants of the
4 dissolution. The notice must:

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

6 (2) State that a claim must be in writing and provide a mailing address to which the claim
7 is to be sent;

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

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

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

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

14 (2) If the claim is timely received but rejected by the company:

15 (i) The company causes the claimant to receive a notice in a record stating that the claim is
16 rejected and will be barred unless the claimant commences an action against the company to enforce
17 the claim not later than ninety (90) days after the claimant receives the notice; and

18 (ii) The claimant does not commence the required action not later than ninety (90) days
19 after the claimant receives the notice.

20 (d) This section does not apply to a claim based on an event occurring after the date of
21 dissolution or a liability that on that date is contingent.

22 **7-16.1-705. Other claims against dissolved limited liability company.**

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

25 (b) A notice under subsection (a) of this section shall:

26 (1) Be published at least once in a newspaper of general circulation in this state whether or
27 not the dissolved limited liability company's principal office is located in this state;

28 (2) Describe the information required to be contained in a claim, state that the claim must
29 be in writing, and provide a mailing address to which the claim is to be sent; and

30 (3) State that a claim against the company is barred unless an action to enforce the claim is
31 commenced not later than three (3) years after publication of the notice.

32 (c) If a dissolved limited liability company publishes a notice in accordance with subsection
33 (b) of this section, the claim of each of the following claimants is barred unless the claimant
34 commences an action to enforce the claim against the company not later than three (3) years after

1 the publication date of the notice:

2 (1) A claimant that did not receive notice in a record under § 7-16.1-704;

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

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

6 (d) A claim not barred under this section or § 7-16.1-704 may be enforced:

7 (1) Against a dissolved limited liability company, to the extent of its undistributed assets;
8 and

9 (2) Except as otherwise provided in § 7-16.1-706, if assets of the company have been
10 distributed after dissolution, against a member or transferee to the extent of that person's
11 proportionate share of the claim or of the company's assets distributed to the member or transferee
12 after dissolution, whichever is less, but a person's total liability for all claims under this subsection
13 may not exceed the total amount of assets distributed to the person after dissolution.

14 **7-16.1-706. Court proceedings.**

15 (a) A dissolved limited liability company that has published a notice under § 7-16.1-705
16 may file an application with the Providence county superior court for a determination of the amount
17 and form of security to be provided for payment of claims that are reasonably expected to arise
18 after the date of dissolution based on facts known to the company and:

19 (1) At the time of application:

20 (i) Are contingent; or

21 (ii) Have not been made known to the company; or

22 (2) Are based on an event occurring after the date of dissolution.

23 (b) Security is not required for any claim that is or is reasonably anticipated to be barred
24 under § 7-16.1-705.

25 (c) Not later than ten (10) days after the filing of an application under subsection (a) of this
26 section, the dissolved limited liability company shall give notice of the proceeding to each claimant
27 holding a contingent claim known to the company.

28 (d) In a proceeding under this section, the court may appoint a guardian ad litem to
29 represent all claimants whose identities are unknown. The reasonable fees and expenses of the
30 guardian, including all reasonable expert witness fees, shall be paid by the dissolved limited
31 liability company.

32 (e) A dissolved limited liability company that provides security in the amount and form
33 ordered by the court under subsection (a) of this section satisfies the company's obligations with
34 respect to claims that are contingent, have not been made known to the company, or are based on

1 an event occurring after the date of dissolution, and such claims may not be enforced against a
2 member or transferee on account of assets received in liquidation.

3 **7-16.1-707. Disposition of assets in winding up.**

4 (a) In winding up its activities and affairs, a limited liability company shall apply its assets
5 to discharge the company's obligations to creditors, including members that are creditors.

6 (b) After a limited liability company complies with subsection (a) of this section, any
7 surplus must be distributed in the following order, subject to any charging order in effect under §
8 7-16.1-503:

9 (1) To each person owning a transferable interest that reflects contributions made and not
10 previously returned, an amount equal to the value of the unreturned contributions; and

11 (2) Among persons owning transferable interests in proportion to their respective rights to
12 share in distributions immediately before the dissolution of the company.

13 (c) If a limited liability company does not have sufficient surplus to comply with subsection
14 (b)(1) of this section, any surplus shall be distributed among the owners of transferable interests in
15 proportion to the value of the respective unreturned contributions.

16 (d) All distributions made under subsections (b) and (c) of this section shall be paid in
17 money.

18 **7-16.1-708. Administrative dissolution.**

19 (a) The secretary of state may commence a proceeding under subsection (b) of this section
20 to dissolve a limited liability company administratively if the company does not:

21 (1) Pay any fee, tax, interest, or penalty required to be paid to the secretary of state not later
22 than six (6) months after it is due;

23 (2) Deliver an annual report to the secretary of state not later than six (6) months after it is
24 due; or

25 (3) Have a registered agent in this state for sixty (60) consecutive days.

26 (b) If the secretary of state determines that one or more grounds exist for administratively
27 dissolving a limited liability company, the secretary of state shall serve the company with notice in
28 a record of the secretary of state's determination.

29 (c) If a limited liability company, not later than sixty (60) days after service of the notice
30 under subsection (b) of this section, does not cure or demonstrate to the satisfaction of the secretary
31 of state the nonexistence of each ground determined by the secretary of state, the secretary of state
32 shall administratively dissolve the company by signing a statement of administrative dissolution
33 that recites the grounds for dissolution and the effective date of dissolution. The secretary of state
34 shall file the statement and serve a copy on the company pursuant to § 7-16.1-210.

1 (d) A limited liability company that is administratively dissolved continues in existence as
2 an entity but may not carry on any activities except as necessary to wind up its activities and affairs
3 and liquidate its assets under §§ 7-16.1-702, 7-16.1-704, 7-16.1-705, 7-16.1-706, and 7-16.1-707,
4 or to apply for reinstatement under § 7-16.1-709.

5 (e) The administrative dissolution of a limited liability company does not terminate the
6 authority of its registered agent.

7 **7-16.1-709. Reinstatement.**

8 (a) A limited liability company that is administratively dissolved under § 7-16.1-708 may
9 apply to the secretary of state for reinstatement not later than one year after the effective date of
10 dissolution. The application shall state:

11 (1) The name of the company at the time of its administrative dissolution and, if needed, a
12 different name that satisfies § 7-16.1-112;

13 (2) The address of the principal office of the company and the name and street and mailing
14 addresses of its registered agent;

15 (3) The effective date of the company's administrative dissolution; and

16 (4) That the grounds for dissolution did not exist or have been cured.

17 (b) To be reinstated, a limited liability company shall pay all fees, taxes, interest, and
18 penalties that were due to the secretary of state at the time of the company's administrative
19 dissolution and all fees, taxes, interest, and penalties that would have been due to the secretary of
20 state while the company was administratively dissolved.

21 (c) If the secretary of state determines that an application under subsection (a) of this
22 section contains the required information, is satisfied that the information is correct, and determines
23 that all payments required to be made to the secretary of state by subsection (b) of this section have
24 been made, the secretary of state shall:

25 (1) Cancel the statement of administrative dissolution and prepare a statement of
26 reinstatement that states the secretary of state's determination and the effective date of
27 reinstatement; and

28 (2) File the statement of reinstatement and serve a copy on the limited liability company.

29 (d) When reinstatement under this section has become effective, the following rules apply:

30 (1) The reinstatement relates back to and takes effect as of the effective date of the
31 administrative dissolution.

32 (2) The limited liability company resumes carrying on its activities and affairs as if the
33 administrative dissolution had not occurred.

34 (3) The rights of a person arising out of an act or omission in reliance on the dissolution

1 before the person knew or had notice of the reinstatement are not affected.

2 **7-16.1-710. Judicial review of denial of reinstatement.**

3 (a) If the secretary of state denies a limited liability company's application for
4 reinstatement following administrative dissolution, the secretary of state shall serve the company
5 with a notice in a record that explains the reasons for the denial.

6 (b) A limited liability company may seek judicial review of denial of reinstatement in the
7 superior court not later than thirty (30) days after service of the notice of denial.

8 ARTICLE 8

9 ACTIONS BY MEMBERS

10 **7-16.1-801. Direct action by member.**

11 (a) Subject to subsection (b) of this section, a member may maintain a direct action against
12 another member, a manager, or the limited liability company to enforce the member's rights and
13 protect the member's interests, including rights and interests under the operating agreement or this
14 chapter or arising independently of the membership relationship.

15 (b) A member maintaining a direct action under this section shall plead and prove an actual
16 or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by
17 the limited liability company.

18 **7-16.1-802. Derivative action.**

19 A member may maintain a derivative action to enforce a right of a limited liability company
20 if:

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

25 (2) A demand under subsection (1) of this section would be futile.

26 **7-16.1-803. Proper plaintiff.**

27 A derivative action to enforce a right of a limited liability company may be maintained
28 only by a person that is a member at the time the action is commenced and:

29 (1) Was a member when the conduct giving rise to the action occurred; or

30 (2) Whose status as a member devolved on the person by operation of law or pursuant to
31 the terms of the operating agreement from a person that was a member at the time of the conduct.

32 **7-16.1-804. Pleading.**

33 In a derivative action, the complaint shall state with particularity:

34 (1) The date and content of the plaintiff's demand and the response to the demand by the

1 managers or other members; or

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

3 **7-16.1-805. Special litigation committee.**

4 (a) If a limited liability company is named as or made a party in a derivative proceeding,
5 the company may appoint a special litigation committee to investigate the claims asserted in the
6 proceeding and determine whether pursuing the action is in the best interests of the company. If the
7 company appoints a special litigation committee, on motion by the committee made in the name of
8 the company, except for good cause shown, the court shall stay discovery for the time reasonably
9 necessary to permit the committee to make its investigation. This subsection does not prevent the
10 court from:

11 (1) Enforcing a person's right to information under § 7-16.1-410; or

12 (2) Granting extraordinary relief in the form of a temporary restraining order or preliminary
13 injunction.

14 (b) A special litigation committee shall be composed of one or more disinterested and
15 independent individuals, who may be members.

16 (c) A special litigation committee may be appointed:

17 (1) In a member-managed limited liability company:

18 (i) By the affirmative vote or consent of a majority of the members not named as parties in
19 the proceeding; or

20 (ii) If all members are named as parties in the proceeding, by a majority of the members
21 named as defendants; or

22 (2) In a manager-managed limited liability company:

23 (i) By a majority of the managers not named as parties in the proceeding; or

24 (ii) If all managers are named as parties in the proceeding, by a majority of the managers
25 named as defendants.

26 (d) After appropriate investigation, a special litigation committee may determine that it is
27 in the best interests of the limited liability company that the proceeding:

28 (1) Continue under the control of the plaintiff;

29 (2) Continue under the control of the committee;

30 (3) Be settled on terms approved by the committee; or

31 (4) Be dismissed.

32 (e) After making a determination under subsection (d) of this section, a special litigation
33 committee shall file with the court a statement of its determination and its report supporting its
34 determination and shall serve each party with a copy of the determination and report. The court

1 shall determine whether the members of the committee were disinterested and independent and
2 whether the committee conducted its investigation and made its recommendation in good faith,
3 independently, and with reasonable care, with the committee having the burden of proof. If the
4 court finds that the members of the committee were disinterested and independent and that the
5 committee acted in good faith, independently, and with reasonable care, the court shall enforce the
6 determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered
7 under subsection (a) of this section and allow the action to continue under the control of the
8 plaintiff.

9 **7-16.1-806. Proceeds and expenses.**

10 (a) Except as otherwise provided in subsection (b) of this section:

11 (1) Any proceeds or other benefits of a derivative action, whether by judgment,
12 compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

13 (2) If the plaintiff receives any proceeds, the plaintiff shall remit them immediately to the
14 company.

15 (b) If a derivative action is successful in whole or in part, the court may award the plaintiff
16 reasonable expenses, including reasonable attorneys' fees and costs, from the recovery of the
17 limited liability company.

18 (c) A derivative action on behalf of a limited liability company may not be voluntarily
19 dismissed or settled without the court's approval.

20 ARTICLE 9

21 FOREIGN LIMITED LIABILITY COMPANIES

22 **7-16.1-901. Governing law.**

23 (a) The law of the jurisdiction of formation of a foreign limited liability company governs:

24 (1) The internal affairs of the company;

25 (2) The liability of a member as member and a manager as manager for a debt, obligation,
26 or other liability of the company; and

27 (3) The liability of a series of the company.

28 (b) A foreign limited liability company is not precluded from registering to do business in
29 this state because of any difference between the law of its jurisdiction of formation and the law of
30 this state.

31 (c) Registration of a foreign limited liability company to do business in this state does not
32 authorize the foreign company to engage in any activities and affairs or exercise any power that a
33 limited liability company may not engage in or exercise in this state.

34 **7-16.1-902. Registration to do business in this state.**

1 (a) A foreign limited liability company shall not do business in this state until it registers
2 with the secretary of state under this chapter.

3 (b) A foreign limited liability company doing business in this state shall not maintain an
4 action or proceeding in this state unless it is registered to do business in this state.

5 (c) The failure of a foreign limited liability company to register to do business in this state
6 does not impair the validity of a contract or act of the company or preclude it from defending an
7 action or proceeding in this state.

8 (d) A limitation on the liability of a member or manager of a foreign limited liability
9 company is not waived solely because the company does business in this state without registering
10 to do business in this state.

11 (e) Section 7-16.1-901(a) and (b) applies even if a foreign limited liability company fails
12 to register under this Article.

13 **7-16.1-903. Foreign registration statement.**

14 To register to do business in this state, a foreign limited liability company shall deliver a
15 foreign registration statement to the secretary of state for filing. The statement shall state:

16 (1) The name of the company and, if the name does not comply with § 7-16.1-112, an
17 alternate name adopted pursuant to § 7-16.1-906(a);

18 (2) That the company is a foreign limited liability company;

19 (3) The company's jurisdiction of formation;

20 (4) The street and mailing addresses of the company's principal office and, if the law of
21 the company's jurisdiction of formation requires the company to maintain an office in that
22 jurisdiction, the street and mailing addresses of the required office; and

23 (5) The name and street and mailing addresses of the company's registered agent in this
24 state.

25 **7-16.1-904. Amendment of foreign registration statement.**

26 A registered foreign limited liability company shall deliver to the secretary of state for
27 filing an amendment to its foreign registration statement if there is a change in:

28 (1) The name of the company;

29 (2) The company's jurisdiction of formation;

30 (3) An address required by § 7-16.1-903(4); or

31 (4) The information required by § 7-16.1-903(5).

32 **7-16.1-905. Activities not constituting doing business.**

33 (a) Activities of a foreign limited liability company which do not constitute doing business
34 in this state under this Article include:

- 1 (1) Maintaining, defending, mediating, arbitrating, or settling an action or proceeding;
- 2 (2) Carrying on any activity concerning its internal affairs, including holding meetings of
- 3 its members or managers;
- 4 (3) Maintaining accounts in financial institutions;
- 5 (4) Maintaining offices or agencies for the transfer, exchange, and registration of securities
- 6 of the company or maintaining trustees or depositories with respect to those securities;
- 7 (5) Selling through independent contractors;
- 8 (6) Soliciting or obtaining orders by any means if the orders require acceptance outside this
- 9 state before they become contracts;
- 10 (7) Creating or acquiring indebtedness, mortgages, or security interests in property;
- 11 (8) Securing or collecting debts or enforcing mortgages or security interests in property
- 12 securing the debts and holding, protecting, or maintaining property;
- 13 (9) Conducting an isolated transaction that is not in the course of similar transactions;
- 14 (10) Owning, without more, property; and
- 15 (11) Doing business in interstate commerce.

16 (b) A person does not do business in this state solely by being a member or manager of a
17 foreign limited liability company that does business in this state.

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

21 **7-16.1-906. Noncomplying name of foreign limited liability company.**

22 (a) A foreign limited liability company whose name does not comply with § 7-16.1-112
23 shall not register to do business in this state until it adopts, for the purpose of doing business in this
24 state, an alternate name that complies with § 7-16.1-112. A company that registers under an
25 alternate name under this subsection need not comply with § 7-16.1-112.1. After registering to do
26 business in this state with an alternate name, a company shall do business in this state under:

- 27 (1) The alternate name;
 - 28 (2) The company's name, with the addition of its jurisdiction of formation; or
 - 29 (3) A name the company is authorized to use under § 7-16.1-112.1.
- 30 (b) If a registered foreign limited liability company changes its name to one that does not
31 comply with § 7-16.1-112, it shall not do business in this state until it complies with subsection (a)
32 of this section by amending its registration to adopt an alternate name that complies with § 7-16.1-
33 112.

34 **7-16.1-907. Withdrawal deemed on conversion to domestic filing entity or domestic**

1 **limited liability partnership.**

2 A registered foreign limited liability company that converts to a domestic limited liability
3 partnership or to a domestic entity whose formation requires delivery of a record to the secretary
4 of state for filing is deemed to have withdrawn its registration on the effective date of the
5 conversion.

6 **7-16.1-908. Withdrawal on dissolution or conversion to nonfiling entity other than**
7 **limited liability partnership.**

8 (a) A registered foreign limited liability company that has dissolved and completed
9 winding up or has converted to a domestic or foreign entity whose formation does not require the
10 public filing of a record, other than a limited liability partnership, shall deliver a statement of
11 withdrawal to the secretary of state for filing. The statement shall state:

12 (1) In the case of a company that has completed winding up:

13 (i) Its name and jurisdiction of formation;

14 (ii) That the company surrenders its registration to do business in this state; and

15 (2) In the case of a company that has converted:

16 (i) The name of the converting company and its jurisdiction of formation;

17 (ii) The type of entity to which the company has converted and its jurisdiction of formation;

18 (iii) That the converted entity surrenders the converting company's registration to do
19 business in this state and revokes the authority of the converting company's registered agent to act
20 as registered agent in this state on behalf of the company or the converted entity; and

21 (iv) A mailing address to which service of process may be made under subsection (b) of
22 this section.

23 (b) After a withdrawal under this section has become effective, service of process in any
24 action or proceeding based on a cause of action arising during the time the foreign limited liability
25 company was registered to do business in this state may be made pursuant to § 7-16.1-119.

26 **7-16.1-909. Transfer of registration.**

27 (a) When a registered foreign limited liability company has merged into a foreign entity
28 that is not registered to do business in this state or has converted to a foreign entity required to
29 register with the secretary of state to do business in this state, the foreign entity shall deliver to the
30 secretary of state for filing an application for transfer of registration. The application shall state:

31 (1) The name of the registered foreign limited liability company before the merger or
32 conversion;

33 (2) That before the merger or conversion the registration pertained to a foreign limited
34 liability company;

1 (3) The name of the applicant foreign entity into which the foreign limited liability
2 company has merged or to which it has been converted and, if the name does not comply with § 7-
3 16.1-112, an alternate name adopted pursuant to § 7-16.1-906(a);

4 (4) The type of entity of the applicant foreign entity and its jurisdiction of formation;

5 (5) The street and mailing addresses of the principal office of the applicant foreign entity
6 and, if the law of the entity's jurisdiction of formation requires the entity to maintain an office in
7 that jurisdiction, the street and mailing addresses of that office; and

8 (6) The name and street and mailing addresses of the applicant foreign entity's registered
9 agent in this state.

10 (b) When an application for transfer of registration takes effect, the registration of the
11 foreign limited liability company to do business in this state is transferred without interruption to
12 the foreign entity into which the company has merged or to which it has been converted.

13 **7-16.1-910. Termination of registration.**

14 (a) The secretary of state may terminate the registration of a registered foreign limited
15 liability company in the manner provided in subsections (b) and (c) of this section if the company
16 does not:

17 (1) Pay, not later than sixty (60) days after the due date, any fee, tax, interest, or penalty
18 required to be paid to the secretary of state under this chapter or law other than this chapter;

19 (2) Deliver to the secretary of state for filing, not later than sixty (60) days after the due
20 date, an annual report required under § 7-16.1-212;

21 (3) Have a registered agent as required by § 7-16.1-115; or

22 (4) Deliver to the secretary of state for filing a statement of a change under § 7-16.1-116
23 not later than thirty (30) days after a change has occurred in the name or address of the registered
24 agent.

25 (b) The secretary of state shall terminate the registration of a registered foreign limited
26 liability company by:

27 (1) Filing a notice of termination or noting the termination in the records of the secretary
28 of state; and

29 (2) Delivering a copy of the notice or the information in the notation to the company's
30 registered agent or, if the company does not have a registered agent, to the company's principal
31 office.

32 (c) The notice shall state or the information in the notation shall include:

33 (1) The effective date of the termination, which shall be at least sixty (60) days after the
34 date the secretary of state delivers the copy; and

1 (4) “Converted entity” means the converting entity as it continues in existence after a
2 conversion.

3 (5) “Converting entity” means the domestic entity that approves a plan of conversion
4 pursuant to § 7-16.1-1043 or the foreign entity that approves a conversion pursuant to the law of
5 its jurisdiction of formation.

6 (6) “Distributional interest” means the right under an unincorporated entity’s organic law
7 and organic rules to receive distributions from the entity.

8 (7) “Domestic”, with respect to an entity, means governed as to its internal affairs by the
9 laws of this state.

10 (8) “Domesticated limited liability company” means the domesticating limited liability
11 company as it continues in existence after a domestication.

12 (9) “Domesticating limited liability company” means the domestic limited liability
13 company that approves a plan of domestication pursuant to § 7-16.1-1053 or the foreign limited
14 liability company that approves a domestication pursuant to the law of its jurisdiction of formation.

15 (10) “Domestication” means a transaction authorized by Part 5 of this Article.

16 (11) “Entity”:

17 (i) means:

18 (A) A business corporation;

19 (B) A nonprofit corporation;

20 (C) A general partnership, including a limited liability partnership;

21 (D) A limited partnership, including a limited liability limited partnership;

22 (E) A limited liability company;

23 (F) A general cooperative association;

24 (G) A limited cooperative association;

25 (H) An unincorporated nonprofit association;

26 (I) A statutory trust, business trust, or common-law business trust; or

27 (J) Any other person that has:

28 (I) A legal existence separate from any interest holder of that person; or

29 (II) The power to acquire an interest in real property in its own name; and

30 (ii) Does not include:

31 (A) An individual;

32 (B) A trust with a predominantly donative purpose or a charitable trust;

33 (C) An association or relationship that is not an entity listed in subsection (11)(i) of this
34 section and is not a partnership under the rules stated in section 202 (c) of the Uniform Partnership

1 Act (1997) (Last Amended (2013)) or a similar provision of the law of another jurisdiction;
2 (D) A decedent's estate; or
3 (E) A government or a governmental subdivision, agency, or instrumentality.
4 (12) "Filing entity" means an entity whose formation requires the filing of a public organic
5 record. The term does not include a limited liability partnership.
6 (13) "Foreign", with respect to an entity, means an entity governed as to its internal affairs
7 by the law of a jurisdiction other than this state.
8 (14) "Governance interest" means a right under the organic law or organic rules of an
9 unincorporated entity, other than as a governor, agent, assignee, or proxy, to:
10 (i) Receive or demand access to information concerning, or the books and records of, the
11 entity;
12 (ii) Vote for or consent to the election of the governors of the entity; or
13 (iii) Receive notice of or vote on or consent to an issue involving the internal affairs of the
14 entity.
15 (15) "Governor" means:
16 (i) A director of a business corporation;
17 (ii) A director or trustee of a nonprofit corporation;
18 (iii) A general partner of a general partnership;
19 (iv) A general partner of a limited partnership;
20 (v) A manager of a manager-managed limited liability company;
21 (vi) A member of a member-managed limited liability company;
22 (vii) A director of a general cooperative association;
23 (viii) A director of a limited cooperative association;
24 (ix) A manager of an unincorporated nonprofit association;
25 (x) A trustee of a statutory trust, business trust, or common-law business trust; or
26 (xxi) Any other person under whose authority the powers of an entity are exercised and
27 under whose direction the activities and affairs of the entity are managed pursuant to the organic
28 law and organic rules of the entity.
29 (16) "Interest" means:
30 (i) A share in a business corporation;
31 (ii) A membership in a nonprofit corporation;
32 (iii) A partnership interest in a general partnership;
33 (iv) A partnership interest in a limited partnership;
34 (v) A membership interest in a limited liability company;

1 (vi) A share in a general cooperative association;
2 (vii) A member’s interest in a limited cooperative association;
3 (viii) A membership in an unincorporated nonprofit association;
4 (ix) A beneficial interest in a statutory trust, business trust, or common-law business trust;
5 or
6 (x) A governance interest or distributional interest in any other type of unincorporated
7 entity.
8 (17) “Interest exchange” means a transaction authorized by Part 3 of this Article.
9 (18) “Interest holder” means:
10 (i) A shareholder of a business corporation;
11 (ii) A member of a nonprofit corporation;
12 (iii) A general partner of a general partnership;
13 (iv) A general partner of a limited partnership;
14 (v) A limited partner of a limited partnership;
15 (vi) A member of a limited liability company;
16 (vii) A shareholder of a general cooperative association;
17 (viii) A member of a limited cooperative association;
18 (ix) A member of an unincorporated nonprofit association;
19 (x) A beneficiary or beneficial owner of a statutory trust, business trust, or common-law
20 business trust; or
21 (xi) Any other direct holder of an interest.
22 (19) “Interest holder liability” means:
23 (i) Personal liability for a liability of an entity which is imposed on a person:
24 (A) Solely by reason of the status of the person as an interest holder; or
25 (ii) By the organic rules of the entity which make one or more specified interest holders or
26 categories of interest holders liable in their capacity as interest holders for all or specified liabilities
27 of the entity; or
28 (iii) An obligation of an interest holder under the organic rules of an entity to contribute to
29 the entity.
30 (20) “Merger” means a transaction authorized by Part 2 of this Article.
31 (21) “Merging entity” means an entity that is a party to a merger and exists immediately
32 before the merger becomes effective.
33 (22) “Organic law” means the law of an entity’s jurisdiction of formation governing the
34 internal affairs of the entity.

1 (23) “Organic rules” means the public organic record and private organic rules of an entity.

2 (24) “Plan” means a plan of merger, plan of interest exchange, plan of conversion, or plan
3 of domestication.

4 (25) “Plan of conversion” means a plan under § 7-16.1-1042.

5 (26) “Plan of domestication” means a plan under § 7-16.1-1052.

6 (27) “Plan of interest exchange” means a plan under § 7-16.1-1032.

7 (28) “Plan of merger” means a plan under § 7-16.1-1022.

8 (29) “Private organic rules” means the rules, whether or not in a record, that govern the
9 internal affairs of an entity, are binding on all its interest holders, and are not part of its public
10 organic record, if any. The term includes:

11 (i) The bylaws of a business corporation;

12 (ii) The bylaws of a nonprofit corporation;

13 (iii) The partnership agreement of a general partnership;

14 (iv) The partnership agreement of a limited partnership;

15 (v) The operating agreement of a limited liability company;

16 (vi) The bylaws of a general cooperative association;

17 (vii) The bylaws of a limited cooperative association;

18 (viii) The governing principles of an unincorporated nonprofit association; and

19 (ix) The trust instrument of a statutory trust or similar rules of a business trust or common-
20 law business trust.

21 (30) “Protected agreement” means:

22 (i) A record evidencing indebtedness and any related agreement in effect on the effective
23 date of this chapter;

24 (ii) An agreement that is binding on an entity on the effective date of this chapter;

25 (iii) The organic rules of an entity in effect on the effective date of this chapter; or

26 (iv) An agreement that is binding on any of the governors or interest holders of an entity
27 on the effective date of this chapter.

28 (31) “Public organic record” means the record the filing of which by the secretary of state
29 is required to form an entity and any amendment to or restatement of that record. The term includes:

30 (i) The articles of incorporation of a business corporation;

31 (ii) The articles of incorporation of a nonprofit corporation;

32 (iii) The certificate of limited partnership of a limited partnership;

33 (iv) The certificate of organization of a limited liability company;

34 (v) The articles of incorporation of a general cooperative association;

1 (vi) The articles of organization of a limited cooperative association; and
2 (vii) The certificate of trust of a statutory trust or similar record of a business trust.
3 (32) “Registered foreign entity” means a foreign entity that is registered to do business in
4 this state pursuant to a record filed by the secretary of state.
5 (33) “Statement of conversion” means a statement under § 7-16.1-1045.
6 (34) “Statement of domestication” means a statement under § 7-16.1-1055.
7 (35) “Statement of interest exchange” means a statement under § 7-16.1-1035.
8 (36) “Statement of merger” means a statement under § 7-16.1-1025.
9 (37) “Surviving entity” means the entity that continues in existence after or is created by a
10 merger.

11 (38) “Type of entity” means a generic form of entity:

12 (i) Recognized at common law; or

13 (ii) Formed under an organic law, whether or not some entities formed under that organic
14 law are subject to provisions of that law that create different categories of the form of entity.

15 **7-16.1-1002. Relationship of article to other laws.**

16 (a) This article does not authorize an act prohibited by, and does not affect the application
17 or requirements of, law other than this article.

18 (b) A transaction effected under this article shall not create or impair a right, duty or
19 obligation of a person under the statutory law of this state other than this article relating to a change
20 in control, takeover, business combination, control-share acquisition, or similar transaction
21 involving a domestic merging, acquired, converting, or domesticating business corporation unless:

22 (1) If the corporation does not survive the transaction, the transaction satisfies any
23 requirements of the law; or

24 (2) If the corporation survives the transaction, the approval of the plan is by a vote of the
25 shareholders or directors which would be sufficient to create or impair the right, duty, or obligation
26 directly under the law.

27 **7-16.1-1003. Required notice or approval.**

28 (a) A domestic or foreign entity that is required to give notice to, or obtain the approval of,
29 a governmental agency or officer of this state to be a party to a merger shall give the notice or
30 obtain the approval to be a party to an interest exchange, conversion, or domestication.

31 (b) Property held for a charitable purpose under the law of this state by a domestic or
32 foreign entity immediately before a transaction under this Article becomes effective shall not, as a
33 result of the transaction, be diverted from the objects for which it was donated, granted, devised,
34 or otherwise transferred unless, to the extent required by or pursuant to the law of this state

1 concerning cy pres or other law dealing with nondiversion of charitable assets, the entity obtains
2 an appropriate order of the superior court by the attorney general specifying the disposition of the
3 property.

4 (c) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
5 donation, subscription, or conveyance which is made to a merging entity that is not the surviving
6 entity and which takes effect or remains payable after the merger inures to the surviving entity.

7 (d) A trust obligation that would govern property if transferred to a nonsurviving entity
8 applies to property that is transferred to the surviving entity under this section.

9 **7-16.1-1004. Nonexclusivity.**

10 The fact that a transaction under this Article produces a certain result does not preclude the
11 same result from being accomplished in any other manner permitted by law other than this Article.

12 **7-16.1-1005. Reference to external facts.**

13 A plan may refer to facts ascertainable outside the plan if the manner in which the facts
14 will operate upon the plan is specified in the plan. The facts may include the occurrence of an event
15 or a determination or action by a person, whether or not the event, determination, or action is within
16 the control of a party to the transaction.

17 **7-16.1-1006. Appraisal rights.**

18 An interest holder of a domestic merging, acquired, converting, or domesticating limited
19 liability company is entitled to contractual appraisal rights in connection with a transaction under
20 this Article to the extent provided in:

21 (1) The operating agreement; or

22 (2) The plan.

23 PART 2

24 MERGER

25 **7-16.1-1021. Merger authorized.**

26 (a) By complying with this Part 2 of this Article:

27 (1) One or more domestic limited liability companies may merge with one or more
28 domestic or foreign entities into a domestic or foreign surviving entity; and

29 (2) Two (2) or more foreign entities may merge into a domestic limited liability company.

30 (b) By complying with the provisions of this Part 2 of this Article applicable to foreign
31 entities, a foreign entity may be a party to a merger under this Part 2 of this Article or may be the
32 surviving entity in such a merger if the merger is authorized by the law of the foreign entity's
33 jurisdiction of formation.

34 **7-16.1-1022. Plan of merger.**

1 (a) A domestic limited liability company may become a party to a merger under this Part
2 2 of this Article by approving a plan of merger. The plan shall be in a record and contain:

3 (1) As to each merging entity, its name, jurisdiction of formation, and type of entity;

4 (2) If the surviving entity is to be created in the merger, a statement to that effect and the
5 entity's name, jurisdiction of formation, and type of entity;

6 (3) The manner of converting the interests in each party to the merger into interests,
7 securities, obligations, money, other property, rights to acquire interests or securities, or any
8 combination of the foregoing;

9 (4) If the surviving entity exists before the merger, any proposed amendments to:

10 (i) Its public organic record, if any; and

11 (ii) Its private organic rules that are, or are proposed to be, in a record;

12 (5) If the surviving entity is to be created in the merger:

13 (i) Its proposed public organic record, if any; and

14 (ii) The full text of its private organic rules that are proposed to be in a record;

15 (6) The other terms and conditions of the merger; and

16 (7) Any other provision required by the law of a merging entity's jurisdiction of formation
17 or the organic rules of a merging entity.

18 (b) In addition to the requirements of subsection (a) of this section, a plan of merger may
19 contain any other provision not prohibited by law.

20 **7-16.1-1023. Approval of merger.**

21 (a) A plan of merger is not effective unless it has been approved:

22 (1) By a domestic merging limited liability company, by all the members of the company
23 entitled to vote on or consent to any matter; and

24 (2) In a record, by each member of a domestic merging limited liability company which
25 will have interest holder liability for debts, obligations, and other liabilities that are incurred after
26 the merger becomes effective, unless:

27 (i) The operating agreement of the company provides in a record for the approval of a
28 merger in which some or all of its members become subject to interest holder liability by the
29 affirmative vote or consent of fewer than all the members; and

30 (ii) The member consented in a record to or voted for that provision of the operating
31 agreement or became a member after the adoption of that provision.

32 (b) A merger involving a domestic merging entity that is not a limited liability company is
33 not effective unless the merger is approved by that entity in accordance with its organic law.

34 (c) A merger involving a foreign merging entity is not effective unless the merger is

1 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
2 formation.

3 **7-16.1-1024. Amendment or abandonment of plan of merger.**

4 (a) A plan of merger may be amended only with the consent of each party to the plan,
5 except as otherwise provided in the plan.

6 (b) A domestic merging limited liability company may approve an amendment of a plan of
7 merger:

8 (1) In the same manner as the plan was approved, if the plan does not provide for the
9 manner in which it may be amended; or

10 (2) By its managers or members in the manner provided in the plan; provided, however,
11 that a member that was entitled to vote on or consent to approval of the merger is entitled to vote
12 on or consent to any amendment of the plan that will change:

13 (i) The amount or kind of interests, securities, obligations, money, other property, rights to
14 acquire interests or securities, or any combination of the foregoing, to be received by the interest
15 holders of any party to the plan;

16 (ii) The public organic record, if any, or private organic rules of the surviving entity that
17 will be in effect immediately after the merger becomes effective, except for changes that do not
18 require approval of the interest holders of the surviving entity under its organic law or organic rules;
19 or

20 (iii) Any other terms or conditions of the plan, if the change would adversely affect the
21 member in any material respect.

22 (c) After a plan of merger has been approved and before a statement of merger becomes
23 effective, the plan may be abandoned as provided in the plan. Unless prohibited by the plan, a
24 domestic merging limited liability company may abandon the plan in the same manner as the plan
25 was approved.

26 (d) If a plan of merger is abandoned after a statement of merger has been delivered to the
27 secretary of state for filing and before the statement becomes effective, a statement of
28 abandonment, signed by a party to the plan, shall be delivered to the secretary of state for filing
29 before the statement of merger becomes effective. The statement of abandonment takes effect on
30 filing, and the merger is abandoned and does not become effective. The statement of abandonment
31 shall contain:

32 (1) The name of each party to the plan of merger;

33 (2) The date on which the statement of merger was filed by the secretary of state; and

34 (3) A statement that the merger has been abandoned in accordance with this section.

1 **7-16.1-1025. Statement of merger - Effective date of merger.**

2 (a) A statement of merger shall be signed by each merging entity and delivered to the
3 secretary of state for filing.

4 (b) A statement of merger shall contain:

5 (1) The name, jurisdiction of formation, and type of entity of each merging entity that is
6 not the surviving entity;

7 (2) The name, jurisdiction of formation, and type of entity of the surviving entity;

8 (3) A statement that the merger was approved by each domestic merging entity, if any, in
9 accordance with this Part 2 of this Article and by each foreign merging entity, if any, in accordance
10 with the law of its jurisdiction of formation;

11 (4) If the surviving entity exists before the merger and is a domestic filing entity, any
12 amendment to its public organic record approved as part of the plan of merger;

13 (5) If the surviving entity is created by the merger and is a domestic filing entity, its public
14 organic record, as an attachment; and

15 (6) If the surviving entity is created by the merger and is a domestic limited liability
16 partnership, its statement of qualification, as an attachment.

17 (c) In addition to the requirements of subsection (b) of this section, a statement of merger
18 may contain any other provision not prohibited by law.

19 (d) If the surviving entity is a domestic entity, its public organic record, if any, shall satisfy
20 the requirements of the law of this state, except that the public organic record does not need to be
21 signed.

22 (e) A plan of merger that is signed by all the merging entities and meets all the requirements
23 of subsection (b) of this section may be delivered to the secretary of state for filing instead of a
24 statement of merger and on filing has the same effect. If a plan of merger is filed as provided in this
25 subsection, references in this Article to a statement of merger refer to the plan of merger filed under
26 this subsection.

27 (f) If the surviving entity is a domestic limited liability company, the merger becomes
28 effective when the statement of merger is effective. In all other cases, the merger becomes effective
29 on the later of:

30 (1) The date and time provided by the organic law of the surviving entity; and

31 (2) When the statement is effective.

32 **7-16.1-1026. Effect of merger.**

33 (a) When a merger becomes effective:

34 (1) The surviving entity continues or comes into existence;

1 (2) Each merging entity that is not the surviving entity ceases to exist;
2 (3) All property of each merging entity vests in the surviving entity without transfer,
3 reversion, or impairment;
4 (4) All debts, obligations, and other liabilities of each merging entity are debts, obligations,
5 and other liabilities of the surviving entity;
6 (5) Except as otherwise provided by law or the plan of merger, all the rights, privileges,
7 immunities, powers, and purposes of each merging entity vest in the surviving entity;
8 (6) If the surviving entity exists before the merger:
9 (i) All its property continues to be vested in it without transfer, reversion, or impairment;
10 (ii) It remains subject to all its debts, obligations, and other liabilities; and
11 (iii) All its rights, privileges, immunities, powers, and purposes continue to be vested in it;
12 (7) The name of the surviving entity may be substituted for the name of any merging entity
13 that is a party to any pending action or proceeding;
14 (8) If the surviving entity exists before the merger:
15 (i) Its public organic record, if any, is amended to the extent provided in the statement of
16 merger; and
17 (ii) Its private organic rules that are to be in a record, if any, are amended to the extent
18 provided in the plan of merger;
19 (9) If the surviving entity is created by the merger, its private organic rules are effective
20 and:
21 (i) If it is a filing entity, its public organic record becomes effective; and
22 (ii) If it is a limited liability partnership, its statement of qualification becomes effective;
23 and
24 (10) The interests in each merging entity which are to be converted in the merger are
25 converted, and the interest holders of those interests are entitled only to the rights provided to them
26 under the plan of merger and to any appraisal rights they have under § 7-16.1-1006 and the merging
27 entity's organic law.
28 (b) Except as otherwise provided in the organic law or organic rules of a merging entity,
29 the merger does not give rise to any rights that an interest holder, governor, or third party would
30 have upon a dissolution, liquidation, or winding up of the merging entity.
31 (c) When a merger becomes effective, a person that did not have interest holder liability
32 with respect to any of the merging entities and becomes subject to interest holder liability with
33 respect to a domestic entity as a result of the merger has interest holder liability only to the extent
34 provided by the organic law of that entity and only for those debts, obligations, and other liabilities

1 that are incurred after the merger becomes effective.

2 (d) When a merger becomes effective, the interest holder liability of a person that ceases
3 to hold an interest in a domestic merging limited liability company with respect to which the person
4 had interest holder liability is subject to the following rules:

5 (1) The merger does not discharge any interest holder liability under this chapter to the
6 extent the interest holder liability was incurred before the merger became effective.

7 (2) The person does not have interest holder liability under this chapter for any debt,
8 obligation, or other liability that is incurred after the merger becomes effective.

9 (3) This chapter continues to apply to the release, collection, or discharge of any interest
10 holder liability preserved under subsection (d)(1) of this section as if the merger had not occurred.

11 (4) The person has whatever rights of contribution from any other person as are provided
12 by this chapter, law other than this chapter, or the operating agreement of the domestic merging
13 limited liability company with respect to any interest holder liability preserved under subsection
14 (d)(1) of this section as if the merger had not occurred.

15 (e) When a merger becomes effective, a foreign entity that is the surviving entity may be
16 served with process in this state for the collection and enforcement of any debts, obligations, or
17 other liabilities of a domestic merging limited liability company as provided in § 7-16.1-119.

18 (f) When a merger becomes effective, the registration to do business in this state of any
19 foreign merging entity that is not the surviving entity is canceled.

20 PART 3

21 INTEREST EXCHANGE

22 **7-16.1-1031. Interest exchange authorized.**

23 (a) By complying with this Part 3 of this Article:

24 (1) A domestic limited liability company may acquire all of one or more classes or series
25 of interests of another domestic entity or a foreign entity in exchange for interests, securities,
26 obligations, money, other property, rights to acquire interests or securities, or any combination of
27 the foregoing; or

28 (2) All of one or more classes or series of interests of a domestic limited liability company
29 may be acquired by another domestic entity or a foreign entity in exchange for interests, securities,
30 obligations, money, other property, rights to acquire interests or securities, or any combination of
31 the foregoing.

32 (b) By complying with the provisions of this Part 3 of this Article applicable to foreign
33 entities, a foreign entity may be the acquiring or acquired entity in an interest exchange under this
34 Part 3 of this Article if the interest exchange is authorized by the law of the foreign entity's

1 jurisdiction of formation.

2 (c) If a protected agreement contains a provision that applies to a merger of a domestic
3 limited liability company but does not refer to an interest exchange, the provision applies to an
4 interest exchange in which the domestic limited liability company is the acquired entity as if the
5 interest exchange were a merger until the provision is amended after the effective date of this
6 chapter.

7 **7-16.1-1032. Plan of interest exchange.**

8 (a) A domestic limited liability company may be the acquired entity in an interest exchange
9 under this Part 3 of this Article by approving a plan of interest exchange. The plan shall be in a
10 record and contain:

11 (1) The name of the acquired entity;

12 (2) The name, jurisdiction of formation, and type of entity of the acquiring entity;

13 (3) The manner of converting the interests in the acquired entity into interests, securities,
14 obligations, money, other property, rights to acquire interests or securities, or any combination of
15 the foregoing;

16 (4) Any proposed amendments to:

17 (i) The certificate of organization of the acquired entity; and

18 (ii) The operating agreement of the acquired entity that are, or are proposed to be, in a
19 record;

20 (5) The other terms and conditions of the interest exchange; and

21 (6) Any other provision required by the law of this state or the operating agreement of the
22 acquired entity.

23 (b) In addition to the requirements of subsection (a) of this section, a plan of interest
24 exchange may contain any other provision not prohibited by law.

25 **7-16.1-1033. Approval of interest exchange.**

26 (a) A plan of interest exchange is not effective unless it has been approved:

27 (1) By all the members of a domestic acquired limited liability company entitled to vote on
28 or consent to any matter; and

29 (2) In a record, by each member of the domestic acquired limited liability company that
30 will have interest holder liability for debts, obligations, and other liabilities that are incurred after
31 the interest exchange becomes effective, unless:

32 (i) The operating agreement of the company provides in a record for the approval of an
33 interest exchange or a merger in which some or all of its members become subject to interest holder
34 liability by the affirmative vote or consent of fewer than all the members; and

1 (ii) The member consented in a record to or voted for that provision of the operating
2 agreement or became a member after the adoption of that provision.

3 (b) An interest exchange involving a domestic acquired entity that is not a limited liability
4 company is not effective unless it is approved by the domestic entity in accordance with its organic
5 law.

6 (c) An interest exchange involving a foreign acquired entity is not effective unless it is
7 approved by the foreign entity in accordance with the law of the foreign entity's jurisdiction of
8 formation.

9 (d) Except as otherwise provided in its organic law or organic rules, the interest holders of
10 the acquiring entity are not required to approve the interest exchange.

11 **7-16.1-1034. Amendment or abandonment of plan of interest exchange.**

12 (a) A plan of interest exchange may be amended only with the consent of each party to the
13 plan, except as otherwise provided in the plan.

14 (b) A domestic acquired limited liability company may approve an amendment of a plan
15 of interest exchange:

16 (1) In the same manner as the plan was approved, if the plan does not provide for the
17 manner in which it may be amended; or

18 (2) By its managers or members in the manner provided in the plan; provided, however,
19 that a member that was entitled to vote on or consent to approval of the interest exchange is entitled
20 to vote on or consent to any amendment of the plan that will change:

21 (i) The amount or kind of interests, securities, obligations, money, other property, rights to
22 acquire interests or securities, or any combination of the foregoing, to be received by any of the
23 members of the acquired company under the plan;

24 (ii) The certificate of organization or operating agreement of the acquired company that
25 will be in effect immediately after the interest exchange becomes effective, except for changes that
26 do not require approval of the members of the acquired company under this chapter or the operating
27 agreement; or

28 (iii) Any other terms or conditions of the plan, if the change would adversely affect the
29 member in any material respect.

30 (c) After a plan of interest exchange has been approved and before a statement of interest
31 exchange becomes effective, the plan may be abandoned as provided in the plan. Unless prohibited
32 by the plan, a domestic acquired limited liability company may abandon the plan in the same
33 manner as the plan was approved.

34 (d) If a plan of interest exchange is abandoned after a statement of interest exchange has

1 been delivered to the secretary of state for filing and before the statement becomes effective, a
2 statement of abandonment, signed by the acquired limited liability company, shall be delivered to
3 the secretary of state for filing before the statement of interest exchange becomes effective. The
4 statement of abandonment takes effect on filing, and the interest exchange is abandoned and does
5 not become effective. The statement of abandonment shall contain:

6 (1) The name of the acquired company;

7 (2) The date on which the statement of interest exchange was filed by the secretary of state;

8 and

9 (3) A statement that the interest exchange has been abandoned in accordance with this
10 section.

11 **7-16.1-1035. Statement of interest exchange - Effective date of interest exchange.**

12 (a) A statement of interest exchange shall be signed by a domestic acquired limited liability
13 company and delivered to the secretary of state for filing.

14 (b) A statement of interest exchange shall contain:

15 (1) The name of the acquired limited liability company;

16 (2) The name, jurisdiction of formation, and type of entity of the acquiring entity;

17 (3) A statement that the plan of interest exchange was approved by the acquired company
18 in accordance with this Part 3 of this Article; and

19 (4) Any amendments to the acquired company's certificate of organization approved as
20 part of the plan of interest exchange.

21 (c) In addition to the requirements of subsection (b) of this section, a statement of interest
22 exchange may contain any other provision not prohibited by law.

23 (d) A plan of interest exchange that is signed by a domestic acquired limited liability
24 company and meets all the requirements of subsection (b) of this section may be delivered to the
25 secretary of state for filing instead of a statement of interest exchange and on filing has the same
26 effect. If a plan of interest exchange is filed as provided in this subsection, references in this Article
27 to a statement of interest exchange refer to the plan of interest exchange filed under this subsection.

28 (e) An interest exchange becomes effective when the statement of interest exchange is
29 effective.

30 **7-16.1-1036. Effect of interest exchange.**

31 (a) When an interest exchange in which the acquired entity is a domestic limited liability
32 company becomes effective:

33 (1) The interests in the acquired company which are the subject of the interest exchange
34 are converted, and the members holding those interests are entitled only to the rights provided to

1 them under the plan of interest exchange and to any appraisal rights they have under § 7-16.1-1006;

2 (2) The acquiring entity becomes the interest holder of the interests in the acquired
3 company stated in the plan of interest exchange to be acquired by the acquiring entity;

4 (3) The certificate of organization of the acquired company is amended to the extent
5 provided in the statement of interest exchange; and

6 (4) The provisions of the operating agreement of the acquired company that are to be in a
7 record, if any, are amended to the extent provided in the plan of interest exchange.

8 (b) Except as otherwise provided in the operating agreement of a domestic acquired limited
9 liability company, the interest exchange does not give rise to any rights that a member, manager,
10 or third party would have upon a dissolution, liquidation, or winding up of the acquired company.

11 (c) When an interest exchange becomes effective, a person that did not have interest holder
12 liability with respect to a domestic acquired limited liability company and becomes subject to
13 interest holder liability with respect to a domestic entity as a result of the interest exchange has
14 interest holder liability only to the extent provided by the organic law of the entity and only for
15 those debts, obligations, and other liabilities that are incurred after the interest exchange becomes
16 effective.

17 (d) When an interest exchange becomes effective, the interest holder liability of a person
18 that ceases to hold an interest in a domestic acquired limited liability company with respect to
19 which the person had interest holder liability is subject to the following rules:

20 (1) The interest exchange does not discharge any interest holder liability under this chapter
21 to the extent the interest holder liability was incurred before the interest exchange became effective.

22 (2) The person does not have interest holder liability under this chapter for any debt,
23 obligation, or other liability that is incurred after the interest exchange becomes effective.

24 (3) This chapter continues to apply to the release, collection, or discharge of any interest
25 holder liability preserved under subsection (d)(1) of this section as if the interest exchange had not
26 occurred.

27 (4) The person has whatever rights of contribution from any other person as are provided
28 by this chapter, law other than this chapter, or the operating agreement of the acquired company
29 with respect to any interest holder liability preserved under subsection (d)(1) of this section as if
30 the interest exchange had not occurred.

31 PART 4

32 CONVERSION

33 **7-16.1-1041. Conversion authorized.**

34 (a) By complying with this Part 4 of this Article, a domestic limited liability company may

1 become:

2 (1) A domestic entity that is a different type of entity; or

3 (2) A foreign entity that is a different type of entity, if the conversion is authorized by the
4 law of the foreign entity's jurisdiction of formation.

5 (b) By complying with the provisions of this Part 4 of this Article applicable to foreign
6 entities, a foreign entity that is not a foreign limited liability company may become a domestic
7 limited liability company if the conversion is authorized by the law of the foreign entity's
8 jurisdiction of formation.

9 (c) If a protected agreement contains a provision that applies to a merger of a domestic
10 limited liability company but does not refer to a conversion, the provision applies to a conversion
11 of the company as if the conversion were a merger until the provision is amended after the effective
12 date of this chapter.

13 **7-16.1-1042. Plan of conversion.**

14 (a) A domestic limited liability company may convert to a different type of entity under
15 this Part 4 of this Article by approving a plan of conversion. The plan shall be in a record and
16 contain:

17 (1) The name of the converting limited liability company;

18 (2) The name, jurisdiction of formation, and type of entity of the converted entity;

19 (3) The manner of converting the interests in the converting limited liability company into
20 interests, securities, obligations, money, other property, rights to acquire interests or securities, or
21 any combination of the foregoing;

22 (4) The proposed public organic record of the converted entity if it will be a filing entity;

23 (5) The full text of the private organic rules of the converted entity which are proposed to
24 be in a record;

25 (6) The other terms and conditions of the conversion; and

26 (7) Any other provision required by the law of this state or the operating agreement of the
27 converting limited liability company.

28 (b) In addition to the requirements of subsection (a) of this section, a plan of conversion
29 may contain any other provision not prohibited by law.

30 **7-16.1-1043. Approval of conversion.**

31 (a) A plan of conversion is not effective unless it has been approved:

32 (1) By a domestic converting limited liability company, by all the members of the limited
33 liability company entitled to vote on or consent to any matter; and

34 (2) In a record, by each member of a domestic converting limited liability company which

1 will have interest holder liability for debts, obligations, and other liabilities that are incurred after
2 the conversion becomes effective, unless:

3 (i) The operating agreement of the company provides in a record for the approval of a
4 conversion or a merger in which some or all of its members become subject to interest holder
5 liability by the affirmative vote or consent of fewer than all the members; and

6 (ii) The member voted for or consented in a record to that provision of the operating
7 agreement or became a member after the adoption of that provision.

8 (b) A conversion involving a domestic converting entity that is not a limited liability
9 company is not effective unless it is approved by the domestic converting entity in accordance with
10 its organic law.

11 (c) A conversion of a foreign converting entity is not effective unless it is approved by the
12 foreign entity in accordance with the law of the foreign entity's jurisdiction of formation.

13 **7-16.1-1044. Amendment or abandonment of plan of conversion.**

14 (a) A plan of conversion of a domestic converting limited liability company may be
15 amended:

16 (1) In the same manner as the plan was approved, if the plan does not provide for the
17 manner in which it may be amended; or

18 (2) By its managers or members in the manner provided in the plan; provided, however,
19 that a member that was entitled to vote on or consent to approval of the conversion is entitled to
20 vote on or consent to any amendment of the plan that will change:

21 (i) The amount or kind of interests, securities, obligations, money, other property, rights to
22 acquire interests or securities, or any combination of the foregoing, to be received by any of the
23 members of the converting company under the plan;

24 (ii) The public organic record, if any, or private organic rules of the converted entity which
25 will be in effect immediately after the conversion becomes effective, except for changes that do not
26 require approval of the interest holders of the converted entity under its organic law or organic
27 rules; or

28 (iii) Any other terms or conditions of the plan, if the change would adversely affect the
29 member in any material respect.

30 (b) After a plan of conversion has been approved by a domestic converting limited liability
31 company and before a statement of conversion becomes effective, the plan may be abandoned as
32 provided in the plan. Unless prohibited by the plan, a domestic converting limited liability company
33 may abandon the plan in the same manner as the plan was approved.

34 (c) If a plan of conversion is abandoned after a statement of conversion has been delivered

1 to the secretary of state for filing and before the statement becomes effective, a statement of
2 abandonment, signed by the converting entity, shall be delivered to the secretary of state for filing
3 before the statement of conversion becomes effective. The statement of abandonment takes effect
4 on filing, and the conversion is abandoned and does not become effective. The statement of
5 abandonment shall contain:

- 6 (1) The name of the converting limited liability company;
- 7 (2) The date on which the statement of conversion was filed by the secretary of state; and
- 8 (3) A statement that the conversion has been abandoned in accordance with this section.

9 **7-16.1-1045. Statement of conversion - Effective date of conversion.**

10 (a) A statement of conversion shall be signed by the converting entity and delivered to the
11 secretary of state for filing.

12 (b) A statement of conversion shall contain:

- 13 (1) The name, jurisdiction of formation, and type of entity of the converting entity;
- 14 (2) The name, jurisdiction of formation, and type of entity of the converted entity;
- 15 (3) If the converting entity is a domestic limited liability company, a statement that the plan
16 of conversion was approved in accordance with this Part 4 of this Article or, if the converting entity
17 is a foreign entity, a statement that the conversion was approved by the foreign entity in accordance
18 with the law of its jurisdiction of formation;

19 (4) If the converted entity is a domestic filing entity, its public organic record, as an
20 attachment; and

21 (5) If the converted entity is a domestic limited liability partnership, its statement of
22 qualification, as an attachment.

23 (c) In addition to the requirements of subsection (b) of this section, a statement of
24 conversion may contain any other provision not prohibited by law.

25 (d) If the converted entity is a domestic entity, its public organic record, if any, shall satisfy
26 the requirements of the law of this state, except that the public organic record does not need to be
27 signed.

28 (e) A plan of conversion that is signed by a domestic converting limited liability company
29 and meets all the requirements of subsection (b) of this section may be delivered to the secretary of
30 state for filing instead of a statement of conversion and on filing has the same effect. If a plan of
31 conversion is filed as provided in this subsection, references in this Article to a statement of
32 conversion refer to the plan of conversion filed under this subsection.

33 (f) If the converted entity is a domestic limited liability company, the conversion becomes
34 effective when the statement of conversion is effective. In all other cases, the conversion becomes

1 effective on the later of:

2 (1) The date and time provided by the organic law of the converted entity; and

3 (2) When the statement is effective.

4 **7-16.1-1046. Effect of conversion.**

5 (a) When a conversion becomes effective:

6 (1) The converted entity is:

7 (i) Organized under and subject to the organic law of the converted entity; and

8 (ii) The same entity without interruption as the converting entity;

9 (2) All property of the converting entity continues to be vested in the converted entity
10 without transfer, reversion, or impairment;

11 (3) All debts, obligations, and other liabilities of the converting entity continue as debts,
12 obligations, and other liabilities of the converted entity;

13 (4) Except as otherwise provided by law or the plan of conversion, all the rights, privileges,
14 immunities, powers, and purposes of the converting entity remain in the converted entity;

15 (5) The name of the converted entity may be substituted for the name of the converting
16 entity in any pending action or proceeding;

17 (6) The certificate of organization of the converted entity becomes effective;

18 (7) The provisions of the operating agreement of the converted entity which are to be in a
19 record, if any, approved as part of the plan of conversion become effective; and

20 (8) The interests in the converting entity are converted, and the interest holders of the
21 converting entity are entitled only to the rights provided to them under the plan of conversion and
22 to any appraisal rights they have under § 7-16.1-1006.

23 (b) Except as otherwise provided in the operating agreement of a domestic converting
24 limited liability company, the conversion does not give rise to any rights that a member, manager,
25 or third party would have upon a dissolution, liquidation, or winding up of the converting entity.

26 (c) When a conversion becomes effective, a person that did not have interest holder liability
27 with respect to the converting entity and becomes subject to interest holder liability with respect to
28 a domestic entity as a result of the conversion has interest holder liability only to the extent provided
29 by the organic law of the entity and only for those debts, obligations, and other liabilities that are
30 incurred after the conversion becomes effective.

31 (d) When a conversion becomes effective, the interest holder liability of a person that
32 ceases to hold an interest in a domestic converting limited liability company with respect to which
33 the person had interest holder liability is subject to the following rules:

34 (1) The conversion does not discharge any interest holder liability under this chapter to the

1 extent the interest holder liability was incurred before the conversion became effective:

2 (2) The person does not have interest holder liability under this chapter for any debt,
3 obligation, or other liability that arises after the conversion becomes effective;

4 (3) This chapter continues to apply to the release, collection, or discharge of any interest
5 holder liability preserved under subsection (d)(1) of this section as if the conversion had not
6 occurred.

7 (4) The person has whatever rights of contribution from any other person as are provided
8 by this chapter, law other than this chapter, or the organic rules of the converting entity with respect
9 to any interest holder liability preserved under subsection (d)(1) of this section as if the conversion
10 had not occurred.

11 (e) When a conversion becomes effective, a foreign entity that is the converted entity may
12 be served with process in this state for the collection and enforcement of any of its debts,
13 obligations, and other liabilities as provided in § 7-16.1-119.

14 (f) If the converting entity is a registered foreign entity, its registration to do business in
15 this state is canceled when the conversion becomes effective.

16 (g) A conversion does not require the entity to wind up its affairs and does not constitute
17 or cause the dissolution of the entity.

18 PART 5

19 DOMESTICATION

20 **7-16.1-1051. Domestication authorized.**

21 (a) By complying with this Part 5 of this Article, a domestic limited liability company may
22 become a foreign limited liability company if the domestication is authorized by the law of the
23 foreign jurisdiction.

24 (b) By complying with the provisions of this Part 5 of this Article applicable to foreign
25 limited liability companies, a foreign limited liability company may become a domestic limited
26 liability company if the domestication is authorized by the law of the foreign limited liability
27 company's jurisdiction of formation.

28 (c) If a protected agreement contains a provision that applies to a merger of a domestic
29 limited liability company but does not refer to a domestication, the provision applies to a
30 domestication of the limited liability company as if the domestication were a merger until the
31 provision is amended after the effective date of this chapter.

32 **7-16.1-1052. Plan of domestication.**

33 (a) A domestic limited liability company may become a foreign limited liability company
34 in a domestication by approving a plan of domestication. The plan shall be in a record and contain:

- 1 (1) The name of the domesticating limited liability company;
- 2 (2) The name and jurisdiction of formation of the domesticated limited liability company;
- 3 (3) The manner of converting the interests in the domesticating limited liability company
4 into interests, securities, obligations, money, other property, rights to acquire interests or securities,
5 or any combination of the foregoing;
- 6 (4) The proposed certificate of organization of the domesticated limited liability company;
- 7 (5) The full text of the provisions of the operating agreement of the domesticated limited
8 liability company that are proposed to be in a record;
- 9 (6) The other terms and conditions of the domestication; and
- 10 (7) Any other provision required by the law of this state or the operating agreement of the
11 domesticating limited liability company.

12 (b) In addition to the requirements of subsection (a) of this section, a plan of domestication
13 may contain any other provision not prohibited by law.

14 **7-16.1-1053. Approval of domestication.**

15 (a) A plan of domestication of a domestic domesticating limited liability company is not
16 effective unless it has been approved:

- 17 (1) By all the members entitled to vote on or consent to any matter; and
- 18 (2) In a record, by each member that will have interest holder liability for debts, obligations,
19 and other liabilities that are incurred after the domestication becomes effective, unless:

20 (i) The operating agreement of the domesticating company in a record provides for the
21 approval of a domestication or merger in which some or all of its members become subject to
22 interest holder liability by the affirmative vote or consent of fewer than all the members; and

23 (ii) The member voted for or consented in a record to that provision of the operating
24 agreement or became a member after the adoption of that provision.

25 (b) A domestication of a foreign domesticating limited liability company is not effective
26 unless it is approved in accordance with the law of the foreign limited liability company's
27 jurisdiction of formation.

28 **7-16.1-1054. Amendment or abandonment of plan of domestication.**

29 (a) A plan of domestication of a domestic domesticating limited liability company may be
30 amended:

31 (1) In the same manner as the plan was approved, if the plan does not provide for the
32 manner in which it may be amended; or

33 (2) By its managers or members in the manner provided in the plan; provided, however,
34 that a member that was entitled to vote on or consent to approval of the domestication is entitled to

1 vote on or consent to any amendment of the plan that will change:

2 (i) The amount or kind of interests, securities, obligations, money, other property, rights to
3 acquire interests or securities, or any combination of the foregoing, to be received by any of the
4 members of the domesticating limited liability company under the plan;

5 (ii) The certificate of organization or operating agreement of the domesticated limited
6 liability company that will be in effect immediately after the domestication becomes effective,
7 except for changes that do not require approval of the members of the domesticated limited liability
8 company under its organic law or operating agreement; or

9 (iii) Any other terms or conditions of the plan, if the change would adversely affect the
10 member in any material respect.

11 (b) After a plan of domestication has been approved by a domestic domesticating limited
12 liability company and before a statement of domestication becomes effective, the plan may be
13 abandoned as provided in the plan. Unless prohibited by the plan, a domestic domesticating limited
14 liability company may abandon the plan in the same manner as the plan was approved.

15 (c) If a plan of domestication is abandoned after a statement of domestication has been
16 delivered to the secretary of state for filing and before the statement becomes effective, a statement
17 of abandonment, signed by the domesticating limited liability company, shall be delivered to the
18 secretary of state for filing before the statement of domestication becomes effective. The statement
19 of abandonment takes effect on filing, and the domestication is abandoned and does not become
20 effective. The statement of abandonment shall contain:

21 (1) The name of the domesticating limited liability company;

22 (2) The date on which the statement of domestication was filed by the secretary of state;

23 and

24 (3) A statement that the domestication has been abandoned in accordance with this section.

25 **7-16.1-1055. Statement of domestication - Effective date of domestication.**

26 (a) A statement of domestication shall be signed by the domesticating limited liability
27 company and delivered to the secretary of state for filing.

28 (b) A statement of domestication shall contain:

29 (1) The name and jurisdiction of formation of the domesticating limited liability company;

30 (2) The name and jurisdiction of formation of the domesticated limited liability company;

31 (3) If the domesticating limited liability company is a domestic limited liability company,
32 a statement that the plan of domestication was approved in accordance with this Part or, if the
33 domesticating limited liability company is a foreign limited liability company, a statement that the
34 domestication was approved in accordance with the law of its jurisdiction of formation; and

1 (4) The certificate of organization of the domesticated limited liability company, as an
2 attachment.

3 (c) In addition to the requirements of subsection (b) of this section, a statement of
4 domestication may contain any other provision not prohibited by law.

5 (d) The certificate of organization of a domestic domesticated limited liability company
6 shall satisfy the requirements of this chapter, but the certificate does not need to be signed.

7 (e) A plan of domestication that is signed by a domesticating domestic limited liability
8 company and meets all the requirements of subsection (b) of this section may be delivered to the
9 secretary of state for filing instead of a statement of domestication and on filing has the same effect.
10 If a plan of domestication is filed as provided in this subsection, references in this Article to a
11 statement of domestication refer to the plan of domestication filed under this subsection.

12 (f) If the domesticated entity is a domestic limited liability company, the domestication
13 becomes effective when the statement of domestication is effective. If the domesticated entity is a
14 foreign limited liability company, the domestication becomes effective on the later of:

15 (1) The date and time provided by the organic law of the domesticated entity; and

16 (2) When the statement is effective.

17 **7-16.1-1056. Effect of domestication.**

18 (a) When a domestication becomes effective:

19 (1) The domesticated entity is:

20 (i) Organized under and subject to the organic law of the domesticated entity; and

21 (ii) The same entity without interruption as the domesticating entity;

22 (2) All property of the domesticating entity continues to be vested in the domesticated
23 entity without transfer, reversion, or impairment;

24 (3) All debts, obligations, and other liabilities of the domesticating entity continue as debts,
25 obligations, and other liabilities of the domesticated entity;

26 (4) Except as otherwise provided by law or the plan of domestication, all the rights,
27 privileges, immunities, powers, and purposes of the domesticating entity remain in the
28 domesticated entity;

29 (5) The name of the domesticated entity may be substituted for the name of the
30 domesticating entity in any pending action or proceeding;

31 (6) The certificate of organization of the domesticated entity becomes effective;

32 (7) The provisions of the operating agreement of the domesticated entity that are to be in a
33 record, if any, approved as part of the plan of domestication become effective; and

34 (8) The interests in the domesticating entity are converted to the extent and as approved in

1 connection with the domestication, and the members of the domesticating entity are entitled only
2 to the rights provided to them under the plan of domestication and to any appraisal rights they have
3 under § 7-16.1-1006.

4 (b) Except as otherwise provided in the organic law or operating agreement of the
5 domesticating limited liability company, the domestication does not give rise to any rights that a
6 member, manager, or third party would otherwise have upon a dissolution, liquidation, or winding
7 up of the domesticating company.

8 (c) When a domestication becomes effective, a person that did not have interest holder
9 liability with respect to the domesticating limited liability company and becomes subject to interest
10 holder liability with respect to a domestic company as a result of the domestication has interest
11 holder liability only to the extent provided by this chapter and only for those debts, obligations, and
12 other liabilities that are incurred after the domestication becomes effective.

13 (d) When a domestication becomes effective, the interest holder liability of a person that
14 ceases to hold an interest in a domestic domesticating limited liability company with respect to
15 which the person had interest holder liability is subject to the following rules:

16 (1) The domestication does not discharge any interest holder liability under this chapter to
17 the extent the interest holder liability was incurred before the domestication became effective;

18 (2) A person does not have interest holder liability under this chapter for any debt,
19 obligation, or other liability that is incurred after the domestication becomes effective;

20 (3) This chapter continues to apply to the release, collection, or discharge of any interest
21 holder liability preserved under subsection (d)(1) of this section as if the domestication had not
22 occurred;

23 (4) A person has whatever rights of contribution from any other person as are provided by
24 this chapter, law other than this chapter, or the operating agreement of the domestic domesticating
25 limited liability company with respect to any interest holder liability preserved under subsection
26 (d)(1) of this section as if the domestication had not occurred.

27 (e) When a domestication becomes effective, a foreign limited liability company that is the
28 domesticated company may be served with process in this state for the collection and enforcement
29 of any of its debts, obligations, and other liabilities as provided in § 7-16.1-119.

30 (f) If the domesticating limited liability company is a registered foreign entity, the
31 registration of the company is canceled when the domestication becomes effective.

32 (g) A domestication does not require a domestic domesticating limited liability company
33 to wind up its affairs and does not constitute or cause the dissolution of the company.

34 ARTICLE 11

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MISCELLANEOUS PROVISIONS

7-16.1-1101. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

7-16.1-1102. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. Section 7003(b).

7-16.1-1103. Savings clause.

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

7-16.1-1104. Severability clause.

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

SECTION 3. This act shall take effect on January 1, 2024.

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LC001902
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO CORPORATIONS -- THE RHODE ISLAND LIMITED -LIABILITY
COMPANY ACT

- 1 This act would replace the existing limited liability company act with a newer and updated
- 2 model act.
- 3 This act would take effect on January 1, 2024.

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LC001902
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