

AMENDED IN SENATE JUNE 10, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Maienschein

February 23, 2015

An act to amend Sections 15902.01, 17701.02, 17701.10, 17701.12, 17701.13, 17704.01, 17704.04, 17704.07, 17704.08, 17704.09, 17704.10, 17705.02, 17706.03, 17707.01, 17707.03, 17707.09, 17708.07, 17710.03, 17710.06, 17710.12, 17713.04, and 17713.12 of the Corporations Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Maienschein. Limited liability ~~companies~~. *companies: limited partnerships.*

Existing law, the California Revised Uniform Limited Liability Company Act, authorizes one or more persons to form a limited liability company by, among other things, signing and delivering articles of organization with the Secretary of State. The act authorizes a person, as defined, to dissociate as a member of a limited liability company at any time by withdrawing as a member by express will. The act deems a person to be dissociated from a limited liability company upon the occurrence of certain events, including, among others, an individual's death. The act provides the effects when a person, including an individual, is dissociated from a limited liability company. Existing law limits the application of an operating agreement.

This bill would specify that upon dissociation a person's right to vote as a member in the management and conduct of the limited liability

company's activities terminates. The bill would authorize, if a member dies or a guardian or general conservator is appointed for the member, the member's executor, administrator, guardian, conservator, or other legal representative to exercise all of the member's rights for the purpose of settling the member's estate or administering the member's property, including any power the member had under the articles of organization or an operating agreement to give a transferee the right to become a member. ~~This~~ The bill would also modify the definition of "electronic transmission by the limited liability company" and would expand the definition of "person" under the act. ~~This~~ The bill would modify what an operating agreement may provide, as specified. ~~This~~ The bill would provide that specified provisions of the Labor Code, relating to consideration for employment and employment contracts, shall not apply to membership interests issued by any limited liability company or foreign limited liability company, as specified.

Existing law requires that any distributions made by a limited liability company before its dissolution and winding up be among the members in accordance with the operating agreement.

This bill would further require that the profits and losses of a limited liability company be allocated among the members, and among classes of members, in the manner provided in the operating agreement, and would require that profits and losses be allocated in proportion to the value of the contributions from each member if the operating agreement does not otherwise provide.

Existing law requires the consent of all members of the limited liability company to approve a merger or conversion and to amend the operating agreement.

This bill would eliminate that requirement.

Existing law requires a limited liability company to reimburse for any payment made and indemnify for any debt, obligation, or other liability incurred by a member of a member-managed limited liability company or the manager of a manager-managed limited liability company in the course of the member's or manager's activities on behalf of the limited liability company, if, in making the payment or incurring the debt, obligation, or other liability, the member or manager complied with specified duties.

This bill would require the limited liability company to indemnify the agent of a limited liability company to the extent that the agent has been successful on the merits in defense or settlement of any claim, issue, or matter if the agent acted in good faith and in a manner that the

agent reasonably believed to be in the best interests of the limited liability company and its members, as provided.

This bill would limit the applicability of the act to acts or transactions existing on or ~~after~~ *before* January 1, 2014, or by members or managers of limited liability companies existing on or before that date, as provided.

Existing law, *the Uniform Limited Partnership Act of 2008*, provides that a limited partnership is formed when the Secretary of State files the certificate of limited partnership.

This bill would provide that a limited partnership is formed when the Secretary of State files the certificate of limited partnership and when the partners enter into a partnership agreement.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15902.01 of the Corporations Code is
2 amended to read:
3 15902.01. (a) In order for a limited partnership to be formed,
4 a certificate of limited partnership must be filed with and on a form
5 prescribed by the Secretary of State and, either before or after the
6 filing of a certificate of limited partnership, the partners shall have
7 entered into a partnership agreement. The certificate must state:
8 (1) the name of the limited partnership, which shall comply with
9 Section 15901.08;
10 (2) the street address of the initial designated office;
11 (3) the name and street address of the initial agent for service
12 of process in accordance with paragraph (1) of subdivision (d) of
13 Section 15901.16;
14 (4) the name and the address of each general partner; and
15 (5) the mailing address of the limited partnership, if different
16 from the address of the initial designated office.
17 (b) A certificate of limited partnership may also contain any
18 other matters but may not vary or otherwise affect the provisions
19 specified in subdivision (b) of Section 15901.10 in a manner
20 inconsistent with that section.
21 (c) Subject to subdivision (c) of Section 15902.06, a limited
22 partnership is formed when the Secretary of State files the
23 certificate of limited partnership and the partners enter into a

1 partnership agreement before or after the filing of a certificate of
2 limited partnership.

3 (d) Subject to subdivision (b), if any provision of a partnership
4 agreement is inconsistent with the filed certificate of limited
5 partnership or with a filed certificate of dissociation, cancellation,
6 or amendment or filed certificate of conversion or merger:

7 (1) the partnership agreement prevails as to partners and
8 transferees; and

9 (2) the filed certificate of limited partnership, certificate of
10 dissociation, cancellation, or amendment or filed certificate of
11 conversion or merger prevails as to persons, other than partners
12 and transferees, that reasonably rely on the filed record to their
13 detriment.

14 (e) A limited partnership may record in the office of the county
15 recorder of any county in this state a certified copy of the certificate
16 of limited partnership, or any amendment thereto, which has been
17 filed by the Secretary of State. A foreign limited partnership may
18 record in the office of the county recorder of any county in the
19 state a certified copy of the application for registration to transact
20 business, together with the certificate of registration, referred to
21 in Section 15909.02, or any amendment thereto, which has been
22 filed by the Secretary of State. The recording shall create a
23 conclusive presumption in favor of any bona fide purchaser or
24 encumbrancer for value of the partnership real property located in
25 the county in which the certified copy has been recorded, that the
26 persons named as general partners therein are the general partners
27 of the partnership named and that they are all of the general
28 partners of the partnership.

29 (f) The Secretary of State may cancel the filing of certificates
30 of limited partnership if a check or other remittance accepted in
31 payment of the filing fee is not paid upon presentation. For partners
32 and transferees, the partnership agreement is paramount. Upon
33 receiving written notification that the item presented for payment
34 has not been honored for payment, the Secretary of State shall give
35 a first written notice of the applicability of this section to the agent
36 for service of process or to the person submitting the instrument.
37 Thereafter, if the amount has not been paid by cashier's check or
38 equivalent, the Secretary of State shall give a second written notice
39 of cancellation and the cancellation shall thereupon be effective.

1 The second notice shall be given 20 days or more after the first
2 notice and 90 days or less after the original filing.

3 (g) The Secretary of State shall include with instructional
4 materials, provided in conjunction with the form for filing a
5 certificate of limited partnership under subdivision (a), a notice
6 that the filing of the certificate of limited partnership will obligate
7 the limited partnership to pay an annual tax for that taxable year
8 to the Franchise Tax Board pursuant to Section 17935 of the
9 Revenue and Taxation Code. That notice shall be updated annually
10 to specify the dollar amount of the annual tax.

11 SEC. 2. Section 17701.02 of the Corporations Code is amended
12 to read:

13 17701.02. In this title:

14 (a) “Acknowledged” means that an instrument is either of the
15 following:

16 (1) Formally acknowledged as provided in Article 3
17 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
18 4 of Division 2 of the Civil Code.

19 (2) Executed to include substantially the following wording
20 preceding the signature:

21
22 “It is hereby declared that I am the person who executed this
23 instrument which execution is my act and deed.”
24

25 Any certificate of acknowledgment taken without this state
26 before a notary public or a judge or clerk of a court of record
27 having an official seal need not be further authenticated.

28 (b) “Articles of organization” means the articles required by
29 Section 17702.01. The term includes the articles of organization
30 as amended or restated.

31 (c) “Contribution” means any benefit provided by a person to
32 a limited liability company:

33 (1) In order to become a member upon formation of the limited
34 liability company and in accordance with an agreement between
35 or among the persons that have agreed to become the initial
36 members of the limited liability company.

37 (2) In order to become a member after formation of the limited
38 liability company and in accordance with an agreement between
39 the person and the limited liability company.

(3) In the person's capacity as a member and in accordance with the operating agreement or an agreement between the member and the limited liability company.

(d) "Debtor in bankruptcy" means a person that is the subject of either of the following:

(1) An order for relief under Title 11 of the United States Code or a successor statute of general application.

(2) A comparable order under federal, state, or foreign law governing bankruptcy or insolvency, an assignment for the benefit of creditors, or an order appointing a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property.

(e) "Designated office" means either of the following:

(1) The office that a limited liability company is required to designate and maintain under Section 17701.13.

(2) The principal office of a foreign limited liability company.

(f) "Distribution," except as otherwise provided in subdivision (g) of Section 17704.05, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

(g) "Domestic" means organized under the laws of this state when used in relation to any limited liability company, other business entity, or person other than a natural person.

(h) "Effective," with respect to a record required or permitted to be delivered to the Secretary of State for filing under this title, means effective under subdivision (c) of Section 17702.05.

(i) (1) "Electronic transmission by the limited liability company" means a communication delivered by any of the following means:

(A) Facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the limited liability company.

(B) Posting on an electronic message board or network that the limited liability company has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof.

(C) Other means of electronic communication to which both of the following apply:

1 (i) The communication is delivered to a recipient who has
2 provided an unrevoked consent to the use of those means of
3 transmission.

4 (ii) The communication creates a record that is capable of
5 retention, retrieval, and review, and that may thereafter be rendered
6 into clearly legible tangible form.

7 (2) “Electronic transmission to the limited liability company”
8 means a communication delivered by any of the following means:

9 (A) Facsimile telecommunication or electronic mail when
10 directed to the facsimile number or electronic mail address,
11 respectively, that the limited liability company has provided from
12 time to time to members or managers for sending communications
13 to the limited liability company.

14 (B) Posting on an electronic message board or network that the
15 limited liability company has designated for those communications,
16 which transmission shall be validly delivered upon the posting.

17 (C) Other means of electronic communication to which both of
18 the following apply:

19 (i) The limited liability company has placed in effect reasonable
20 measures to verify that the sender is the member or manager, in
21 person or by proxy, purporting to send the transmission.

22 (ii) The communication creates a record that is capable of
23 retention, retrieval, and review, and that may thereafter be rendered
24 into clearly legible tangible form.

25 (j) “Foreign limited liability company” means an unincorporated
26 entity formed under the law of a jurisdiction other than this state
27 and denominated by that law as a limited liability company.

28 (k) “Limited liability company,” except in the phrase “foreign
29 limited liability company,” means a domestic entity formed under
30 this title or an entity that becomes subject to this title pursuant to
31 Article 13 (commencing with Section 17713.01).

32 (l) “Majority of the managers” unless otherwise provided in the
33 operating agreement, means more than 50 percent of the managers
34 of the limited liability company.

35 (m) “Majority of the members” unless otherwise provided in
36 the operating agreement, means more than 50 percent of the
37 membership interests of members in current profits of the limited
38 liability company.

39 (n) “Manager” means a person that under the operating
40 agreement of a manager-managed limited liability company is

1 responsible, alone or in concert with others, for performing the
2 management functions stated in subdivision (c) of Section
3 17704.07.

4 (o) “Manager-managed limited liability company” means a
5 limited liability company that qualifies under subdivision (a) of
6 Section 17704.07.

7 (p) “Member” means a person that has become a member of a
8 limited liability company under Section 17704.01 and has not
9 dissociated under Section 17706.02.

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

13 (r) “Membership interest” means a member’s rights in the
14 limited liability company, including the member’s transferable
15 interest, any right to vote or participate in management, and any
16 right to information concerning the business and affairs of the
17 limited liability company provided by this title.

18 (s) “Operating agreement” means the agreement, whether or
19 not referred to as an operating agreement and whether oral, in a
20 record, implied, or in any combination thereof, of all the members
21 of a limited liability company, including a sole member, concerning
22 the matters described in subdivision (a) of Section 17701.10. The
23 term “operating agreement” may include, without more, an
24 agreement of all members to organize a limited liability company
25 pursuant to this title. An operating agreement of a limited liability
26 company having only one member shall not be unenforceable by
27 reason of there being only one person who is a party to the
28 operating agreement. The term includes the agreement as amended
29 or restated.

30 (t) “Organization” means, whether domestic or foreign, a
31 partnership whether general or limited, limited liability company,
32 association, corporation, professional corporation, professional
33 association, nonprofit corporation, business trust, or statutory
34 business trust having a governing statute.

35 (u) “Organizer” means a person that acts under Section 17702.01
36 to form a limited liability company.

37 (v) “Person” means an individual, partnership, limited
38 partnership, trust, a trustee of a trust, including, but not limited to,
39 a trust described under Division 9 (commencing with Section
40 15000) of the Probate Code, estate, association, corporation, limited

1 liability company, or other entity, whether domestic or foreign.
2 Nothing in this subdivision shall be construed to confer any rights
3 under the California Constitution or the United States Constitution.

4 (w) “Principal office” means the principal executive office of
5 a limited liability company or foreign limited liability company,
6 whether or not the office is located in this state.

7 (x) “Record” means information that is inscribed on a tangible
8 medium or that is stored in an electronic or other medium and is
9 retrievable in perceivable form.

10 (y) “State” means a state of the United States, the District of
11 Columbia, Puerto Rico, the United States Virgin Islands, or any
12 territory or insular possession subject to the jurisdiction of the
13 United States.

14 (z) “Transfer” includes an assignment, conveyance, deed, bill
15 of sale, lease, mortgage, security interest, encumbrance, gift, and
16 transfer by operation of law.

17 (aa) “Transferable interest” means the right, as originally
18 associated with a person’s capacity as a member, to receive
19 distributions from a limited liability company in accordance with
20 the operating agreement, whether or not the person remains a
21 member or continues to own any part of the right.

22 (ab) “Transferee” means a person to which all or part of a
23 transferable interest has been transferred, whether or not the
24 transferor is a member.

25 (ac) “Vote” includes authorization by written consent or consent
26 given by electronic transmission to the limited liability company.

27 SEC. 3. Section 17701.10 of the Corporations Code is amended
28 to read:

29 17701.10. (a) Except as otherwise provided in this section,
30 the operating agreement governs all of the following:

31 (1) Relations among the members as members and between the
32 members and the limited liability company.

33 (2) The rights and duties under this title of a person in the
34 capacity of manager.

35 (3) The activities of the limited liability company and the
36 conduct of those activities.

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

1 (b) To the extent the operating agreement does not otherwise
2 provide for a matter described in subdivision (a), this title governs
3 the matter.

4 (c) In addition to the matters specified in paragraphs (1) to (4),
5 inclusive, of subdivision (d), an operating agreement shall not do
6 any of the following:

7 (1) Vary a limited liability company's capacity under Section
8 17701.05 to sue and be sued in its own name.

9 (2) Vary the law applicable under Section 17701.06.

10 (3) Vary the power of the court under Section 17702.04.

11 (4) Subject to paragraphs (14) and (15) of this subdivision and
12 subdivisions (d) to (g), inclusive, eliminate the duty of loyalty, the
13 duty of care, or any other fiduciary duty.

14 (5) Subject to subdivisions (d) to (g), inclusive, eliminate the
15 contractual obligation of good faith and fair dealing under
16 subdivision (d) of Section 17704.09, but the operating agreement
17 may prescribe the standards by which the performance of the
18 obligation is to be measured, if the standards are not manifestly
19 unreasonable as determined at the time the standards are prescribed.

20 (6) Vary the requirements of Section 17701.13 to 17701.16,
21 inclusive, or any provision under Article 8 (commencing with
22 Section 17708.01).

23 (7) Vary the power of a court to decree dissolution in the
24 circumstances specified in subdivision (a) of Section 17707.03 or
25 the provisions for avoidance of dissolution in subdivision (c) of
26 Section 17707.03.

27 (8) Except as provided therein, vary the requirements of Article
28 2 (commencing with Section 17702.01) or Article 7 (commencing
29 with Section 17707.01).

30 (9) Unreasonably restrict the right of a member to maintain an
31 action under Article 9 (commencing with Section 17709.01).

32 (10) Restrict the right of a member that will have personal
33 liability with respect to a surviving or converted organization to
34 approve a merger or conversion under Article 10 (commencing
35 with Section 17710.01).

36 (11) Except as otherwise provided in subdivision (b) of Section
37 17701.12, restrict the rights under this title of a person other than
38 a member or manager.

39 (12) Except as provided therein, vary any provision under Article
40 10 (commencing with Section 17710.01).

1 (13) Vary any provision under Article 11 (commencing with
2 Section 17711.01), Article 12 (commencing with Section
3 17712.01), or Article 13 (commencing with Section 17713.01).

4 (14) Eliminate the duty of loyalty under subdivision (b) of
5 Section 17704.09, but the operating agreement may do any of the
6 following:

7 (A) Identify specific types or categories of activities that do not
8 violate the duty of loyalty, if not manifestly unreasonable.

9 (B) Specify the number or percentage of members that may
10 authorize or ratify, after full disclosure to all members of all
11 material facts, a specific act or transaction that otherwise would
12 violate the duty of loyalty.

13 (15) Unreasonably reduce the duty of care under subdivision
14 (c) of Section 17704.09.

15 (d) Except as provided in subdivision (c) and subdivisions (e)
16 to (g), inclusive, the effects of the provisions of this title may be
17 varied as among the members or as between the members and the
18 limited liability company by the operating agreement; provided,
19 however, that the provisions of Sections 17701.13, 17703.01, and
20 17704.08 and subdivisions (f) to (r), inclusive, and (u) to (w),
21 inclusive, of Section 17704.07 shall only be varied by a written
22 operating agreement. Notwithstanding the first sentence of this
23 subdivision and in addition to the matters specified in subdivision
24 (c), the operating agreement shall not do any of the following:

25 (1) Vary the definitions of Section 17701.02, except as
26 specifically provided therein.

27 (2) Vary a member's rights under Section 17704.10.

28 (3) Vary any of the provisions of this section or Section
29 17701.12, except as provided therein.

30 (4) Vary any of the provisions of subdivisions (s) and (t) of
31 Section 17704.07.

32 (e) The fiduciary duties of a manager to a manager-managed
33 limited liability company and to the members of the limited liability
34 company and of a member to a member-managed limited liability
35 company and to the members of such limited liability company
36 shall only be modified in a written operating agreement with the
37 informed consent of the members. Assenting to the operating
38 agreement pursuant to subdivision (b) of Section 17701.11 shall
39 not constitute informed consent.

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

(g) The operating agreement may alter or eliminate the indemnification for a member or manager provided by subdivision (a) of Section 17704.08 and may eliminate or limit a member or manager's liability to the limited liability company and members for money damages, except for the following:

(1) Breach of the duty of loyalty.

(2) A financial benefit received by the member or manager to which the member or manager is not entitled.

(3) A member's liability for excess distributions under Section 17704.06.

(4) Intentional infliction of harm on the limited liability company or a member.

(5) An intentional violation of criminal law.

SEC. 4. Section 17701.12 of the Corporations Code is amended to read:

17701.12. (a) An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

(b) The obligations of a limited liability company and its members to a person in the person's capacity as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under paragraph (2) of subdivision (b) of Section 17705.03 to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the person's capacity as a transferee or dissociated member.

(c) If a record that has been delivered by a limited liability company to the Secretary of State for filing and has become

1 effective under this title contains a provision that would be
2 ineffective under Section 17701.10 if contained in the operating
3 agreement, the provision is likewise ineffective in the record.

4 (d) Subject to subdivision (c), if a record that has been delivered
5 by a limited liability company to the Secretary of State for filing
6 and has become effective under this title conflicts with a provision
7 of the operating agreement both of the following apply:

8 (1) The operating agreement prevails as to members, dissociated
9 members, transferees, and managers.

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

12 SEC. 5. Section 17701.13 of the Corporations Code is amended
13 to read:

14 17701.13. (a) A limited liability company shall designate and
15 continuously maintain in this state both of the following:

16 (1) An office, which need not be a place of its activity in this
17 state.

18 (2) An agent for service of process.

19 (b) A foreign limited liability company that has a certificate of
20 registration under Section 17708.02 shall designate and
21 continuously maintain in this state an agent for service of process.

22 (c) An agent for service of process of a limited liability company
23 or foreign limited liability company shall be an individual who is
24 a resident of this state or a corporation that has complied with
25 Section 1505 and whose capacity to act as an agent has not
26 terminated. If a limited liability company or foreign limited liability
27 company designates a corporation as its agent for service of process
28 in an instrument filed with the Secretary of State, no address for
29 that agent for service of process shall be set forth in that instrument.

30 (d) Each limited liability company shall maintain in writing or
31 in any other form capable of being converted into clearly legible
32 tangible form at the office referred to in subdivision (a) all of the
33 following:

34 (1) A current list of the full name and last known business or
35 residence address of each member and of each transferee set forth
36 in alphabetical order, together with the contribution and the share
37 in profits and losses of each member and transferee.

38 (2) If the limited liability company is a manager-managed
39 limited liability company, a current list of the full name and
40 business or residence address of each manager.

1 (3) A copy of the articles of organization and all amendments
2 thereto, together with any powers of attorney pursuant to which
3 the articles of organization or any amendments thereto were
4 executed.

5 (4) Copies of the limited liability company's federal, state, and
6 local income tax or information returns and reports, if any, for the
7 six most recent fiscal years.

8 (5) A copy of the limited liability company's operating
9 agreement, if in writing, and any amendments thereto, together
10 with any powers of attorney pursuant to which any written
11 operating agreement or any amendments thereto were executed.

12 (6) Copies of the financial statement of the limited liability
13 company, if any, for the six most recent fiscal years.

14 (7) The books and records of the limited liability company as
15 they relate to the internal affairs of the limited liability company
16 for at least the current and past four fiscal years.

17 (e) Upon request of an assessor, a domestic or foreign limited
18 liability company owning, claiming, possessing, or controlling
19 property in this state subject to local assessment shall make
20 available at the limited liability company's principal office in this
21 state or at the office required to be kept pursuant to subdivision
22 (a) or at a place mutually acceptable to the assessor and the limited
23 liability company a true copy of the business records relevant to
24 the amount, cost, and value of all property that the limited liability
25 company owns, claims, possesses, or controls within the county.

26 SEC. 6. Section 17704.01 of the Corporations Code is amended
27 to read:

28 17704.01. (a) If a limited liability company is to have only
29 one member upon formation, the person becomes a member as
30 agreed by that person and the organizer of the limited liability
31 company. That person and the organizer may be, but need not be,
32 different persons. If different, the organizer acts on behalf of the
33 initial member.

34 (b) If a limited liability company is to have more than one
35 member upon formation, those persons become members as agreed
36 by the persons before the formation of the limited liability
37 company. The organizer acts on behalf of the persons in forming
38 the limited liability company and may be, but need not be, one of
39 the persons.

1 (c) After formation of a limited liability company, a person
2 becomes a member as follows:

3 (1) As provided in the operating agreement.

4 (2) As the result of a transaction effective under Article 10
5 (commencing with Section 17710.01).

6 (3) With the consent of all the members.

7 (4) If, within 90 consecutive days after the limited liability
8 company ceases to have any members, the last person to have been
9 a member, or the legal representative of that person, designates a
10 person to become a member, and the designated person consents
11 to become a member.

12 (d) A person may become a member without acquiring a
13 transferable interest and without making or being obligated to
14 make a contribution to the limited liability company.

15 (e) Sections 406 and 407 of the Labor Code shall not apply to
16 membership interests issued by any limited liability company or
17 foreign limited liability company to the following persons:

18 (1) Any employee of the limited liability company or foreign
19 limited liability company or of any parent or subsidiary of either,
20 pursuant to a membership interest purchase plan or agreement, or
21 a membership interest option plan or agreement.

22 (2) In any transaction in connection with securing employment,
23 a person who is or is about to become an officer or a manager (as
24 appointed or elected by the members) of the limited liability
25 company or the foreign limited liability company or of any parent
26 or subsidiary of either.

27 SEC. 7. Section 17704.04 of the Corporations Code is amended
28 to read:

29 17704.04. (a) Any distributions made by a limited liability
30 company before its dissolution and winding up shall be among the
31 members in accordance with the operating agreement. If the
32 operating agreement does not otherwise provide, distributions shall
33 be on the basis of the value, as stated in the required records when
34 the limited liability company decides to make the distribution, of
35 the contributions the limited liability company has received from
36 each member, except to the extent necessary to comply with any
37 transfer effective under Section 17705.02 and any charging order
38 in effect under Section 17705.03.

39 (b) A person has a right to a distribution before the dissolution
40 and winding up of a limited liability company only if the limited

1 liability company decides to make an interim distribution. Unless
2 the articles of organization or written operating agreement provides
3 otherwise, a person's dissociation does not entitle the person to a
4 distribution, and, beginning on the date of dissociation, the
5 dissociated person shall have only the right of a transferee of a
6 transferable interest with respect to that person's interest in the
7 limited liability company, and then only with respect to
8 distributions, if any, to which a transferee is entitled under the
9 operating agreement. If the dissociation is in violation of the
10 operating agreement, the limited liability company shall have the
11 right to offset any damages for the breach of the operating
12 agreement from the amounts, if any, otherwise distributable to the
13 dissociated person with respect to that person's interest in the
14 limited liability company.

15 (c) A person does not have a right to demand or receive a
16 distribution from a limited liability company in any form other
17 than money. A limited liability company may distribute an asset
18 in kind if each part of the asset is fungible with each other part and
19 each person receives a percentage of the asset equal in value to
20 the person's share of distributions.

21 (d) If a member or transferee becomes entitled to receive a
22 distribution, the member or transferee has the status of, and is
23 entitled to all remedies available to, a creditor of the limited
24 liability company with respect to the distribution.

25 (e) The profits and losses of a limited liability company shall
26 be allocated among the members, and among classes of members,
27 in the manner provided in the operating agreement. If the operating
28 agreement does not otherwise provide, profits and losses shall be
29 allocated in proportion to the value, as stated in the required
30 records, of the contributions the limited liability company has
31 received from each member.

32 SEC. 8. Section 17704.07 of the Corporations Code is amended
33 to read:

34 17704.07. (a) A limited liability company is a
35 member-managed limited liability company unless the articles of
36 organization contain the statement required by paragraph (5) of
37 subdivision (b) of Section 17702.01.

38 (b) In a member-managed limited liability company, the
39 following rules apply:

1 (1) The management and conduct of the limited liability
2 company are vested in the members.

3 (2) Except as provided in subdivision (r), each member has
4 equal rights in the management and conduct of the limited liability
5 company's activities including equal voting rights.

6 (3) A difference arising among members as to a matter in the
7 ordinary course of the activities of the limited liability company
8 shall be decided by a majority of the members.

9 (4) Except as otherwise provided in Article 10 (commencing
10 with Section 17710.01), an act outside the ordinary course of the
11 activities of the limited liability company may be undertaken only
12 with the consent of all members.

13 (5) The operating agreement may be amended only with the
14 consent of all members.

15 (c) In a manager-managed limited liability company, the
16 following rules apply:

17 (1) Except as otherwise expressly provided in this title, any
18 matter relating to the activities of the limited liability company is
19 decided exclusively by the managers.

20 (2) Each manager has equal rights in the management and
21 conduct of the activities of the limited liability company.

22 (3) A difference arising among managers as to a matter in the
23 ordinary course of the activities of the limited liability company
24 may be decided by a majority of the managers of the limited
25 liability company.

26 (4) The consent of all members of the limited liability company
27 is required to do any of the following:

28 (A) Sell, lease, exchange, or otherwise dispose of all, or
29 substantially all, of the limited liability company's property, with
30 or without the goodwill, outside the ordinary course of the limited
31 liability company's activities.

32 (B) Except as otherwise provided in Article 10 (commencing
33 with Section 17710.01), any other act outside the ordinary course
34 of the limited liability company's activities.

35 (5) A manager may be chosen at any time by the consent of a
36 majority of the members and remains a manager until a successor
37 has been chosen, unless the manager at an earlier time resigns, is
38 removed, or dies, or, in the case of a manager that is not an
39 individual, terminates. A manager may be removed at any time by
40 the consent of a majority of the members without cause, subject

1 to the rights, if any, of the manager under any service contract with
2 the limited liability company.

3 (6) A person need not be a member to be a manager, but the
4 dissociation of a member that is also a manager removes the person
5 as a manager. If a person that is both a manager and a member
6 ceases to be a manager, that cessation does not by itself dissociate
7 the person as a member.

8 (7) A person's ceasing to be a manager does not discharge any
9 debt, obligation, or other liability to the limited liability company
10 or members which the person incurred while a manager.

11 (d) ~~The~~ *Except for such orders as may be made by a court of*
12 *competent jurisdiction over a dissolution under Section 17707.03,*
13 *the* dissolution of a limited liability company does not affect the
14 applicability of this section. However, a person that wrongfully
15 causes dissolution of the limited liability company loses the right
16 to participate in management as a member and a manager.

17 (e) This title does not entitle a member to remuneration for
18 services performed for a member-managed limited liability
19 company, except for reasonable compensation for services rendered
20 in winding up the activities of a limited liability company.

21 (f) Meetings of members may be held at any place, by electronic
22 video screen communication or by electronic transmission by and
23 to the limited liability company pursuant to paragraphs (1) and (2)
24 of subdivision (i) of Section 17701.02, either within or without
25 this state, selected by the person or persons calling the meeting or
26 as may be stated in or fixed in accordance with the articles of
27 organization or a written operating agreement. If no other place is
28 stated or so fixed, all meetings shall be held at the principal office
29 of the limited liability company. Unless prohibited by the articles
30 of organization of the limited liability company, if authorized by
31 the operating agreement, members not physically present in person
32 or by proxy at a meeting of members may, by electronic
33 transmission by and to the limited liability company pursuant to
34 paragraphs (1) and (2) of subdivision (i) of Section 17701.02 or
35 by electronic video screen communication, participate in a meeting
36 of members, be deemed present in person or by proxy, and vote
37 at a meeting of members whether that meeting is to be held at a
38 designated place or in whole or in part by means of electronic
39 transmission by and to the limited liability company or by

1 electronic video screen communication, in accordance with
2 subdivision (l).

3 (g) A meeting of the members may be called by any manager
4 or by any member or members representing more than 10 percent
5 of the interests in current profits of members for the purpose of
6 addressing any matters on which the members may vote.

7 (h) (1) Whenever members are required or permitted to take
8 any action at a meeting, a written notice of the meeting shall be
9 given not less than 10 days nor more than 60 days before the date
10 of the meeting to each member entitled to vote at the meeting. The
11 notice shall state the place, date, and hour of the meeting, the means
12 of electronic transmission by and to the limited liability company
13 or electronic video screen communication, if any, and the general
14 nature of the business to be transacted. No other business may be
15 transacted at that meeting.

16 (2) Any report or any notice of a members' meeting shall be
17 given personally, by electronic transmission by the limited liability
18 company, or by mail or other means of written communication,
19 addressed to the member at the address of the member appearing
20 on the books of the limited liability company or given by the
21 member to the limited liability company for the purpose of notice,
22 or, if no address appears or is given, at the place where the principal
23 office of the limited liability company is located or by publication
24 at least once in a newspaper of general circulation in the county
25 in which the principal office is located. The notice or report shall
26 be deemed to have been given at the time when delivered
27 personally, delivered by electronic transmission by the limited
28 liability company, deposited in the mail, or sent by other means
29 of written communication. An affidavit of mailing or delivered by
30 electronic transmission by the limited liability company of any
31 notice or report in accordance with this article, executed by a
32 manager, shall be prima facie evidence of the giving of the notice
33 or report.

34 (3) If any notice or report addressed to the member at the address
35 of the member appearing on the books of the limited liability
36 company is returned to the limited liability company by the United
37 States Postal Service marked to indicate that the United States
38 Postal Service is unable to deliver the notice or report to the
39 member at the address, all future notices or reports shall be deemed
40 to have been duly given without further mailing if they are

1 available for the member at the principal office of the limited
2 liability company for a period of one year from the date of the
3 giving of the notice or report to all other members.

4 (4) Notice given by electronic transmission by the limited
5 liability company under this subdivision shall be valid only if it
6 complies with paragraph (1) of subdivision (i) of Section 17701.02.

7 Notwithstanding this condition, notice shall not be given by
8 electronic transmission by the limited liability company under this
9 subdivision after either of the following has occurred:

10 (A) The limited liability company is unable to deliver two
11 consecutive notices to the member by that means.

12 (B) The inability to so deliver the notices to the member
13 becomes known to the secretary, any assistant secretary, the transfer
14 agent, or any other person responsible for the giving of the notice.

15 (5) Upon written request to a manager by any person entitled
16 to call a meeting of members, the manager shall immediately cause
17 notice to be given to the members entitled to vote that a meeting
18 will be held at a time requested by the person calling the meeting,
19 not less than 10 days nor more than 60 days after the receipt of the
20 request. If the notice is not given within 20 days after receipt of
21 the request, the person entitled to call the meeting may give the
22 notice or, upon the application of that person, the superior court
23 of the county in which the principal office of the limited liability
24 company is located, or if the principal office is not in this state,
25 the county in which the limited liability company's address in this
26 state is located, shall summarily order the giving of the notice,
27 after notice to the limited liability company affording it an
28 opportunity to be heard. The procedure provided in subdivision
29 (c) of Section 305 shall apply to the application. The court may
30 issue any order as may be appropriate, including, without
31 limitation, an order designating the time and place of the meeting,
32 the record date for determination of members entitled to vote, and
33 the form of notice.

34 (i) When a members' meeting is adjourned to another time or
35 place, unless the articles of organization or a written operating
36 agreement otherwise require and except as provided in this
37 subdivision, notice need not be given of the adjourned meeting if
38 the time and place thereof or the means of electronic transmission
39 by and to the limited liability company or electronic video screen
40 communication, if any, are announced at the meeting at which the

1 adjournment is taken. At the adjourned meeting, the limited liability
2 company may transact any business that may have been transacted
3 at the original meeting. If the adjournment is for more than 45
4 days, or if after the adjournment a new record date is fixed for the
5 adjourned meeting, a notice of the adjourned meeting shall be
6 given to each member of record entitled to vote at the meeting.

7 (j) The actions taken at any meeting of members, however called
8 and noticed, and wherever held, have the same validity as if taken
9 at a meeting duly held after regular call and notice, if a quorum is
10 present either in person or by proxy, and if, either before or after
11 the meeting, each of the members entitled to vote, not present in
12 person or by proxy, provides a waiver of notice or consents to the
13 holding of the meeting or approves the minutes of the meeting in
14 writing. All waivers, consents, and approvals shall be filed with
15 the limited liability company records or made a part of the minutes
16 of the meeting after conversion to the form in which those records
17 or minutes are kept. Attendance of a person at a meeting shall
18 constitute a waiver of notice of the meeting, except when the person
19 objects, at the beginning of the meeting, to the transaction of any
20 business because the meeting is not lawfully called or convened.
21 Attendance at a meeting is not a waiver of any right to object to
22 the consideration of matters required by this title to be included
23 in the notice but not so included, if the objection is expressly made
24 at the meeting. Neither the business to be transacted nor the purpose
25 of any meeting of members need be specified in any written waiver
26 of notice, unless otherwise provided in the articles of organization
27 or operating agreement, except as provided in subdivision (l).

28 (k) Members may participate in a meeting of the limited liability
29 company through the use of conference telephones or electronic
30 video screen communication, as long as all members participating
31 in the meeting can hear one another, or by electronic transmission
32 by and to the limited liability company pursuant to paragraphs (1)
33 and (2) of subdivision (i) of Section 17701.02. Participation in a
34 meeting pursuant to this provision constitutes presence in person
35 at that meeting.

36 (l) Any action approved at a meeting, other than by unanimous
37 approval of those entitled to vote, shall be valid only if the general
38 nature of the proposal so approved was stated in the notice of
39 meeting or in any written waiver of notice.

1 (m) (1) A majority of the members represented in person or by
2 proxy shall constitute a quorum at a meeting of members.

3 (2) The members present at a duly called or held meeting at
4 which a quorum is present may continue to transact business until
5 adjournment, notwithstanding the loss of a quorum, if any action
6 taken after loss of a quorum, other than adjournment, is approved
7 by the requisite percentage of interests of members specified in
8 this title or in the articles of organization or a written operating
9 agreement.

10 (3) In the absence of a quorum, any meeting of members may
11 be adjourned from time to time by the vote of a majority of the
12 interests represented either in person or by proxy, but no other
13 business may be transacted, except as provided in paragraph (2).

14 (n) (1) Any action that may be taken at any meeting of the
15 members may be taken without a meeting if a consent in writing,
16 setting forth the action so taken, is signed and delivered to the
17 limited liability company within 60 days of the record date for that
18 action by members having not less than the minimum number of
19 votes that would be necessary to authorize or take that action at a
20 meeting at which all members entitled to vote thereon were present
21 and voted.

22 (2) Unless the consents of all members entitled to vote have
23 been solicited in writing, (A) notice of any member approval of
24 an amendment to the articles of organization or operating
25 agreement, a dissolution of the limited liability company as
26 provided in Section 17707.01, or a merger of the limited liability
27 company as provided in Section 17710.10, without a meeting by
28 less than unanimous written consent shall be given at least 10 days
29 before the consummation of the action authorized by the approval,
30 and (B) prompt notice shall be given of the taking of any other
31 action approved by members without a meeting by less than
32 unanimous written consent, to those members entitled to vote who
33 have not consented in writing.

34 (3) Any member giving a written consent, or the member's
35 proxyholder, may revoke the consent personally or by proxy by a
36 writing received by the limited liability company prior to the time
37 that written consents of members having the minimum number of
38 votes that would be required to authorize the proposed action have
39 been filed with the limited liability company, but may not do so
40 thereafter. This revocation is effective upon its receipt at the office

1 of the limited liability company required to be maintained pursuant
2 to Section 17701.13.

3 (o) The use of proxies in connection with this section shall be
4 governed in the same manner as in the case of corporations formed
5 under the General Corporation Law, Division 1 (commencing with
6 Section 100) of Title 1.

7 (p) In order that the limited liability company may determine
8 the members of record entitled to notices of any meeting or to vote,
9 or entitled to receive any distribution or to exercise any rights in
10 respect of any other lawful action, a manager, or members
11 representing more than 10 percent of the interests of members,
12 may fix, in advance, a record date, that is not more than 60 days
13 nor less than 10 days prior to the date of the meeting and not more
14 than 60 days prior to any other action. If no record date is fixed
15 the following shall apply:

16 (1) The record date for determining members entitled to notice
17 of or to vote at a meeting of members shall be at the close of
18 business on the business day next preceding the day on which
19 notice is given or, if notice is waived, at the close of business on
20 the business day next preceding the day on which the meeting is
21 held.

22 (2) The record date for determining members entitled to give
23 consent to limited liability company action in writing without a
24 meeting shall be the day on which the first written consent is given.

25 (3) The record date for determining members for any other
26 purpose shall be at the close of business on the day on which the
27 managers adopt the resolution relating thereto, or the 60th day
28 prior to the date of the other action, whichever is later.

29 (4) The determination of members of record entitled to notice
30 of or to vote at a meeting of members shall apply to any
31 adjournment of the meeting unless a manager or the members who
32 called the meeting fix a new record date for the adjourned meeting,
33 but the manager or the members who called the meeting shall fix
34 a new record date if the meeting is adjourned for more than 45
35 days from the date set for the original meeting.

36 (q) A meeting of the members may be conducted, in whole or
37 in part, by electronic transmission by and to the limited liability
38 company or by electronic video screen communication if both of
39 the following requirements are met:

1 (1) The limited liability company implements reasonable
2 measures to provide members, in person or by proxy, a reasonable
3 opportunity to participate in the meeting and to vote on matters
4 submitted to the members, including an opportunity to read or hear
5 the proceedings of the meeting substantially concurrently with
6 those proceedings.

7 (2) When any member votes or takes other action at the meeting
8 by means of electronic transmission to the limited liability company
9 or electronic video screen communication, a record of that vote or
10 action shall be maintained by the limited liability company.

11 (r) The articles of organization or a written operating agreement
12 may provide to all or certain identified members of a specified
13 class or group of members the right to vote separately or with all
14 or any class or group of members on any matter. Voting by
15 members may be on a per capita, number, financial interest, class,
16 group, or any other basis. If no voting provision is contained in
17 the articles of organization or written operating agreement, each
18 of the following shall apply:

19 (1) The members of a limited liability company shall vote in
20 proportion to their interests in current profits of the limited liability
21 company or, in the case of a member who has assigned the
22 member's entire transferable interest in the limited liability
23 company to a person who has not been admitted as a member, in
24 proportion to the interest in current profits that the assigning
25 member would have, had the assignment not been made.

26 (2) Any amendment to the articles of organization or operating
27 agreement shall require the unanimous vote of all members.

28 (3) In all other matters in which a vote is required, except as
29 otherwise provided in this section, a vote of a majority of the
30 members shall be sufficient.

31 (s) Notwithstanding any provision to the contrary in the articles
32 of organization or operating agreement, in no event shall the
33 articles of organization be amended by a vote of less than a
34 majority of the members.

35 (t) Notwithstanding any provision to the contrary in the articles
36 of organization or operating agreement, members shall have the
37 right to vote on a dissolution of the limited liability company as
38 provided in subdivision (b) of Section 17707.01, on a conversion
39 to another business entity as provided in subdivision (b) of Section

1 17710.03, and on a merger of the limited liability company as
2 provided in Section 17710.12.

3 (u) A written operating agreement may provide for the
4 appointment of officers, including, but not limited to, a chairperson
5 or a president, or both a chairperson and a president, a secretary,
6 a chief financial officer, and any other officers with the titles,
7 powers, and duties as shall be specified in the articles of
8 organization or operating agreement or as determined by the
9 managers or members. An officer may, but does not need to, be a
10 member or manager of the limited liability company, and any
11 number of offices may be held by the same person.

12 (v) Officers, if any, shall be appointed in accordance with the
13 written operating agreement or, if no such provision is made in
14 the operating agreement, any officers shall be appointed by the
15 managers and shall serve at the pleasure of the managers, subject
16 to the rights, if any, of an officer under any contract of
17 employment. Any officer may resign at any time upon written
18 notice to the limited liability company without prejudice to the
19 rights, if any, of the limited liability under any contract to which
20 the officer is a party.

21 (w) Subject to the provisions of the articles of organization, any
22 note, mortgage, evidence of indebtedness, contract, certificate,
23 statement, conveyance, or other instrument in writing, and any
24 assignment or endorsement thereof, executed or entered into
25 between any limited liability company and any other person, when
26 signed by the chairperson of the board, the president, or any vice
27 president and any secretary, any assistant secretary, the chief
28 financial officer, or any assistant treasurer of the limited liability
29 company, is not invalidated as to the limited liability company by
30 any lack of authority of the signing officers in the absence of actual
31 knowledge on the part of the other person that the signing officers
32 had no authority to execute the same.

33 SEC. 9. Section 17704.08 of the Corporations Code is amended
34 to read:

35 17704.08. (a) A limited liability company shall reimburse for
36 any payment made and indemnify for any debt, obligation, or other
37 liability incurred by a member of a member-managed limited
38 liability company or the manager of a manager-managed limited
39 liability company in the course of the member's or manager's
40 activities on behalf of the limited liability company, if, in making

1 the payment or incurring the debt, obligation, or other liability,
2 the member or manager complied with the duties stated in Section
3 17704.09.

4 (b) Except as provided in subdivision (g) of Section 17701.10,
5 a limited liability company may reimburse for any payment made
6 and may indemnify for any debt, obligation, or other liability
7 incurred by a person not identified in subdivision (a), ~~including~~
8 *including*, without limitation, any officer, employee, or agent of
9 the limited liability company, in the course of that person's
10 activities on behalf of the limited liability company.

11 (c) A limited liability company may purchase and maintain
12 insurance on behalf of any person against liability asserted against
13 or incurred by that person even if, under subdivision (g) of Section
14 17701.10, the operating agreement could not eliminate or limit the
15 person's liability to the limited liability company for the conduct
16 giving rise to the liability.

17 (d) (1) Without limiting subdivision (a), to the extent that an
18 agent of a limited liability company has been successful on the
19 merits in defense or settlement of any claim, issue, or matter in
20 any proceeding in which the agent was or is a party or is threatened
21 to be made a party by reason of the fact that the person is or was
22 an agent of the limited liability company, if the agent acted in good
23 faith and in a manner that the agent reasonably believed to be in
24 the best interests of the limited liability company and its members,
25 the agent shall be indemnified against expenses actually and
26 reasonably incurred by the agent in connection therewith.

27 (2) For purposes of this subdivision, the following terms have
28 the following meanings:

29 (A) "Agent" means any person who is or was a member of a
30 member-managed limited liability company, manager of a
31 manager-managed limited liability company, employee, or other
32 agent of the limited liability company, or is or was serving at the
33 request of the limited liability company as a manager, director,
34 officer, ~~employee~~ *employee*, or agent of another foreign or domestic
35 corporation, limited liability company or foreign limited liability
36 company, partnership, joint venture, ~~trust~~ *trust*, or other enterprise,
37 or was a manager, director, officer, ~~employee~~ *employee*, or agent
38 of a foreign or domestic limited liability company, partnership,
39 joint venture, trust, or other enterprise that was a predecessor of

1 the limited liability company or of another enterprise at the request
2 of the predecessor entity corporation or other enterprise.

3 (B) “Expenses” include, without limitation, the attorney’s fees
4 and any expenses of establishing a right to indemnification under
5 this subdivision.

6 (C) “Proceeding” means any threatened, pending, or completed
7 action or proceeding, whether civil, criminal, administrative, or
8 investigative.

9 SEC. 10. Section 17704.09 of the Corporations Code is
10 amended to read:

11 17704.09. (a) The fiduciary duties that a member owes to a
12 member-managed limited liability company and the other members
13 of the limited liability company are the duties of loyalty and care
14 under subdivisions (b) and (c).

15 (b) A member’s duty of loyalty to the limited liability company
16 and the other members is limited to the following:

17 (1) To account to the limited liability company and hold as
18 trustee for it any property, profit, or benefit derived by the member
19 in the conduct and winding up of the activities of a limited liability
20 company or derived from a use by the member of a limited liability
21 company property, including the appropriation of a limited liability
22 company opportunity.

23 (2) To refrain from dealing with the limited liability company
24 in the conduct or winding up of the activities of the limited liability
25 company as or on behalf of a person having an interest adverse to
26 the limited liability company.

27 (3) To refrain from competing with the limited liability company
28 in the conduct or winding up of the activities of the limited liability
29 company.

30 (c) A member’s duty of care to a limited liability company and
31 the other members in the conduct and winding up of the activities
32 of the limited liability company is limited to refraining from
33 engaging in grossly negligent or reckless conduct, intentional
34 misconduct, or a knowing violation of law.

35 (d) A member shall discharge the duties to a limited liability
36 company and the other members under this title or under the
37 operating agreement and exercise any rights consistent with the
38 obligation of good faith and fair dealing.

1 (e) A member does not violate a duty or obligation under this
2 article or under the operating agreement merely because the
3 member's conduct furthers the member's own interest.

4 (f) In a manager-managed limited liability company, all of the
5 following rules apply:

6 (1) Subdivisions (a), (b), (c), and (e) apply to the manager or
7 managers and not the members.

8 (2) Subdivision (d) applies to the members and managers.

9 (3) Except as otherwise provided, a member does not have any
10 fiduciary duty to the limited liability company or to any other
11 member solely by reason of being a member.

12 SEC. 11. Section 17704.10 of the Corporations Code is
13 amended to read:

14 17704.10. (a) Upon the request of a member or transferee, for
15 purposes reasonably related to the interest of that person as a
16 member or a transferee, a manager or, if the limited liability
17 company is member-managed, a member in possession of the
18 requested information, shall promptly deliver, in writing, to the
19 member or transferee, at the expense of the limited liability
20 company, a copy of the information required to be maintained by
21 paragraphs (1), (2), and (4) of subdivision (d) of Section 17701.13,
22 and any written operating agreement of the limited liability
23 company.

24 (b) Each member, manager, and transferee has the right, upon
25 reasonable request, for purposes reasonably related to the interest
26 of that person as a member, manager, or transferee, to each of the
27 following:

28 (1) To inspect and copy during normal business hours any of
29 the records required to be maintained pursuant to Section 17701.13.

30 (2) To obtain in writing from the limited liability company,
31 promptly after becoming available, a copy of the limited liability
32 company's federal, state, and local income tax returns for each
33 year.

34 (c) In the case of a limited liability company with more than 35
35 members, each of the following shall apply:

36 (1) A manager shall cause an annual report to be sent to each
37 of the members not later than 120 days after the close of the fiscal
38 year. The report, which may be sent by electronic transmission by
39 the limited liability company (paragraph (1) of subdivision (i) of
40 Section 17701.02) shall contain a balance sheet as of the end of

1 the fiscal year and an income statement and a statement of
2 cashflows for the fiscal year.

3 (2) Members representing at least 5 percent of the voting
4 interests of members, or three or more members, may make a
5 written request to a manager for an income statement of the limited
6 liability company for the initial three-month, six-month, or
7 nine-month period of the current fiscal year ending more than 30
8 days prior to the date of the request, and a balance sheet of the
9 limited liability company as of the end of that period. The statement
10 shall be delivered or mailed to the members within 30 days
11 thereafter.

12 (3) The financial statements referred to in this section shall be
13 accompanied by the report thereon, if any, of the independent
14 accountants engaged by the limited liability company or, if there
15 is no report, the certificate of the manager of the limited liability
16 company that the financial statements were prepared without audit
17 from the books and records of the limited liability company.

18 (d) A manager shall promptly furnish to a member a copy of
19 any amendment to the articles of organization or operating
20 agreement executed by a manager pursuant to a power of attorney
21 from the member. The articles of organization or operating
22 agreement may be sent by electronic transmission by the limited
23 liability company.

24 (e) The limited liability company shall send or cause information
25 to be sent in writing to each member or holder of a transferable
26 interest within 90 days after the end of each taxable year the
27 information necessary to complete federal and state income tax or
28 information returns and, in the case of a limited liability company
29 with 35 or fewer members, a copy of the limited liability
30 company's federal, state, and local income tax or information
31 returns for the year.

32 (f) In addition to the remedies provided in Sections 17713.06
33 and 17713.07 and any other remedies, a court of competent
34 jurisdiction may enforce the duty of making and mailing or
35 delivering the information and financial statements required by
36 this section and, for good cause shown, extend the time therefor.

37 (g) In any action under this section or under Section 17713.07,
38 if the court finds the failure of the limited liability company to
39 comply with the requirements of this section is without
40 justification, the court may award an amount sufficient to reimburse

1 the person bringing the action for the reasonable expenses incurred
2 by that person, including attorney's fees, in connection with the
3 action or proceeding.

4 (h) Any waiver of the rights provided in this section shall be
5 unenforceable.

6 (i) Any request, inspection, or copying by a member or holder
7 of a transferable interest may be made by that person or by that
8 person's agent or attorney.

9 (j) Upon complaint that a limited liability company is failing to
10 comply with the provisions of this section, or to afford to the
11 members rights given to them in the articles of organization or
12 operating agreement, the Attorney General may, in the name of
13 the people of the State of California, send to the office required to
14 be maintained pursuant to Section 17701.13, notice of the
15 complaint.

16 (k) If the answer of the limited liability company is not received
17 within 30 days of the date the notice was transmitted, or if the
18 answer is not satisfactory, and if the enforcement of the rights of
19 the aggrieved persons by private civil action, by class action, or
20 otherwise, would be so burdensome or expensive as to be
21 impracticable, the Attorney General may institute, maintain, or
22 intervene in any court of competent jurisdiction or before any
23 administrative agency for relief by way of injunction, the
24 dissolution of entities, the appointment of receivers, or any other
25 temporary, preliminary, provisional, or final remedies as may be
26 appropriate to protect the rights of members or to restore the
27 position of the members for the failure to comply with the
28 requirements of Section 17701.13 or the articles of organization
29 or the operating agreement. In any action, suit, or proceeding, there
30 may be joined as parties all persons and entities responsible for or
31 affected by the activity.

32 SEC. 12. Section 17705.02 of the Corporations Code is
33 amended to read:

34 17705.02. (a) With respect to a transfer, in whole or in part,
35 of a transferable interest, all of the following apply:

36 (1) A transfer is permissible.

37 (2) A transfer does not by itself cause a member's dissociation
38 or a dissolution and winding up of the activities of a limited liability
39 company.

1 (3) Subject to Section 17705.04, a transfer does not entitle the
2 transferee to do any of the following:

3 (A) Vote or otherwise participate in the management or conduct
4 of the activities of a limited liability company.

5 (B) Except as otherwise provided in subdivision (c) and Section
6 17704.10, have access to records or other information concerning
7 the activities of a limited liability company.

8 (b) A transferee has the right to receive, in accordance with the
9 transfer, distributions to which the transferor would otherwise be
10 entitled; provided, however, that the pledge or granting of a security
11 interest, lien, or other encumbrance in or against any or all of the
12 transferable interest of a transferor shall not cause the transferor
13 to cease to be a member or grant to the transferee or to anyone else
14 the power to exercise any rights or powers of a member, including,
15 without limitation, the right to receive distributions to which the
16 member is entitled.

17 (c) In a dissolution and winding up of a limited liability
18 company, a transferee is entitled to an account of the limited
19 liability company's transactions only from the date of dissolution.

20 (d) A transferable interest may be evidenced by a certificate of
21 the interest issued by the limited liability company in a record,
22 and, subject to this article, the interest represented by the certificate
23 may be transferred by a transfer of the certificate.

24 (e) A limited liability company need not give effect to a
25 transferee's rights under this section until the limited liability
26 company has notice of the transfer.

27 (f) A transfer of a transferable interest in violation of a restriction
28 on transfer contained in the operating agreement is ineffective as
29 to a person having notice of the restriction at the time of transfer.

30 (g) Except as otherwise provided in subdivision (b) of this
31 section and paragraph (2) of subdivision (d) of Section 17706.02,
32 when a member transfers a transferable interest, the transferor
33 retains the rights of a member, other than the interest in
34 distributions transferred, and retains all duties and obligations of
35 a member.

36 (h) When a member transfers a transferable interest to a person
37 that becomes a member with respect to the transferred interest, the
38 transferee is liable for the member's obligations under Section
39 17704.03 and subdivision (c) of Section 17704.06 known to the
40 transferee when the transferee becomes a member.

1 SEC. 13. Section 17706.03 of the Corporations Code is
2 amended to read:

3 17706.03. (a) When a person is dissociated as a member of a
4 limited liability company all of the following apply:

5 (1) The person's right to vote or participate as a member in the
6 management and conduct of the limited liability company's
7 activities terminates.

8 (2) If the limited liability company is member-managed, the
9 person's fiduciary duties as a member end with regard to matters
10 arising and events occurring after the person's dissociation.

11 (3) Subject to Section 17705.04 and Article 10 (commencing
12 with Section 17710.01), any transferable interest owned by the
13 person immediately before dissociation in the person's capacity
14 as a member is owned by the person solely as a transferee.

15 (b) A person's dissociation as a member of a limited liability
16 company does not of itself discharge the person from any debt,
17 obligation, or other liability to the limited liability company or the
18 other members that the person incurred while a member.

19 (c) If a member dies or a guardian or general conservator is
20 appointed for the member, the member's executor, administrator,
21 guardian, conservator, or other legal representative may exercise
22 all of the member's rights for the purpose of settling the member's
23 estate or administering the member's property, including any power
24 the member had under the articles of organization or an operating
25 agreement to give a transferee the right to become a member.

26 SEC. 14. Section 17707.01 of the Corporations Code is
27 amended to read:

28 17707.01. A limited liability company is dissolved, and its
29 activities shall be wound up, upon the happening of the first to
30 occur of the following:

31 (a) On the happening of an event set forth in a written operating
32 agreement or the articles of organization.

33 (b) By the vote of a majority of the members of the limited
34 liability company or a greater percentage of the voting interests
35 of members as may be specified in the articles of organization, or
36 a written operating agreement.

37 (c) The passage of 90 consecutive days during which the limited
38 liability company has no members, except that, on the death of a
39 natural person who is the sole member of a limited liability
40 company, the status of the member, including a membership

1 interest, may pass to one or more heirs, successors, and assigns of
2 the member by will or applicable law. An heir, successor, or assign
3 of the member's interest becomes a substituted member pursuant
4 to paragraph (4) of subdivision (c) of Section 17704.01, subject
5 to administration as provided by applicable law, without the
6 permission or consent of the heirs, successors, or assigns ~~or, or~~
7 those administering the estate of the deceased member.

8 (d) Entry of a decree of judicial dissolution pursuant to Section
9 17707.03.

10 SEC. 15. Section 17707.03 of the Corporations Code is
11 amended to read:

12 17707.03. (a) Pursuant to an action filed by any manager or
13 by any member or members of a limited liability company, a court
14 of competent jurisdiction may decree the dissolution of a limited
15 liability company whenever any of the events specified in
16 subdivision (b) occurs.

17 (b) (1) It is not reasonably practicable to carry on the business
18 in conformity with the articles of organization or operating
19 agreement.

20 (2) Dissolution is reasonably necessary for the protection of the
21 rights or interests of the complaining members.

22 (3) The business of the limited liability company has been
23 abandoned.

24 (4) The management of the limited liability company is
25 deadlocked or subject to internal dissention.

26 (5) Those in control of the limited liability company have been
27 guilty of, or have knowingly countenanced persistent and pervasive
28 fraud, mismanagement, or abuse of authority.

29 (c) (1) In any suit for judicial dissolution, the other members
30 may avoid the dissolution of the limited liability company by
31 purchasing for cash the membership interests owned by the
32 members so initiating the proceeding, the "moving parties," at
33 their fair market value. In fixing the value, the amount of any
34 damages resulting if the initiation of the dissolution is a breach by
35 any moving party or parties of an agreement with the purchasing
36 party or parties, including, without limitation, the operating
37 agreement, may be deducted from the amount payable to the
38 moving party or parties; provided, that no member who sues for
39 dissolution on the grounds set forth in paragraph (3), (4), or (5) of

1 subdivision (b) shall be liable for damages for breach of contract
2 in bringing that action.

3 (2) If the purchasing parties elect to purchase the membership
4 interests owned by the moving parties, are unable to agree with
5 the moving parties upon the fair market value of the membership
6 interests, and give bond with sufficient security to pay the estimated
7 reasonable expenses, including attorney's fees, of the moving
8 parties if the expenses are recoverable under paragraph (3), the
9 court, upon application of the purchasing parties, either in the
10 pending action or in a proceeding initiated in the superior court of
11 the proper county by the purchasing parties, shall stay the winding
12 up and dissolution proceeding and shall proceed to ascertain and
13 fix the fair market value of the membership interests owned by
14 the moving parties.

15 (3) The court shall appoint three disinterested appraisers to
16 appraise the fair market value of the membership interests owned
17 by the moving parties, and shall make an order referring the matter
18 to the appraisers so appointed for the purpose of ascertaining that
19 value. The order shall prescribe the time and manner of producing
20 evidence, if evidence is required. The award of the appraisers or
21 a majority of them, when confirmed by the court, shall be final
22 and conclusive upon all parties. The court shall enter a decree that
23 shall provide in the alternative for winding up and dissolution of
24 the limited liability company, unless payment is made for the
25 membership interests within the time specified by the decree. If
26 the purchasing parties do not make payment for the membership
27 interests within the time specified, judgment shall be entered
28 against them and the surety or sureties on the bond for the amount
29 of the expenses, including attorney's fees, of the moving parties.
30 Any member aggrieved by the action of the court may appeal
31 therefrom.

32 (4) If the purchasing parties desire to prevent the winding up
33 and dissolution of the limited liability company, they shall pay to
34 the moving parties the value of their membership interests
35 ascertained and decreed within the time specified pursuant to this
36 section, or, in the case of an appeal, as fixed on appeal. On
37 receiving that payment or the tender of payment, the moving parties
38 shall transfer their membership interests to the purchasing parties.

39 (5) For the purposes of this section, the valuation date shall be
40 the date upon which the action for judicial dissolution was

1 commenced. However, the court may, upon the hearing of a motion
2 by any party, and for good cause shown, designate some other date
3 as the valuation date.

4 (6) A dismissal of any suit for judicial dissolution by a manager,
5 member, or members shall not affect the other members' rights to
6 avoid dissolution pursuant to this section.

7 *(d) Nothing in this section shall be construed to limit the*
8 *remedies otherwise available to a court of competent jurisdiction*
9 *over the dissolution.*

10 SEC. 16. Section 17707.09 of the Corporations Code is
11 amended to read:

12 17707.09. (a) Notwithstanding the filing of a certificate of
13 dissolution, a majority of the members may cause to be filed, in
14 the office of, and on a form prescribed by, the Secretary of State,
15 a certificate of continuation, in any of the following circumstances:

16 (1) The business of the limited liability company is to be
17 continued pursuant to a unanimous vote of the remaining members.

18 (2) The dissolution of the limited liability company was by vote
19 of the members pursuant to subdivision (b) of Section 17707.01
20 and each member who consented to the dissolution has agreed in
21 writing to revoke his or her vote in favor of or consent to the
22 dissolution.

23 (3) The limited liability company was not, in fact, dissolved.

24 (b) The certificate of continuation shall set forth all of the
25 following:

26 (1) The name of the limited liability company and the Secretary
27 of State's file number.

28 (2) The grounds provided by subdivision (a) that are the basis
29 for filing the certificate of continuation.

30 (c) Upon the filing of a certificate of continuation, the certificate
31 of dissolution shall be of no effect from the time of the filing of
32 the certificate of dissolution.

33 SEC. 17. Section 17708.07 of the Corporations Code is
34 amended to read:

35 17708.07. (a) A foreign limited liability company transacting
36 intrastate business in this state shall not maintain an action or
37 proceeding in this state unless it has a certificate of registration to
38 transact intrastate business in this state.

39 (b) The failure of a foreign limited liability company to have a
40 certificate of registration to transact intrastate business in this state

1 does not prevent the foreign limited liability company from
2 defending an action or proceeding in this state.

3 (c) A member or manager of a foreign limited liability company
4 is not liable for the debts, obligations, or other liabilities of the
5 foreign limited liability company solely because the foreign limited
6 liability company transacted intrastate business in this state without
7 a certificate of registration.

8 (d) If a foreign limited liability company transacts intrastate
9 business in this state without a certificate of registration or cancels
10 its certificate of registration, it shall be deemed to have appointed
11 the Secretary of State as its agent for service of process for rights
12 of action arising out of the transaction of intrastate business in this
13 state.

14 SEC. 18. Section 17710.03 of the Corporations Code is
15 amended to read:

16 17710.03. (a) A limited liability company that desires to
17 convert to an other business entity or a foreign other business entity
18 or a foreign limited liability company shall approve a plan of
19 conversion.

20 The plan of conversion shall state all of the following:

21 (1) The terms and conditions of the conversion.

22 (2) The place of the organization of the converted entity and of
23 the converting limited liability company and the name of the
24 converted entity after conversion.

25 (3) The manner of converting the membership interests of each
26 of the members into shares of, securities of, or interests in, the
27 converted entity.

28 (4) The provisions of the governing documents for the converted
29 entity, including the limited liability company articles of
30 organization and operating agreement, or articles or certificate of
31 incorporation if the converted entity is a corporation, to which the
32 holders of interests in the converted entity are to be bound.

33 (5) Any other details or provisions that are required by the laws
34 under which the converted entity is organized, or that are desired
35 by the parties.

36 (b) (1) The plan of conversion shall be approved by all
37 managers and a majority of the members of each class of
38 membership interest or if there are no managers, a majority of the
39 members of each class of membership of the converting limited

1 liability company, unless a greater approval is required by the
2 operating agreement of the converting limited liability company.

3 (2) However, if the members of the limited liability company
4 would become personally liable for any obligations of the
5 converted entity as a result of the conversion, the plan of
6 conversion shall be approved by all of the members of the
7 converting limited liability company, unless the plan of conversion
8 provides that all members will have dissenters' rights as provided
9 in Article 11 (commencing with Section 17711.01).

10 (c) Upon the effectiveness of the conversion, all members of
11 the converting limited liability company, except those that exercise
12 dissenters' rights as provided in Article 11 (commencing with
13 Section 17711.01), shall be deemed parties to any governing
14 documents for the converted entity adopted as part of the plan of
15 conversion, regardless of whether or not the member has executed
16 the plan of conversion or the governing documents for the
17 converted entity. Any adoption of governing documents made
18 pursuant to the conversion shall be effective at the effective time
19 or date of the conversion.

20 (d) Notwithstanding its prior approval, a plan of conversion
21 may be amended before the conversion takes effect if the
22 amendment is approved by all managers and a majority of the
23 members or if there are no managers, a majority of the members
24 of the converting limited liability company and, if the amendment
25 changes any of the principal terms of the plan of conversion, the
26 amendment is approved by the managers and members of the
27 converting limited liability company in the same manner and to
28 the same extent as required for the approval of the original plan
29 of conversion.

30 (e) The managers by unanimous approval and the members of
31 a converting limited liability company may, by majority approval
32 at any time before the conversion is effective, in their discretion,
33 abandon a conversion, without further approval by the managers
34 or members, subject to the contractual rights of third parties other
35 than managers or members.

36 (f) The converted entity shall keep the plan of conversion at the
37 principal place of business of the converted entity if the converted
38 entity is a domestic limited liability company or foreign other
39 business entity, at the principal office of, or registrar or transfer
40 agent of, the converted entity, if the converted entity is a domestic

1 corporation, or at the office where records are to be kept pursuant
2 to Section 17701.13 if the converted entity is a domestic limited
3 liability company. Upon the request of a member of a converting
4 limited liability company, the authorized person on behalf of the
5 converted entity shall promptly deliver to the member or the holder
6 of shares, interests, or other securities, at the expense of the
7 converted entity, a copy of the plan of conversion. A waiver by a
8 member of the rights provided in this subdivision shall be
9 unenforceable.

10 SEC. 19. Section 17710.06 of the Corporations Code is
11 amended to read:

12 17710.06. (a) Upon conversion of a limited liability company,
13 one of the following applies:

14 (1) If the limited liability company is converting into a domestic
15 limited partnership, a statement of conversion shall be completed
16 on a certificate of limited partnership for the converted entity and
17 shall be filed with the Secretary of State.

18 (2) If the limited liability company is converting into a domestic
19 partnership, a statement of conversion shall be completed on the
20 statement of partnership authority for the converted entity. If no
21 statement of partnership authority is filed, a certificate of
22 conversion shall be filed separately with the Secretary of State.

23 (3) If the limited liability company is converting into a domestic
24 corporation, a statement of conversion shall be completed on the
25 articles of incorporation for the converted entity and shall be filed
26 with the Secretary of State.

27 (4) If the limited liability company is converting to a foreign
28 limited liability company or foreign other business entity, a
29 certificate of conversion shall be filed with the Secretary of State.

30 (b) Any certificate or statement of conversion shall be executed
31 and acknowledged by all members of a member-managed limited
32 liability company or all managers of a manger-managed limited
33 liability company, unless a lesser number is provided in the articles
34 of organization or operating agreement, and shall set forth all of
35 the following:

36 (1) The name of the converting limited liability company and
37 the Secretary of State's file number of the converting limited
38 liability company.

39 (2) A statement that the principal terms of the plan of conversion
40 were approved by a vote of the members, that equaled or exceeded

1 the vote required under Section 17710.03, specifying each class
2 entitled to vote and the percentage vote required of each class.

3 (c) A certificate of conversion shall set forth all of the following:

4 (1) The name, form, and jurisdiction of organization of the
5 converted entity.

6 (2) The name, street, and mailing address of the converted
7 entity's agent for service of process.

8 (3) The street address of the converted entity's chief executive
9 office.

10 (d) The filing with the Secretary of State of a certificate of
11 conversion, a certificate of limited partnership, a statement of
12 partnership authority, or articles of incorporation containing a
13 statement of conversion as set forth in subdivision (a) shall have
14 the effect of the filing of a certificate of cancellation by the
15 converting limited liability company, and no converting limited
16 liability company that has made the filing is required to take any
17 action under Article 7 (commencing with Section 17707.01) as a
18 result of that conversion.

19 (e) For the purposes of this title, the certificate of conversion
20 shall be on a form prescribed by the Secretary of State.

21 SEC. 20. Section 17710.12 of the Corporations Code is
22 amended to read:

23 17710.12. (a) Each limited liability company and other
24 business entity that desires to merge shall approve an agreement
25 of merger.

26 The agreement of merger shall be approved by all managers and
27 a majority of the members of each class of membership interests
28 of each constituent limited liability company, unless a greater
29 approval is required by the operating agreement of the constituent
30 limited liability company. Notwithstanding the previous sentence,
31 if the members of any constituent limited liability company become
32 personally liable for any obligations of a constituent limited
33 liability company or constituent other business entity as a result
34 of the merger, the principal terms of the agreement of merger shall
35 be approved by all of the members of the constituent limited
36 liability company, unless the agreement of merger provides that
37 all members shall have the dissenters' rights provided in Article
38 11 (commencing with Section 17711.01). The agreement of merger
39 shall be approved on behalf of each constituent other business
40 entity by those persons required to approve the merger by the laws

1 under which it is organized. Other persons, including a parent of
2 a constituent limited liability company, may be parties to the
3 agreement of merger. The agreement of merger shall state all of
4 the following:

5 (1) The terms and conditions of the merger.

6 (2) The name and place of the organization of the surviving
7 limited liability company or surviving other business entity, and
8 of each disappearing limited liability company and disappearing
9 other business entity, and the agreement of merger may change
10 the name of the surviving limited liability company, the new name
11 may be the same as or similar to the name of a disappearing
12 domestic or foreign limited liability company, subject to Section
13 17701.08.

14 (3) The manner of converting the membership interests of each
15 of the constituent limited liability companies into interests, shares,
16 or other securities of the surviving limited liability company or
17 surviving other business entity, and if limited liability company
18 interests of any of the constituent limited liability companies are
19 not to be converted solely into interests, shares, or other securities
20 of the surviving limited liability company or surviving other
21 business entity, the cash, property, rights, interests, or securities
22 that the holders of the limited liability company interests are to
23 receive in exchange for the membership interests, the cash,
24 property, rights, interests, or securities that may be in addition to
25 or in lieu of interests, shares, or other securities of the surviving
26 limited liability company or surviving other business entity, or
27 that the limited liability company interests are canceled without
28 consideration.

29 (4) The amendments to the articles of organization of the
30 surviving limited liability company, if applicable, to be effected
31 by the merger, if any.

32 (5) Any other details or provisions that are required by the laws
33 under which any constituent other business entity is organized,
34 including, if a domestic corporation is a party to the merger, as
35 provided in subdivision (b) of Section 1113.

36 (6) Any other details or provisions that are desired, including,
37 without limitation, a provision for the treatment of fractional
38 membership interests.

39 (b) (1) Each membership interest of the same class of any
40 constituent limited liability company, other than a membership

1 interest in another constituent limited liability company that is
2 being canceled and that is held by a constituent limited liability
3 company or its parent or a limited liability company of which the
4 constituent limited liability company is a parent shall, unless all
5 members of the class consent, be treated equally with respect to
6 any distribution of cash, property, rights, interests, or securities.

7 (2) Unless otherwise provided in a written operating agreement,
8 notwithstanding paragraph (1), except in a merger of a limited
9 liability company with a limited liability company that controls at
10 least 90 percent of the membership interests entitled to vote with
11 respect to the merger, the unredeemable membership interests of
12 a constituent limited liability company may be converted only into
13 unredeemable interests or securities of the surviving limited
14 liability company or other business entity, or a parent if a
15 constituent limited liability company or a constituent other business
16 entity or its parent owns, directly or indirectly, prior to the merger,
17 membership interests of another constituent limited liability
18 company or interests or securities of a constituent other business
19 entity representing more than 50 percent of the interests or
20 securities entitled to vote with respect to the merger of the other
21 constituent limited liability company or constituent other business
22 entity or more than 50 percent of the voting power, as defined in
23 Section 194.5, of a constituent other business entity that is a
24 domestic corporation, unless all of the members of the class
25 consent.

26 (3) The provisions of this subdivision do not apply to any
27 transaction if the commissioner has approved the terms and
28 conditions of the transaction and the fairness of those terms
29 pursuant to Section 25142.

30 (c) Notwithstanding its prior approval, an agreement of merger
31 may be amended prior to the filing of the certificate of merger or
32 the agreement of merger, as provided in Section 17710.14, if the
33 amendment is approved by the managers and members of each
34 constituent limited liability company in the same manner as
35 required for approval of the original agreement of merger and, if
36 the amendment changes any of the principal terms of the agreement
37 of merger, the amendment is approved by the managers and
38 members of each constituent limited liability company in the same
39 manner and to the same extent as required for the approval of the

1 original agreement of merger, and by each of the constituent other
2 business entities.

3 (d) The managers and members of a constituent limited liability
4 company may, in their discretion, abandon a merger, subject to
5 the contractual rights, if any, of third parties, including other
6 constituent limited liability companies and constituent other
7 business entities, without further approval by the membership
8 interests, at any time before the merger is effective.

9 (e) An agreement of merger approved in accordance with
10 subdivision (a) may do the following:

11 (1) Effect any amendment to the operating agreement of any
12 constituent limited liability company.

13 (2) Effect the adoption of a new operating agreement for a
14 constituent limited liability company if it is the surviving limited
15 liability company in the merger. Any amendment to an operating
16 agreement or adoption of a new operating agreement made pursuant
17 to the foregoing sentence shall be effective at the effective time
18 or date of the merger. Notwithstanding the above provisions of
19 this subdivision, if a greater number of members is required to
20 approve an amendment to the operating agreement of a constituent
21 limited liability company than is required to approve the agreement
22 of merger pursuant to subdivision (a), and the number of members
23 that approve the agreement of merger is less than the number of
24 members required to approve an amendment to the operating
25 agreement of the constituent limited liability company, any
26 amendment to the operating agreement or adoption of a new
27 operating agreement of that constituent limited liability company
28 made pursuant to the first sentence of this subdivision shall be
29 effective only if the agreement of merger provides that all of the
30 members shall have the dissenters' rights provided in Article 11
31 (commencing with Section 17711.01).

32 (f) The surviving limited liability company or surviving other
33 business entity shall keep the agreement of merger at its designated
34 office or at the business address specified in paragraph (5) of
35 subdivision (a) of Section 17710.14, as applicable, and, upon the
36 request of a member of a constituent limited liability company or
37 a holder of shares, interests, or other securities of a constituent
38 other business entity, the managers or members of the surviving
39 limited liability company or the authorized person of the surviving
40 other business entity shall promptly deliver to the member or the

1 holder of shares, interests, or other securities, at the expense of the
2 surviving limited liability company or surviving other business
3 entity, a copy of the agreement of merger. A waiver by a member
4 or holder of shares, interests, or other securities of the rights
5 provided in this subdivision shall be unenforceable.

6 SEC. 21. Section 17713.04 of the Corporations Code is
7 amended to read:

8 17713.04. (a) Except as otherwise provided in subdivisions
9 (b) and (c), this title shall apply to all domestic limited liability
10 companies existing on or after January 1, 2014, to all foreign
11 limited liability companies registered with the Secretary of State
12 prior to January 1, 2014, whose registrations have not been
13 canceled as of January 1, 2014, to all foreign limited liability
14 companies registered with the Secretary of State on or after January
15 1, 2014, and to all actions taken by the managers or members of
16 a limited liability company on or after that date.

17 (b) Except as otherwise specified in this title, this title applies
18 only to the acts or transactions by a limited liability company
19 existing on or before January 1, 2014, or by the members or
20 managers of the limited liability company existing on or before
21 January 1, 2014, occurring, or an operating agreement or other
22 contracts entered into by the limited liability company or by the
23 members or managers of the limited liability company, on or after
24 January 1, 2014. An amendment, including the acts necessary and
25 in respect to the negotiation, adoption, ratification, or approval, to
26 an operating agreement or other contracts entered into by a limited
27 liability company existing before January 1, 2014, or by the
28 members or managers of a limited liability company existing before
29 January 1, 2014, shall be governed by prior law unless expressly
30 provided in such amendment or other contract. The prior law
31 governs all acts or transactions by a limited liability company
32 existing on or before January 1, 2014, or by the members or
33 managers of the limited liability company occurring, and any
34 operating agreement or other ~~or~~ contracts entered into by the
35 limited liability company or by the members or managers of the
36 limited liability company, prior to January 1, 2014.

37 (c) Any vote or consent by the managers or members of a limited
38 liability company prior to January 1, 2014, shall be governed by
39 prior law. If a certificate or document is required to be filed in a
40 public office of this state relating to a vote or consent by the

1 managers or members of the limited liability company prior to
2 January 1, 2014, it may be filed after that date pursuant to the filing
3 requirements of this title, even though the vote or consent is
4 governed by prior law.

5 (d) This title does not cancel or otherwise affect the status of,
6 or create a new filing requirement with the Secretary of State or
7 any other agency, board, commission, or department for, any
8 domestic limited liability company in existence on December 31,
9 2013, or any foreign limited liability company registered to transact
10 intrastate business in this state prior to January 1, 2014.

11 (e) For the purposes of this section, “prior law” means Title 2.5
12 (commencing with Section 17000) as it read on December 31,
13 2013.

14 SEC. 22. Section 17713.12 of the Corporations Code is
15 amended to read:

16 17713.12. (a) A limited liability company is liable for a civil
17 penalty in an amount not exceeding one million dollars
18 (\$1,000,000) if the limited liability company does both of the
19 following:

20 (1) Has actual knowledge that a member, officer, manager, or
21 agent of the limited liability company does any of the following:

22 (A) Makes, publishes, or posts, or has made, published, or
23 posted, either generally or privately to the members or other
24 persons, either of the following:

25 (i) An oral, written, or electronically transmitted report, exhibit,
26 notice, or statement of its affairs or pecuniary condition that
27 contains a material statement or omission that is false and intended
28 to give membership shares in the limited liability company a
29 materially greater or a materially less apparent market value than
30 they really possess.

31 (ii) An oral, written, or electronically transmitted report,
32 prospectus, account, or statement of operations, values, business,
33 profits, or expenditures that includes a material false statement or
34 omission intended to give membership shares in the limited liability
35 company a materially greater or a materially less apparent market
36 value than they really possess.

37 (B) Refuses or has refused to make any book entry or post any
38 notice required by law in the manner required by law.

39 (C) Misstates or conceals or has misstated or concealed from a
40 regulatory body a material fact in order to deceive a regulatory

body to avoid a statutory or regulatory duty, or to avoid a statutory or regulatory limit or prohibition.

(2) Within 30 days after actual knowledge is acquired of the actions described in paragraph (1), the limited liability company knowingly fails to do both of the following:

(A) Notify the Attorney General or appropriate government agency in writing, unless the limited liability company has actual knowledge that the Attorney General or appropriate government agency has been notified.

(B) Notify its members and investors in writing, unless the limited liability company has actual knowledge that the members and investors have been notified.

(b) The requirement for notification under this section is not applicable if the action taken or about to be taken by the limited liability company, or by a member, officer, manager, or agent of the limited liability company under paragraph (1) of subdivision (a), is abated within the time prescribed for reporting, unless the appropriate government agency requires disclosure by regulation.

(c) If the action reported to the Attorney General pursuant to this section implicates the government authority of an agency other than the Attorney General, the Attorney General shall promptly forward the written notice to that agency.

(d) If the Attorney General was not notified pursuant to subparagraph (A) of paragraph (2) of subdivision (a), but the limited liability company reasonably and in good faith believed that it had complied with the notification requirements of this section by notifying a government agency listed in paragraph (5) of subdivision (e), no penalties shall apply.

(e) For purposes of this section:

(1) “Manager” means a person defined by subdivision (m) of Section 17701.01 having both of the following:

(A) Management authority over the limited liability company.

(B) Significant responsibility for an aspect of the limited liability company that includes actual authority for the financial operations or financial transactions of the limited liability company.

(2) “Agent” means a person or entity authorized by the limited liability company to make representations to the public about the limited liability company’s financial condition and who is acting within the scope of the agency when the representations are made.

(3) “Member” means a person as defined by subdivision (o) of Section 17701.01 that is a member of the limited liability company at the time the disclosure is required pursuant to subparagraph (B) of paragraph (2) of subdivision (a).

(4) “Notify its members” means to give sufficient description of an action taken or about to be taken that would constitute acts or omissions as described in paragraph (1) of subdivision (a). A notice or report filed by a limited liability company with the United States Securities and Exchange Commission that relates to the facts and circumstances giving rise to an obligation under paragraph (1) of subdivision (a) shall satisfy all notice requirements arising under paragraph (2) of subdivision (a) but shall not be the exclusive means of satisfying the notice requirements, provided that the Attorney General or appropriate agency is informed in writing that the filing has been made together with a copy of the filing or an electronic link where it is available online without charge.

(5) “Appropriate government agency” means an agency on the following list that has regulatory authority with respect to the financial operations of a limited liability company:

- (A) Department of Corporations.
- (B) Department of Insurance.
- (C) Department of Financial Institutions.
- (D) Department of Managed Health Care.
- (E) United States Securities and Exchange Commission.

(6) “Actual knowledge of the limited liability company” means the knowledge a member, officer, or manager of a limited liability company actually possesses or does not consciously avoid possessing, based on an evaluation of information provided pursuant to the limited liability company’s disclosure controls and procedures.

(7) “Refuse to make a book entry” means the intentional decision not to record an accounting transaction when all of the following conditions are satisfied:

- (A) The independent auditors required recordation of an accounting transaction during the course of an audit.
- (B) The audit committee of the limited liability company has not approved the independent auditor’s recommendation.
- (C) The decision is made for the primary purpose of rendering the financial statements materially false or misleading.

1 (8) “Refuse to post any notice required by law” means an
2 intentional decision not to post a notice required by law when all
3 of the following conditions exist:

4 (A) The decision not to post the notice has not been approved
5 by the limited liability company’s audit committee.

6 (B) The decision is intended to give the membership shares in
7 the limited liability company a materially greater or a materially
8 less apparent market value than they really possess.

9 (9) “Misstate or conceal material facts from a regulatory body”
10 means an intentional decision not to disclose material facts when
11 all of the following conditions exist:

12 (A) The decision not to disclose material facts has not been
13 approved by the limited liability company’s audit committee.

14 (B) The decision is intended to give the membership shares in
15 the limited liability company a materially greater or a materially
16 less apparent market value than they really possess.

17 (10) “Material false statement or omission” means an untrue
18 statement of material fact or an omission to state a material fact
19 necessary in order to make the statements made under the
20 circumstances under which they were made not misleading.

21 (11) “Officer” means a person appointed pursuant to Section
22 17703.02, except an officer of a specified subsidiary limited
23 liability company who is not also an officer of the parent limited
24 liability company.

25 (f) This section only applies to limited liability companies that
26 are issuers, as defined in Section 2 of the federal Sarbanes-Oxley
27 Act of 2002 (15 U.S.C. Sec. 7201 et seq.).

28 (g) An action to enforce this section may only be brought by
29 the Attorney General or a district attorney or city attorney in the
30 name of the people of the State of California.