

AMENDED IN SENATE JUNE 29, 2015

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, ~~17707.06~~, 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:~~
~~limited partnerships:~~ *companies*.

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~~ *dies*, or a guardian or ~~general~~ conservator *of the estate* is appointed for the member, *or a member's interest is being administered by an attorney-in-fact under a valid power of attorney*, the member's executor, administrator, guardian, conservator, *attorney-in-fact*, 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. 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. The bill would modify what an operating agreement may provide, as specified. 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.

Under existing law, the persons who filed the certificate of dissolution are required to sign and file with the Secretary of State a certificate of cancellation of articles of organization upon the completion of the winding up of the affairs of the limited liability company, except as specified. Existing law requires the certificate of cancellation of articles of organization to include, among other things, that upon the filing of the certificate of cancellation, the limited liability company is required to be canceled and its powers, rights, and privileges are required to cease. Under existing law, a limited liability company that is dissolved continues to exist for the purpose of, among other things, winding up its affairs and prosecuting and defending actions by or against it in order to collect and discharge obligations.

This bill would instead provide that a limited liability company that has filed a certificate of cancellation continues to exist for those purposes, as specified.

This bill would limit the applicability of the act to acts or transactions ~~existing on or before January 1, 2014, by a limited liability company or by the members or managers of the limited liability companies existing company occurring, or an operating agreement or other contracts entered into by the limited liability company or by the members or managers of the limited liability company, on or before that date, as provided: after January 1, 2014.~~

~~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~~
24 ~~partnership agreement before or after the filing of a certificate of~~
25 ~~limited partnership.~~

26 ~~(d) Subject to subdivision (b), if any provision of a partnership~~
27 ~~agreement is inconsistent with the filed certificate of limited~~
28 ~~partnership or with a filed certificate of dissociation, cancellation,~~
29 ~~or amendment or filed certificate of conversion or merger:~~

30 ~~(1) the partnership agreement prevails as to partners and~~
31 ~~transferees; and~~

32 ~~(2) the filed certificate of limited partnership, certificate of~~
33 ~~dissociation, cancellation, or amendment or filed certificate of~~
34 ~~conversion or merger prevails as to persons, other than partners~~
35 ~~and transferees, that reasonably rely on the filed record to their~~
36 ~~detriment.~~

37 ~~(e) A limited partnership may record in the office of the county~~
38 ~~recorder of any county in this state a certified copy of the certificate~~

1 of limited partnership, or any amendment thereto, which has been
2 filed by the Secretary of State. A foreign limited partnership may
3 record in the office of the county recorder of any county in the
4 state a certified copy of the application for registration to transact
5 business, together with the certificate of registration, referred to
6 in Section 15909.02, or any amendment thereto, which has been
7 filed by the Secretary of State. The recording shall create a
8 conclusive presumption in favor of any bona fide purchaser or
9 encumbrancer for value of the partnership real property located in
10 the county in which the certified copy has been recorded, that the
11 persons named as general partners therein are the general partners
12 of the partnership named and that they are all of the general
13 partners of the partnership.

14 (f) The Secretary of State may cancel the filing of certificates
15 of limited partnership if a check or other remittance accepted in
16 payment of the filing fee is not paid upon presentation. For partners
17 and transferees, the partnership agreement is paramount. Upon
18 receiving written notification that the item presented for payment
19 has not been honored for payment, the Secretary of State shall give
20 a first written notice of the applicability of this section to the agent
21 for service of process or to the person submitting the instrument.
22 Thereafter, if the amount has not been paid by cashier's check or
23 equivalent, the Secretary of State shall give a second written notice
24 of cancellation and the cancellation shall thereupon be effective.
25 The second notice shall be given 20 days or more after the first
26 notice and 90 days or less after the original filing.

27 (g) The Secretary of State shall include with instructional
28 materials, provided in conjunction with the form for filing a
29 certificate of limited partnership under subdivision (a), a notice
30 that the filing of the certificate of limited partnership will obligate
31 the limited partnership to pay an annual tax for that taxable year
32 to the Franchise Tax Board pursuant to Section 17935 of the
33 Revenue and Taxation Code. That notice shall be updated annually
34 to specify the dollar amount of the annual tax.

35 SEC. 2.

36 SECTION 1. Section 17701.02 of the Corporations Code is
37 amended to read:

38 17701.02. In this title:

39 (a) "Acknowledged" means that an instrument is either of the
40 following:

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

4 (2) Executed to include substantially the following wording
5 preceding the signature:

6
7 “It is hereby declared that I am the person who executed this
8 instrument which execution is my act and deed.”

9
10 Any certificate of acknowledgment taken without this state
11 before a notary public or a judge or clerk of a court of record
12 having an official seal need not be further authenticated.

13 (b) “Articles of organization” means the articles required by
14 Section 17702.01. The term includes the articles of organization
15 as amended or restated.

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

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

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

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

28 (d) “Debtor in bankruptcy” means a person that is the subject
29 of either of the following:

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

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

36 (e) “Designated office” means either of the following:

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

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

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

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

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

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

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

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

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

25 (i) The communication is delivered to a recipient who has
26 provided an unrevoked consent to the use of those means of
27 transmission.

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

31 (2) "Electronic transmission to the limited liability company"
32 means a communication delivered by any of the following means:

33 (A) Facsimile telecommunication or electronic mail when
34 directed to the facsimile number or electronic mail address,
35 respectively, that the limited liability company has provided from
36 time to time to members or managers for sending communications
37 to the limited liability company.

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

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

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

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

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

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

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

19 (m) “Majority of the members” unless otherwise provided in
20 the operating agreement, means more than 50 percent of the
21 membership interests of members in current profits of the limited
22 liability company.

23 (n) “Manager” means a person that under the operating
24 agreement of a manager-managed limited liability company is
25 responsible, alone or in concert with others, for performing the
26 management functions stated in subdivision (c) of Section
27 17704.07.

28 (o) “Manager-managed limited liability company” means a
29 limited liability company that qualifies under subdivision (a) of
30 Section 17704.07.

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

34 (q) “Member-managed limited liability company” means a
35 limited liability company that is not a manager-managed limited
36 liability company.

37 (r) “Membership interest” means a member’s rights in the
38 limited liability company, including the member’s transferable
39 interest, any right to vote or participate in management, and any

1 right to information concerning the business and affairs of the
2 limited liability company provided by this title.

3 (s) “Operating agreement” means the agreement, whether or
4 not referred to as an operating agreement and whether oral, in a
5 record, implied, or in any combination thereof, of all the members
6 of a limited liability company, including a sole member, concerning
7 the matters described in subdivision (a) of Section 17701.10. The
8 term “operating agreement” may include, without more, an
9 agreement of all members to organize a limited liability company
10 pursuant to this title. An operating agreement of a limited liability
11 company having only one member shall not be unenforceable by
12 reason of there being only one person who is a party to the
13 operating agreement. The term includes the agreement as amended
14 or restated.

15 (t) “Organization” means, whether domestic or foreign, a
16 partnership whether general or limited, limited liability company,
17 association, corporation, professional corporation, professional
18 association, nonprofit corporation, business trust, or statutory
19 business trust having a governing statute.

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

22 (v) “Person” means an individual, partnership, limited
23 partnership, trust, a trustee of a trust, including, but not limited to,
24 a trust described under Division 9 (commencing with Section
25 15000) of the Probate Code, estate, association, corporation, limited
26 liability company, or other entity, whether domestic or foreign.
27 Nothing in this subdivision shall be construed to confer any rights
28 under the California Constitution or the United States Constitution.

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

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

35 (y) “State” means a state of the United States, the District of
36 Columbia, Puerto Rico, the United States Virgin Islands, or any
37 territory or insular possession subject to the jurisdiction of the
38 United States.

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

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

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

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

~~SEC. 3.~~

SEC. 2. Section 17701.10 of the Corporations Code is amended to read:

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

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

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

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

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

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

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

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

(2) Vary the law applicable under Section 17701.06.

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

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

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

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

10 (7) Vary the power of a court to decree dissolution in the
11 circumstances specified in subdivision (a) of Section 17707.03 or
12 the provisions for avoidance of dissolution in subdivision (c) of
13 Section 17707.03.

14 (8) Except as provided therein, vary the requirements of Article
15 2 (commencing with Section 17702.01) or Article 7 (commencing
16 with Section 17707.01).

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

19 (10) Restrict the right of a member that will have personal
20 liability with respect to a surviving or converted organization to
21 approve a merger or conversion under Article 10 (commencing
22 with Section 17710.01).

23 (11) Except as otherwise provided in subdivision (b) of Section
24 17701.12, restrict the rights under this title of a person other than
25 a member or manager.

26 (12) Except as provided therein, vary any provision under Article
27 10 (commencing with Section 17710.01).

28 (13) Vary any provision under Article 11 (commencing with
29 Section 17711.01), Article 12 (commencing with Section
30 17712.01), or Article 13 (commencing with Section 17713.01).

31 (14) Eliminate the duty of loyalty under subdivision (b) of
32 Section 17704.09, but the operating agreement may do any of the
33 following:

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

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

1 (15) Unreasonably reduce the duty of care under subdivision
2 (c) of Section 17704.09.

3 (d) Except as provided in subdivision (c) and subdivisions (e)
4 to (g), inclusive, the effects of the provisions of this title may be
5 varied as among the members or as between the members and the
6 limited liability company by the operating agreement; provided,
7 however, that the provisions of Sections 17701.13, 17703.01, and
8 17704.08 and subdivisions (f) to (r), inclusive, and (u) to (w),
9 inclusive, of Section 17704.07 shall only be varied by a written
10 operating agreement. Notwithstanding the first sentence of this
11 subdivision and in addition to the matters specified in subdivision
12 (c), the operating agreement shall not do any of the following:

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

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

16 (3) Vary any of the provisions of this section or Section
17 17701.12, except as provided therein.

18 (4) Vary any of the provisions of subdivisions (s) and (t) of
19 Section 17704.07.

20 (e) The fiduciary duties of a manager to a manager-managed
21 limited liability company and to the members of the limited liability
22 company and of a member to a member-managed limited liability
23 company and to the members of such limited liability company
24 shall only be modified in a written operating agreement with the
25 informed consent of the members. Assenting to the operating
26 agreement pursuant to subdivision (b) of Section 17701.11 shall
27 not constitute informed consent.

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

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

1 (1) Breach of the duty of loyalty.

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

4 (3) A member's liability for excess distributions under Section
5 17704.06.

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

8 (5) An intentional violation of criminal law.

9 ~~SEC. 4.~~

10 *SEC. 3.* Section 17701.12 of the Corporations Code is amended
11 to read:

12 17701.12. (a) An operating agreement may specify that its
13 amendment requires the approval of a person that is not a party to
14 the operating agreement or the satisfaction of a condition. An
15 amendment is ineffective if its adoption does not include the
16 required approval or satisfy the specified condition.

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

27 (c) If a record that has been delivered by a limited liability
28 company to the Secretary of State for filing and has become
29 effective under this title contains a provision that would be
30 ineffective under Section 17701.10 if contained in the operating
31 agreement, the provision is likewise ineffective in the record.

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

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

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

1 ~~SEC. 5.~~

2 *SEC. 4.* Section 17701.13 of the Corporations Code is amended
3 to read:

4 17701.13. (a) A limited liability company shall designate and
5 continuously maintain in this state both of the following:

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

8 (2) An agent for service of process.

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

12 (c) An agent for service of process of a limited liability company
13 or foreign limited liability company shall be an individual who is
14 a resident of this state or a corporation that has complied with
15 Section 1505 and whose capacity to act as an agent has not
16 terminated. If a limited liability company or foreign limited liability
17 company designates a corporation as its agent for service of process
18 in an instrument filed with the Secretary of State, no address for
19 that agent for service of process shall be set forth in that instrument.

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

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

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

31 (3) A copy of the articles of organization and all amendments
32 thereto, together with any powers of attorney pursuant to which
33 the articles of organization or any amendments thereto were
34 executed.

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

38 (5) A copy of the limited liability company's operating
39 agreement, if in writing, and any amendments thereto, together

1 with any powers of attorney pursuant to which any written
2 operating agreement or any amendments thereto were executed.

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

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

8 (e) Upon request of an assessor, a domestic or foreign limited
9 liability company owning, claiming, possessing, or controlling
10 property in this state subject to local assessment shall make
11 available at the limited liability company's principal office in this
12 state or at the office required to be kept pursuant to subdivision
13 (a) or at a place mutually acceptable to the assessor and the limited
14 liability company a true copy of the business records relevant to
15 the amount, cost, and value of all property that the limited liability
16 company owns, claims, possesses, or controls within the county.

17 ~~SEC. 6.~~

18 *SEC. 5.* Section 17704.01 of the Corporations Code is amended
19 to read:

20 17704.01. (a) If a limited liability company is to have only
21 one member upon formation, the person becomes a member as
22 agreed by that person and the organizer of the limited liability
23 company. That person and the organizer may be, but need not be,
24 different persons. If different, the organizer acts on behalf of the
25 initial member.

26 (b) If a limited liability company is to have more than one
27 member upon formation, those persons become members as agreed
28 by the persons before the formation of the limited liability
29 company. The organizer acts on behalf of the persons in forming
30 the limited liability company and may be, but need not be, one of
31 the persons.

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

34 (1) As provided in the operating agreement.

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

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

38 (4) If, within 90 consecutive days after the limited liability
39 company ceases to have any members, the last person to have been
40 a member, or the legal representative of that person, designates a

1 person to become a member, and the designated person consents
2 to become a member.

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

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

9 (1) Any employee of the limited liability company or foreign
10 limited liability company or of any parent or subsidiary of either,
11 pursuant to a membership interest purchase plan or agreement, or
12 a membership interest option plan or agreement.

13 (2) In any transaction in connection with securing employment,
14 a person who is or is about to become an officer or a manager ~~(as~~
15 ~~appointed or elected by the members)~~ of the limited liability
16 company or the foreign limited liability company or of any parent
17 or subsidiary of either.

18 ~~SEC. 7.~~

19 *SEC. 6.* Section 17704.04 of the Corporations Code is amended
20 to read:

21 17704.04. (a) Any distributions made by a limited liability
22 company before its dissolution and winding up shall be among the
23 members in accordance with the operating agreement. If the
24 operating agreement does not otherwise provide, distributions shall
25 be on the basis of the value, as stated in the required records when
26 the limited liability company decides to make the distribution, of
27 the contributions the limited liability company has received from
28 each member, except to the extent necessary to comply with any
29 transfer effective under Section 17705.02 and any charging order
30 in effect under Section 17705.03.

31 (b) A person has a right to a distribution before the dissolution
32 and winding up of a limited liability company only if the limited
33 liability company decides to make an interim distribution. Unless
34 the articles of organization or written operating agreement provides
35 otherwise, a person's dissociation does not entitle the person to a
36 distribution, and, beginning on the date of dissociation, the
37 dissociated person shall have only the right of a transferee of a
38 transferable interest with respect to that person's interest in the
39 limited liability company, and then only with respect to
40 distributions, if any, to which a transferee is entitled under the

1 operating agreement. If the dissociation is in violation of the
2 operating agreement, the limited liability company shall have the
3 right to offset any damages for the breach of the operating
4 agreement from the amounts, if any, otherwise distributable to the
5 dissociated person with respect to that person's interest in the
6 limited liability company.

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

13 (d) If a member or transferee becomes entitled to receive a
14 distribution, the member or transferee has the status of, and is
15 entitled to all remedies available to, a creditor of the limited
16 liability company with respect to the distribution.

17 (e) The profits and losses of a limited liability company shall
18 be allocated among the members, and among classes of members,
19 in the manner provided in the operating agreement. If the operating
20 agreement does not otherwise provide, profits and losses shall be
21 allocated in proportion to the value, as stated in the required
22 records, of the contributions the limited liability company has
23 received from each member.

24 ~~SEC. 8.~~

25 *SEC. 7.* Section 17704.07 of the Corporations Code is amended
26 to read:

27 17704.07. (a) A limited liability company is a
28 member-managed limited liability company unless the articles of
29 organization contain the statement required by paragraph (5) of
30 subdivision (b) of Section 17702.01.

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

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

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

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

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

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

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

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

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

14 (3) A difference arising among managers as to a matter in the
15 ordinary course of the activities of the limited liability company
16 may be decided by a majority of the managers of the limited
17 liability company.

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

20 (A) Sell, lease, exchange, or otherwise dispose of all, or
21 substantially all, of the limited liability company's property, with
22 or without the goodwill, outside the ordinary course of the limited
23 liability company's activities.

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

27 (5) A manager may be chosen at any time by the consent of a
28 majority of the members and remains a manager until a successor
29 has been chosen, unless the manager at an earlier time resigns, is
30 removed, or dies, or, in the case of a manager that is not an
31 individual, terminates. A manager may be removed at any time by
32 the consent of a majority of the members without cause, subject
33 to the rights, if any, of the manager under any service contract with
34 the limited liability company.

35 (6) A person need not be a member to be a manager, but the
36 dissociation of a member that is also a manager removes the person
37 as a manager. If a person that is both a manager and a member
38 ceases to be a manager, that cessation does not by itself dissociate
39 the person as a member.

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

4 (d) Except for such orders as may be made by a court of
5 competent jurisdiction over a dissolution under Section 17707.03,
6 the dissolution of a limited liability company does not affect the
7 applicability of this section. However, a person that wrongfully
8 causes dissolution of the limited liability company loses the right
9 to participate in management as a member and a manager.

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

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

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

39 (h) (1) Whenever members are required or permitted to take
40 any action at a meeting, a written notice of the meeting shall be

1 given not less than 10 days nor more than 60 days before the date
2 of the meeting to each member entitled to vote at the meeting. The
3 notice shall state the place, date, and hour of the meeting, the means
4 of electronic transmission by and to the limited liability company
5 or electronic video screen communication, if any, and the general
6 nature of the business to be transacted. No other business may be
7 transacted at that meeting.

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

26 (3) If any notice or report addressed to the member at the address
27 of the member appearing on the books of the limited liability
28 company is returned to the limited liability company by the United
29 States Postal Service marked to indicate that the United States
30 Postal Service is unable to deliver the notice or report to the
31 member at the address, all future notices or reports shall be deemed
32 to have been duly given without further mailing if they are
33 available for the member at the principal office of the limited
34 liability company for a period of one year from the date of the
35 giving of the notice or report to all other members.

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

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

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

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

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

28 (i) When a members' meeting is adjourned to another time or
29 place, unless the articles of organization or a written operating
30 agreement otherwise require and except as provided in this
31 subdivision, notice need not be given of the adjourned meeting if
32 the time and place thereof or the means of electronic transmission
33 by and to the limited liability company or electronic video screen
34 communication, if any, are announced at the meeting at which the
35 adjournment is taken. At the adjourned meeting, the limited liability
36 company may transact any business that may have been transacted
37 at the original meeting. If the adjournment is for more than 45
38 days, or if after the adjournment a new record date is fixed for the
39 adjourned meeting, a notice of the adjourned meeting shall be
40 given to each member of record entitled to vote at the meeting.

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

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

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

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

(2) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the requisite percentage of interests of members specified in

1 this title or in the articles of organization or a written operating
2 agreement.

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

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

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

27 (3) Any member giving a written consent, or the member's
28 proxyholder, may revoke the consent personally or by proxy by a
29 writing received by the limited liability company prior to the time
30 that written consents of members having the minimum number of
31 votes that would be required to authorize the proposed action have
32 been filed with the limited liability company, but may not do so
33 thereafter. This revocation is effective upon its receipt at the office
34 of the limited liability company required to be maintained pursuant
35 to Section 17701.13.

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

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

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

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

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

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

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

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

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

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

13 (1) The members of a limited liability company shall vote in
14 proportion to their interests in current profits of the limited liability
15 company or, in the case of a member who has assigned the
16 member's entire transferable interest in the limited liability
17 company to a person who has not been admitted as a member, in
18 proportion to the interest in current profits that the assigning
19 member would have, had the assignment not been made.

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

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

25 (s) Notwithstanding any provision to the contrary in the articles
26 of organization or operating agreement, in no event shall the
27 articles of organization be amended by a vote of less than a
28 majority of the members.

29 (t) Notwithstanding any provision to the contrary in the articles
30 of organization or operating agreement, members shall have the
31 right to vote on a dissolution of the limited liability company as
32 provided in subdivision (b) of Section 17707.01, on a conversion
33 to another business entity as provided in subdivision (b) of Section
34 17710.03, and on a merger of the limited liability company as
35 provided in Section 17710.12.

36 (u) A written operating agreement may provide for the
37 appointment of officers, including, but not limited to, a chairperson
38 or a president, or both a chairperson and a president, a secretary,
39 a chief financial officer, and any other officers with the titles,
40 powers, and duties as shall be specified in the articles of

1 organization or operating agreement or as determined by the
2 managers or members. An officer may, but does not need to, be a
3 member or manager of the limited liability company, and any
4 number of offices may be held by the same person.

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

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

26 ~~SEC. 9:~~

27 *SEC. 8.* Section 17704.08 of the Corporations Code is amended
28 to read:

29 17704.08. (a) A limited liability company shall reimburse for
30 any payment made and indemnify for any debt, obligation, or other
31 liability incurred by a member of a member-managed limited
32 liability company or the manager of a manager-managed limited
33 liability company in the course of the member's or manager's
34 activities on behalf of the limited liability company, if, in making
35 the payment or incurring the debt, obligation, or other liability,
36 the member or manager complied with the duties stated in Section
37 17704.09.

38 (b) Except as provided in subdivision (g) of Section 17701.10,
39 a limited liability company may reimburse for any payment made
40 and may indemnify for any debt, obligation, or other liability

1 incurred by a person not identified in subdivision (a), including,
2 without limitation, any officer, employee, or agent of the limited
3 liability company, in the course of that person's activities on behalf
4 of the limited liability company.

5 (c) A limited liability company may purchase and maintain
6 insurance on behalf of any person against liability asserted against
7 or incurred by that person even if, under subdivision (g) of Section
8 17701.10, the operating agreement could not eliminate or limit the
9 person's liability to the limited liability company for the conduct
10 giving rise to the liability.

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

21 (2) For purposes of this subdivision, the following terms have
22 the following meanings:

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

36 (B) "Expenses" include, without limitation, the attorney's fees
37 and any expenses of establishing a right to indemnification under
38 this subdivision.

1 (C) “Proceeding” means any threatened, pending, or completed
2 action or proceeding, whether civil, criminal, administrative, or
3 investigative.

4 ~~SEC. 10.~~

5 *SEC. 9.* Section 17704.09 of the Corporations Code is amended
6 to read:

7 17704.09. (a) The fiduciary duties that a member owes to a
8 member-managed limited liability company and the other members
9 of the limited liability company are the duties of loyalty and care
10 under subdivisions (b) and (c).

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

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

19 (2) To refrain from dealing with the limited liability company
20 in the conduct or winding up of the activities of the limited liability
21 company as or on behalf of a person having an interest adverse to
22 the limited liability company.

23 (3) To refrain from competing with the limited liability company
24 in the conduct or winding up of the activities of the limited liability
25 company.

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

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

35 (e) A member does not violate a duty or obligation under this
36 article or under the operating agreement merely because the
37 member’s conduct furthers the member’s own interest.

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

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

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

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

7 ~~SEC. 11.~~

8 *SEC. 10.* Section 17704.10 of the Corporations Code is
9 amended to read:

10 17704.10. (a) Upon the request of a member or transferee, for
11 purposes reasonably related to the interest of that person as a
12 member or a transferee, a manager or, if the limited liability
13 company is member-managed, a member in possession of the
14 requested information, shall promptly deliver, in writing, to the
15 member or transferee, at the expense of the limited liability
16 company, a copy of the information required to be maintained by
17 paragraphs (1), (2), and (4) of subdivision (d) of Section 17701.13,
18 and any written operating agreement of the limited liability
19 company.

20 (b) Each member, manager, and transferee has the right, upon
21 reasonable request, for purposes reasonably related to the interest
22 of that person as a member, manager, or transferee, to each of the
23 following:

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

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

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

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

39 (2) Members representing at least 5 percent of the voting
40 interests of members, or three or more members, may make a

1 written request to a manager for an income statement of the limited
2 liability company for the initial three-month, six-month, or
3 nine-month period of the current fiscal year ending more than 30
4 days prior to the date of the request, and a balance sheet of the
5 limited liability company as of the end of that period. The statement
6 shall be delivered or mailed to the members within 30 days
7 thereafter.

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

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

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

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

33 (g) In any action under this section or under Section 17713.07,
34 if the court finds the failure of the limited liability company to
35 comply with the requirements of this section is without
36 justification, the court may award an amount sufficient to reimburse
37 the person bringing the action for the reasonable expenses incurred
38 by that person, including attorney's fees, in connection with the
39 action or proceeding.

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

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

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

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

29 ~~SEC. 12.~~

30 *SEC. 11.* Section 17705.02 of the Corporations Code is
31 amended to read:

32 17705.02. (a) With respect to a transfer, in whole or in part,
33 of a transferable interest, all of the following apply:

34 (1) A transfer is permissible.

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

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

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

3 (B) Except as otherwise provided in subdivision (c) and Section
4 17704.10, have access to records or other information concerning
5 the activities of a limited liability company.

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

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

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

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

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

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

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

1 ~~SEC. 13.~~

2 ~~SEC. 12.~~ Section 17706.03 of the Corporations Code is
3 amended to read:

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

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

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

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

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

20 (c) If a member ~~dies~~ *dies*, or a guardian or ~~general~~ conservator
21 *of the estate* is appointed for the member, *or a member's interest*
22 *is being administered by an attorney-in-fact under a valid power*
23 *of attorney*, the member's executor, administrator, guardian,
24 conservator, *attorney-in-fact*, or other legal representative may
25 exercise all of the member's rights for the purpose of settling the
26 member's estate or administering the member's property, including
27 any power the member had under the articles of organization or
28 an operating agreement to give a transferee the right to become a
29 member.

30 ~~SEC. 14.~~

31 ~~SEC. 13.~~ Section 17707.01 of the Corporations Code is
32 amended to read:

33 17707.01. A limited liability company is dissolved, and its
34 activities shall be wound up, upon the happening of the first to
35 occur of the following:

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

38 (b) By the vote of a majority of the members of the limited
39 liability company or a greater percentage of the voting interests

1 of members as may be specified in the articles of organization, or
2 a written operating agreement.

3 (c) The passage of 90 consecutive days during which the limited
4 liability company has no members, except that, on the death of a
5 natural person who is the sole member of a limited liability
6 company, the status of the member, including a membership
7 interest, may pass to one or more heirs, successors, and assigns of
8 the member by will or applicable law. An heir, successor, or assign
9 of the member's interest becomes a substituted member pursuant
10 to paragraph (4) of subdivision (c) of Section 17704.01, subject
11 to administration as provided by applicable law, without the
12 permission or consent of the heirs, successors, or assigns or those
13 administering the estate of the deceased member.

14 (d) Entry of a decree of judicial dissolution pursuant to Section
15 17707.03.

16 ~~SEC. 15.~~

17 *SEC. 14.* Section 17707.03 of the Corporations Code is
18 amended to read:

19 17707.03. (a) Pursuant to an action filed by any manager or
20 by any member or members of a limited liability company, a court
21 of competent jurisdiction may decree the dissolution of a limited
22 liability company whenever any of the events specified in
23 subdivision (b) occurs.

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

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

29 (3) The business of the limited liability company has been
30 abandoned.

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

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

36 (c) (1) In any suit for judicial dissolution, the other members
37 may avoid the dissolution of the limited liability company by
38 purchasing for cash the membership interests owned by the
39 members so initiating the proceeding, the "moving parties," at
40 their fair market value. In fixing the value, the amount of any

1 damages resulting if the initiation of the dissolution is a breach by
2 any moving party or parties of an agreement with the purchasing
3 party or parties, including, without limitation, the operating
4 agreement, may be deducted from the amount payable to the
5 moving party or parties; provided, that no member who sues for
6 dissolution on the grounds set forth in paragraph (3), (4), or (5) of
7 subdivision (b) shall be liable for damages for breach of contract
8 in bringing that action.

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

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

38 (4) If the purchasing parties desire to prevent the winding up
39 and dissolution of the limited liability company, they shall pay to
40 the moving parties the value of their membership interests

1 ascertained and decreed within the time specified pursuant to this
2 section, or, in the case of an appeal, as fixed on appeal. On
3 receiving that payment or the tender of payment, the moving parties
4 shall transfer their membership interests to the purchasing parties.

5 (5) For the purposes of this section, the valuation date shall be
6 the date upon which the action for judicial dissolution was
7 commenced. However, the court may, upon the hearing of a motion
8 by any party, and for good cause shown, designate some other date
9 as the valuation date.

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

13 (d) Nothing in this section shall be construed to limit the
14 remedies otherwise available to a court of competent jurisdiction
15 over the dissolution.

16 *SEC. 15. Section 17707.06 of the Corporations Code is*
17 *amended to read:*

18 17707.06. (a) A limited liability company that ~~is dissolved~~
19 *has filed a certificate of cancellation* nevertheless continues to
20 exist for the purpose of winding up its affairs, prosecuting and
21 defending actions by or against it in order to collect and discharge
22 obligations, disposing of and conveying its property, and collecting
23 and dividing its assets. A limited liability company shall not
24 continue business except so far as necessary for its winding up.

25 (b) No action or proceeding to which a limited liability company
26 is a party abates by the ~~dissolution of filing of a certificate of~~
27 *cancellation* for the limited liability company or by reason of
28 proceedings for its winding up and dissolution.

29 (c) Any assets inadvertently or otherwise omitted from the
30 winding up continue in the ~~dissolved~~ *canceled* limited liability
31 company for the benefit of the persons entitled to those assets upon
32 ~~dissolution~~ *cancellation* and on realization shall be distributed
33 accordingly.

34 (d) After ~~dissolution~~ *cancellation* of the limited liability
35 company, the limited liability company is bound by both of the
36 following:

37 (1) The act of a person authorized to wind up the affairs of the
38 limited liability company, if the act is appropriate for winding up
39 the activities of the limited liability company.

1 (2) The act of a person authorized to act on behalf of the limited
2 liability company, if the act would have bound the limited liability
3 company before ~~dissolution~~, *cancellation*, if the other party to the
4 transaction did not have notice of the ~~dissolution~~, *cancellation*.

5 SEC. 16. Section 17707.09 of the Corporations Code is
6 amended to read:

7 17707.09. (a) Notwithstanding the filing of a certificate of
8 dissolution, a majority of the members may cause to be filed, in
9 the office of, and on a form prescribed by, the Secretary of State,
10 a certificate of continuation, in any of the following circumstances:

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

13 (2) The dissolution of the limited liability company was by vote
14 of the members pursuant to subdivision (b) of Section 17707.01
15 and each member who consented to the dissolution has agreed in
16 writing to revoke his or her vote in favor of or consent to the
17 dissolution.

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

19 (b) The certificate of continuation shall set forth all of the
20 following:

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

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

25 (c) Upon the filing of a certificate of continuation, the certificate
26 of dissolution shall be of no effect from the time of the filing of
27 the certificate of dissolution.

28 SEC. 17. Section 17708.07 of the Corporations Code is
29 amended to read:

30 17708.07. (a) A foreign limited liability company transacting
31 intrastate business in this state shall not maintain an action or
32 proceeding in this state unless it has a certificate of registration to
33 transact intrastate business in this state.

34 (b) The failure of a foreign limited liability company to have a
35 certificate of registration to transact intrastate business in this state
36 does not prevent the foreign limited liability company from
37 defending an action or proceeding in this state.

38 (c) A member or manager of a foreign limited liability company
39 is not liable for the debts, obligations, or other liabilities of the
40 foreign limited liability company solely because the foreign limited

1 liability company transacted intrastate business in this state without
2 a certificate of registration.

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

9 SEC. 18. Section 17710.03 of the Corporations Code is
10 amended to read:

11 17710.03. (a) A limited liability company that desires to
12 convert to an other business entity or a foreign other business entity
13 or a foreign limited liability company shall approve a plan of
14 conversion.

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

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

17 (2) The place of the organization of the converted entity and of
18 the converting limited liability company and the name of the
19 converted entity after conversion.

20 (3) The manner of converting the membership interests of each
21 of the members into shares of, securities of, or interests in, the
22 converted entity.

23 (4) The provisions of the governing documents for the converted
24 entity, including the limited liability company articles of
25 organization and operating agreement, or articles or certificate of
26 incorporation if the converted entity is a corporation, to which the
27 holders of interests in the converted entity are to be bound.

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

31 (b) (1) The plan of conversion shall be approved by all
32 managers and a majority of the members of each class of
33 membership interest or if there are no managers, a majority of the
34 members of each class of membership of the converting limited
35 liability company, unless a greater approval is required by the
36 operating agreement of the converting limited liability company.

37 (2) However, if the members of the limited liability company
38 would become personally liable for any obligations of the
39 converted entity as a result of the conversion, the plan of
40 conversion shall be approved by all of the members of the

1 converting limited liability company, unless the plan of conversion
2 provides that all members will have dissenters' rights as provided
3 in Article 11 (commencing with Section 17711.01).

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

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

24 (e) The managers by unanimous approval and the members of
25 a converting limited liability company may, by majority approval
26 at any time before the conversion is effective, in their discretion,
27 abandon a conversion, without further approval by the managers
28 or members, subject to the contractual rights of third parties other
29 than managers or members.

30 (f) The converted entity shall keep the plan of conversion at the
31 principal place of business of the converted entity if the converted
32 entity is a domestic limited liability company or foreign other
33 business entity, at the principal office of, or registrar or transfer
34 agent of, the converted entity, if the converted entity is a domestic
35 corporation, or at the office where records are to be kept pursuant
36 to Section 17701.13 if the converted entity is a domestic limited
37 liability company. Upon the request of a member of a converting
38 limited liability company, the authorized person on behalf of the
39 converted entity shall promptly deliver to the member or the holder
40 of shares, interests, or other securities, at the expense of the

1 converted entity, a copy of the plan of conversion. A waiver by a
2 member of the rights provided in this subdivision shall be
3 unenforceable.

4 SEC. 19. Section 17710.06 of the Corporations Code is
5 amended to read:

6 17710.06. (a) Upon conversion of a limited liability company,
7 one of the following applies:

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

12 (2) If the limited liability company is converting into a domestic
13 partnership, a statement of conversion shall be completed on the
14 statement of partnership authority for the converted entity. If no
15 statement of partnership authority is filed, a certificate of
16 conversion shall be filed separately with the Secretary of State.

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

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

24 (b) Any certificate or statement of conversion shall be executed
25 and acknowledged by all members of a member-managed limited
26 liability company or all managers of a ~~manger-managed~~
27 *manager-managed* limited liability company, unless a lesser
28 number is provided in the articles of organization or operating
29 agreement, and shall set forth all of the following:

30 (1) The name of the converting limited liability company and
31 the Secretary of State's file number of the converting limited
32 liability company.

33 (2) A statement that the principal terms of the plan of conversion
34 were approved by a vote of the members, that equaled or exceeded
35 the vote required under Section 17710.03, specifying each class
36 entitled to vote and the percentage vote required of each class.

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

38 (1) The name, form, and jurisdiction of organization of the
39 converted entity.

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

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

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

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

16 SEC. 20. Section 17710.12 of the Corporations Code is
17 amended to read:

18 17710.12. (a) Each limited liability company and other
19 business entity that desires to merge shall approve an agreement
20 of merger.

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

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

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

(3) The manner of converting the membership interests of each of the constituent limited liability companies into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, and if limited liability company interests of any of the constituent limited liability companies are not to be converted solely into interests, shares, or other securities of the surviving limited liability company or surviving other business entity, the cash, property, rights, interests, or securities that the holders of the limited liability company interests are to receive in exchange for the membership interests, the cash, property, rights, interests, or securities that may be in addition to or in lieu of interests, shares, or other securities of the surviving limited liability company or surviving other business entity, or that the limited liability company interests are canceled without consideration.

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

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

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

(b) (1) Each membership interest of the same class of any constituent limited liability company, other than a membership interest in another constituent limited liability company that is being canceled and that is held by a constituent limited liability company or its parent or a limited liability company of which the constituent limited liability company is a parent shall, unless all

1 members of the class consent, be treated equally with respect to
2 any distribution of cash, property, rights, interests, or securities.

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

22 (3) The provisions of this subdivision do not apply to any
23 transaction if the commissioner has approved the terms and
24 conditions of the transaction and the fairness of those terms
25 pursuant to Section 25142.

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

38 (d) The managers and members of a constituent limited liability
39 company may, in their discretion, abandon a merger, subject to
40 the contractual rights, if any, of third parties, including other

1 constituent limited liability companies and constituent other
2 business entities, without further approval by the membership
3 interests, at any time before the merger is effective.

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

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

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

27 (f) The surviving limited liability company or surviving other
28 business entity shall keep the agreement of merger at its designated
29 office or at the business address specified in paragraph (5) of
30 subdivision (a) of Section 17710.14, as applicable, and, upon the
31 request of a member of a constituent limited liability company or
32 a holder of shares, interests, or other securities of a constituent
33 other business entity, the managers or members of the surviving
34 limited liability company or the authorized person of the surviving
35 other business entity shall promptly deliver to the member or the
36 holder of shares, interests, or other securities, at the expense of the
37 surviving limited liability company or surviving other business
38 entity, a copy of the agreement of merger. A waiver by a member
39 or holder of shares, interests, or other securities of the rights
40 provided in this subdivision shall be unenforceable.

1 SEC. 21. Section 17713.04 of the Corporations Code is
2 amended to read:

3 17713.04. (a) Except as otherwise provided in subdivisions
4 (b) and (c), this title shall apply to all domestic limited liability
5 companies existing on or after January 1, 2014, to all foreign
6 limited liability companies registered with the Secretary of State
7 prior to January 1, 2014, whose registrations have not been
8 canceled as of January 1, 2014, to all foreign limited liability
9 companies registered with the Secretary of State on or after January
10 1, 2014, and to all actions taken by the managers or members of
11 a limited liability company on or after that date.

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

32 (c) Any vote or consent by the managers or members of a limited
33 liability company prior to January 1, 2014, shall be governed by
34 prior law. If a certificate or document is required to be filed in a
35 public office of this state relating to a vote or consent by the
36 managers or members of the limited liability company prior to
37 January 1, 2014, it may be filed after that date pursuant to the filing
38 requirements of this title, even though the vote or consent is
39 governed by prior law.

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

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

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

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

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

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

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

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

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

(C) Misstates or conceals or has misstated or concealed from a 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.

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

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

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

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

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

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

27 (e) For purposes of this section:

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

30 (A) Management authority over the limited liability company.

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

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

38 (3) “Member” means a person as defined by subdivision (o) of
39 Section 17701.01 that is a member of the limited liability company

1 at the time the disclosure is required pursuant to subparagraph (B)
2 of paragraph (2) of subdivision (a).

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

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

19 (A) Department of Corporations.

20 (B) Department of Insurance.

21 (C) Department of Financial Institutions.

22 (D) Department of Managed Health Care.

23 (E) United States Securities and Exchange Commission.

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

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

33 (A) The independent auditors required recordation of an
34 accounting transaction during the course of an audit.

35 (B) The audit committee of the limited liability company has
36 not approved the independent auditor’s recommendation.

37 (C) The decision is made for the primary purpose of rendering
38 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.

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