

CHAPTER 428
UNIFORM LIMITED LIABILITY COMPANY ACT

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Cross References

Limited liability partnerships, see §§425-151 to 173.

Law Journals and Reviews

The Proposed Limited Liability Company Act in Hawai'i. 18 UH L. Rev. 483.

The "Aloha Corporation:" Infusing the Culture of Hawai'i to Broaden the Perspective of Business and Return to Community. 34 UH L. Rev. 221 (2012).

"PART I. GENERAL PROVISIONS

§428-101 Definitions. As used in this chapter:

"Articles of organization" means initial, amended, and restated articles of organization and articles of merger. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed in the office of the director or comparable office of the company's jurisdiction of organization.

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

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

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

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

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

"Entity" includes domestic and foreign corporations, domestic professional corporations, domestic and foreign limited liability companies, domestic and foreign nonprofit corporations, domestic and foreign business trusts, estates, domestic and foreign partnerships, domestic and foreign limited partnerships, domestic and foreign limited liability partnerships, trusts, two or more persons having joint or common economic interest, associations and cooperative associations, and state, federal, and foreign governments.

"Foreign limited liability company" means an unincorporated entity organized under laws other than the laws of this State which afford limited liability to its owners comparable to the liability under section 428-303 and is not required to obtain a certificate of authority to transact business under any law of this State other than this chapter.

"Individual" means a natural person.

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

"Manager" means a person, whether or not a member of a manager-managed limited liability company, who is vested with authority under section 428-301(b).

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

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

"Operating agreement" means the agreement under section 428-103 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement.

"Person" includes any individual or entity.

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

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

"Signed" includes any symbol executed or adopted by a person with the present intention to authenticate a record.

"Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, and gift. [L 1996, c 92, pt of §1; am L 2004, c 121, §43; am L 2006, c 184, §32]

" **[§428-102] Knowledge and notice.** (a) A person knows a fact if the person has actual knowledge of it.

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

- (1) Knows the fact;
- (2) Has received a notification of the fact; or
- (3) Has reason to know the fact exists from all of the facts known to the person at the time in question.

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

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

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

(e) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence. An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information. [L 1996, c 92, pt of §1]

" **§428-103 Effect of operating agreement; nonwaivable provisions.** (a) Except as provided in subsection (b), all the members of a limited liability company may enter into an operating agreement to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

- (b) The operating agreement may not:
- (1) Unreasonably restrict a right to information or access to records under section 428-408;
 - (2) Eliminate the duty of loyalty under section 428-409(b) or 428-603(b)(3), but the agreement may:
 - (A) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - (B) Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
 - (3) Unreasonably reduce the duty of care under section 428-409(c) or 428-603(b)(3);

- (4) Eliminate the obligation of good faith and fair dealing under section 428-409(d), but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
- (5) Vary the right to expel a member in an event specified in section 428-601(5);
- (6) Vary the requirement to wind up the limited liability company's business in a case specified in section 428-801(3) or 428-801(4); or
- (7) Restrict rights of third parties under this chapter, other than managers, members, or their transferees. [L 1996, c 92, pt of §1; am L 1999, c 164, §2; am L 2004, c 121, §44]

" **[§428-104] Supplemental principles of law.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 478-2. [L 1996, c 92, pt of §1]

" **§428-105 Name.** (a) The name of a limited liability company must contain "limited liability company" or the abbreviation "L.L.C." or "LLC". "Limited" may be abbreviated as "Ltd.", and "company" may be abbreviated as "Co.". The letters in the name of a limited liability company must be letters of the English alphabet.

(b) Except as authorized by subsections (c) and (d), the name of a limited liability company shall not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
- (2) The name of any foreign corporation, partnership, limited partnership, limited liability company, or limited liability partnership authorized to transact business in this State;
- (3) A name the exclusive right to which is reserved under the laws of this State;
- (4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
- (5) Any trade name, trademark, or service mark registered in this State.

(c) A limited liability company may apply to the director for authorization to use a name that, upon the records of the department, is the same as, or is substantially identical to, one or more of the names described in subsection (b). The director may authorize use of a substantially identical name applied for if:

- (1) The present user, registrant, or owner of a reserved or registered name consents in writing to the use and registration of the name, and one or more words are added by the applicant to make the name distinguishable from the name on record; or
- (2) The applicant delivers to the director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

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

- (1) Merged with the other entity; or
- (2) Been formed by reorganization with the other entity.
[L 1996, c 92, pt of §1; am L 1999, c 249, §31; am L 2000, c 219, §69; am L 2001, c 129, §88; am L 2012, c 58, §19]

" **§428-105.5 Administrative order of abatement for infringement of limited liability company name.** (a) Any domestic limited liability company in good standing or foreign limited liability company authorized to do business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or foreign limited liability company authorized to transact business in the State is substantially identical to, or confusingly similar with, its name may file a petition with the director for an administrative order of abatement to address the infringement of its name. The petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing and the registrant shall be given an opportunity to address the petition at a full hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

- (1) Allow the entity to retain its registered name, but:
 - (A) Require the entity to register a new trade name with the director; and
 - (B) Require the entity to conduct business in this State under this new trade name; or
- (2)
 - (A) Require the entity to change its registered name;
 - (B) Require the entity to register the new name with the director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority, after the time to appeal has lapsed and no appeal has been timely filed. The director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with chapter 414, 414D, 415A, 425, 425E, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602. [L 1999, c 250, §6; am L 2002, c 40, §65; am L 2003, c 210, §9]

" **§428-106 Reserved name.** (a) A person may reserve the exclusive use of the name of a limited liability company or a foreign limited liability company, including a fictitious name for a foreign limited liability company whose company name is not available, by delivering an application to the director for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the director finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a one hundred twenty-day period from the date of filing.

(b) The owner of a name so reserved may transfer the reservation to another person by delivering to the director a signed notice of the transfer which states the name and address of the transferee. [L 1996, c 92, pt of §1; am L 2001, c 129, §89]

" **§428-107 Registered agent.** A limited liability company and a foreign limited liability company authorized to transact business in this State shall continuously maintain in this State a registered agent, who shall have a business address in this State and may be:

- (1) An individual who resides in this State;
- (2) A domestic entity authorized to transact business in this State; or
- (3) A foreign entity authorized to transact business in this State. [L 1996, c 92, pt of §1; am L 2003, c 124, §70; am L 2009, c 55, §52]

" **§428-108 Change of registered agent.** (a) A limited liability company or a foreign limited liability company may change its registered agent by complying with the requirements of section 425R-7.

(b) If a registered agent changes its name, its address or its type or jurisdiction of organization, the agent shall comply with the requirements of section 425R-8 or 425R-9, whichever is applicable. [L 1996, c 92, pt of §1; am L 2002, c 130, §102; am L 2009, c 55, §53]

" **§428-109 Resignation of registered agent.** A registered agent of a domestic or foreign limited liability company may resign from the registered agent's appointment by complying with the requirements of section 425R-10. [L 1996, c 92, pt of §1; am L 2002, c 130, §103; am L 2003, c 124, §71; am L 2009, c 55, §54]

" **§428-110 Service of process.** (a) Service of any notice or process authorized by law that is issued against a domestic or foreign limited liability company by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, manager, if the company is manager-managed, or upon any member if the company is member-managed, who is found within the jurisdiction of the court, officer, or board; or if any registered agent, manager, or member cannot be found, upon any person who is found in charge of the property, business, or office of the company within the jurisdiction of the court, officer, or board.

(b) If no manager, member, or other person in charge of the property, business, or office of the limited liability company can be found within the State, and the limited liability company has not filed with the director pursuant to this

chapter, the name of a registered agent upon whom legal notice and process from the courts of the State may be served, or the person named is not found within the State, service may be made upon the limited liability company by registered or certified mail, return receipt requested, addressed to the limited liability company at its principal office.

(c) Service by registered or certified mail is perfected at the earliest of:

- (1) The date the company receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the company; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company in any other manner permitted by law. [L 1996, c 92, pt of §1; am L 2001, c 129, §90; am L 2003, c 124, §72; am L 2006, c 184, §33]

" **§428-111 Nature of business and powers.** (a) A limited liability company may be organized under this chapter for any lawful purpose, subject to any law of this State governing or regulating business.

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

- (1) Sue and be sued, and defend in its company name;
- (2) Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
- (3) Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- (4) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- (5) Make contracts and guarantees, incur liabilities, borrow money, issue notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations

- by a mortgage on or a security interest in any of its property, franchises, or income;
- (6) Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
 - (7) Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;
 - (8) Conduct its business, locate offices, and exercise the powers granted by this chapter within or without this State;
 - (9) Elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit;
 - (10) Pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;
 - (11) Make donations for the public welfare or for charitable, scientific, or educational purposes; and
 - (12) Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company. [L 1996, c 92, pt of §1; am L 1999, c 164, §3]

"PART II. ORGANIZATION

[§428-201] Limited liability company as legal entity. A limited liability company is a legal entity distinct from its members. [L 1996, c 92, pt of §1]

" **§428-202 Organization.** (a) One or more persons may organize a limited liability company, consisting of one or more members, by delivering articles of organization to the office of the director for filing.

(b) The existence of a limited liability company begins when the articles of organization are filed.

(c) The filing of the articles of organization by the director is conclusive proof that the organizers satisfied all conditions precedent to the creation of the organization. [L 1996, c 92, pt of §1; am L 1997, c 4, §1]

" **§428-203 Articles of organization.** (a) Articles of organization of a limited liability company shall set forth:

- (1) The name of the company;

- (2) The mailing address of the company's initial principal office and the information required by section 425R-4(a);
- (3) The name and address of each organizer;
- (4) Whether the duration of the company is for a specified term and, if so, the period specified;
- (5) Whether the company is to be manager-managed, and:
 - (A) If so, the name and address of each initial manager, and the number of initial members; or
 - (B) If not, the name and address of each initial member; and
- (6) Whether the members of the company are to be liable for its debts and obligations under section 428-303(c).

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

- (1) Provisions permitted to be set forth in an operating agreement; or
 - (2) Other matters not inconsistent with law.
- (c) Articles of organization of a limited liability

company may not vary the nonwaivable provisions of section 428-103(b). As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

- (1) The operating agreement controls as to managers, members, and members' transferees; and
- (2) The articles of organization control as to persons other than managers, members, and their transferees who rely on the articles to their detriment.

(d) The duration of a limited liability company is at-will unless a term for its duration is specified in its articles of organization. [L 1996, c 92, pt of §1; am L 2000, c 219, §70; am L 2002, c 130, §104; am L 2009, c 55, §55]

" **§428-204 Articles of amendment.** A limited liability company may amend its articles of organization from time to time, in any and in as many respects as may be desired, so long as its articles of organization as amended contain only those provisions which may be lawfully contained in original articles of organization at the time of making the amendment. The articles of amendment shall be delivered to the director for filing and shall set forth:

- (1) The name of the limited liability company; and
- (2) The amendment to the articles of organization, referencing specifically the provisions being amended. [L 1996, c 92, pt of §1; am L 2000, c 219, §71]

" **§428-204.5 Amended and restated articles of organization.**

(a) A limited liability company may at any time amend and restate its articles of organization by complying with the procedures and requirements of sections 428-204 and 428-204.6.

(b) Upon its adoption, the amended and restated articles of organization shall set forth:

- (1) All of the operative provisions of the articles of organization as therefore amended;
- (2) The information required by section 428-204; and
- (3) A statement that the amended and restated articles of organization supersede the original articles of organization and all amendments thereto.

(c) The amended and restated articles of organization shall be delivered to the director for filing. The director may certify the amended and restated articles of organization as the articles of organization currently in effect, without including the information required to be filed by subsection (b)(2) and (3). [L 1999, c 164, §1; am L 2000, c 219, §72]

" **[§428-204.6] Restated articles of organization.** (a) A limited liability company may at any time restate its articles of organization as amended.

(b) The restated articles of organization shall set forth all of the operative provisions of the articles of organization as amended, together with a statement that the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.

(c) The restated articles of organization shall be delivered to the director for filing. The director may certify the restated articles of organization currently in effect, without including the information required to be filed by subsection (b). [L 2000, c 219, §1]

" **§428-205 Signing of records.** (a) Except as otherwise provided in this chapter, a record to be filed by or on behalf of a limited liability company in the office of the director shall be certified and signed by a:

- (1) Manager of a manager-managed company or, in the case of a foreign limited liability company, a person who is authorized or required to sign a record under the laws of its jurisdiction of organization;
- (2) Member of a member-managed company or, in the case of a foreign limited liability company, a person who is

authorized or required to sign a record under the laws of its jurisdiction of organization;

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

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

(b) The signer of a record to be filed under subsection (a) may do so as an attorney-in-fact by stating beneath or opposite the signature the name of the person for whom the signer is the attorney-in-fact. The power of attorney need not be filed with the record. [L 1996, c 92, pt of §1; am L 2001, c 129, §91; am L 2012, c 58, §20; am L 2012, c 58, §20]

" **§428-206 Filing in office of director; effective time and date.** (a) Articles of organization or any other record

authorized to be filed under this chapter shall be in a medium permitted by the director and shall be delivered to the office of the director. Unless the director determines that a record fails to comply as to form with the filing requirements of this chapter, and if all filing fees have been paid, the director shall file the record and stamp the word "Filed" and the date of delivery thereof.

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

(c) Except as otherwise provided in subsection (d) and section 428-207, a record accepted for filing is effective at the time of filing on the date it is filed, as evidenced by the director's date and time endorsement on the original record.

(d) Articles of termination, articles of conversion, and articles of merger may specify a delayed effective time and date, and if so, the record becomes effective at the time and date specified. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. A delayed effective date for a record may not be later than the thirtieth day after the date it is filed.

(e) A specified delayed effective date that is later than the thirtieth day after the record is filed makes the record effective as of the thirtieth day.

(f) A record filed with the director may contain information in addition to that required by this chapter.

(g) If the director has prescribed a mandatory form for a record to be filed, the record must be in or on the prescribed form.

(h) The duty of the director to file records under this chapter is ministerial. The filing or refusal to file a document does not:

- (1) Affect or create a presumption as to the validity or invalidity of the record in whole or in part; or
- (2) Relate to or create a presumption as to the correctness or incorrectness of information contained in the record. [L 1996, c 92, pt of §1; am L 2003, c 124, §73]

" **§428-207 Correcting filed record.** (a) A limited liability company or foreign limited liability company may correct a record filed by the director if the record contains a false or erroneous statement or was defectively certified or signed.

(b) A record is corrected:

(1) By preparing articles of correction that:

- (A) Describe the record, including its filing date, or have attached a copy of it to the articles of correction;
- (B) Specify the incorrect statement and the reason it is incorrect or the manner in which the certification or signing was defective; and
- (C) Correct the incorrect statement or defective certification or signing; and

(2) By delivering the articles of correction to the director for filing.

(c) Articles of correction are effective retroactively to the effective date of the record they correct. However, a person who has relied on the uncorrected record and was adversely affected by the correction is not bound by the correction until the articles of correction are filed. [L 1996, c 92, pt of §1; am L 2001, c 129, §92; am L 2002, c 130, §105]

" **[\$428-208] Liability for false statement in filed record.**

If a record authorized or required to be filed under this chapter contains a false statement, any person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed. [L 1996, c 92, pt of §1]

" **[\$428-209] Filing by judicial act.** If a person required by section 428-205, or otherwise by this chapter, to sign a record fails or refuses to do so, any other person who is adversely affected by such failure or refusal may petition the circuit court to direct the failing or refusing person to sign the record. If the court finds that it is proper for the record to be signed and that a person so designated has failed or refused to sign the record, it shall authorize another person to

sign, on behalf of the person refusing or failing to sign, and to file an appropriate record. [L 1996, c 92, pt of §1]

" **§428-210 Annual report.** (a) Each limited liability company and each foreign limited liability company authorized to transact business in this State shall deliver to the director for filing an annual report that sets forth:

- (1) The name of the company and the jurisdiction under whose law it is organized;
- (2) The mailing address of the company's principal office and the information required by section 425R-4(a); and
- (3) Whether the company is manager-managed, and:
 - (A) If so, the name and address of each manager, and the number of members; or
 - (B) If not, the name and address of each member.

(b) The annual report shall be filed within the time periods prescribed in subsections (c) and (d).

(c) Notwithstanding any other provision of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.

(d) Effective January 1, 2003, for domestic or foreign limited liability companies whose date of organization or registration in this State falls between:

- (1) January 1 and March 31, an annual report shall be filed on or before March 31 of each year and shall reflect the state of the company's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual report shall be filed on or before June 30 of each year and shall reflect the state of the company's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual report shall be filed on or before September 30 of each year and shall reflect the state of the company's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual report shall be filed on or before December 31 of each year and shall reflect the state of the company's affairs as of October 1 of the year when filed;

provided that if a domestic or foreign limited liability company is organized in the same year in which the annual report is due, the domestic or foreign limited liability company shall not be required to file an annual report for that year. Thereafter,

the domestic or foreign limited liability company shall comply with the requirements of this section.

(e) If an annual report does not contain the information required in subsection (a), the director shall return the report for correction. If the report is corrected to contain the information required in subsection (a) and delivered to the director within thirty days after the date on which it was mailed to the limited liability company by the director, the report shall be considered to be timely filed. [L 1996, c 92, pt of §1; am L 2000, c 219, §73; am L 2002, c 130, §106; am L 2009, c 55, §56]

**"PART III. RELATIONS OF MEMBERS AND MANAGERS TO PERSONS
DEALING WITH THE LIMITED LIABILITY COMPANY**

[\$428-301] Agency of members and managers. (a) Subject to the provisions of subsections (b) and (c):

- (1) Each member is an agent of the limited liability company for the purpose of its business;
- (2) An act of a member, including the signing of an instrument in the company name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority; and
- (3) An act of a member which is not apparently for carrying on in the ordinary course of the company's business or business of the kind carried on by the company binds the company only if the act was authorized by the other members.

(b) Subject to subsection (c), in a manager-managed limited liability company:

- (1) A member is not an agent of the company for the purpose of its business solely by reason of being a member;
- (2) Each manager is an agent of the company for the purpose of its business;
- (3) An act of a manager, including the signing of an instrument in the company name, for apparently carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company, unless the manager had no authority to act for the company in the particular

matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority; and

- (4) An act of a manager which is not apparently for carrying on in the ordinary course the company's business or business of the kind carried on by the company binds the company only if the act was authorized under section 428-404(b)(2).

(c) Unless the articles of organization limit their authority, any member of a member-managed limited liability company or any manager of a manager-managed company may sign and deliver any instrument transferring or affecting the company's interest in real property. Such an instrument shall be conclusively in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument. [L 1996, c 92, pt of §1]

" **[\$428-302] Limited liability company liable for member's or manager's actionable conduct.** A limited liability company shall be liable for loss or injury caused to any person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with authority of the company. [L 1996, c 92, pt of §1]

" **[\$428-303] Liability of members and managers.** (a) Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager shall not be personally liable for any debt, obligation, or liability of the company solely by reason of being or acting as a member or a manager.

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

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

- (1) A provision to that effect is contained in the articles of organization; and
- (2) A member so liable has consented in writing to the adoption of the provision or to be bound by the provision. [L 1996, c 92, pt of §1]

**"PART IV. RELATIONS OF MEMBERS TO ONE ANOTHER AND TO THE
LIMITED LIABILITY COMPANY**

[\$428-401] Form of contribution. The contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other obligations to contribute cash or property, or contracts for services to be performed. [L 1996, c 92, pt of §1]

" §428-402 Member's liability for contributions. (a) A member's obligation to contribute money, property, or other benefit to, or to perform services for, a limited liability company is not excused by the member's death, disability, or other inability to perform personally. If a member does not make the required contribution of property or services, the member or the member's executor, as the case may be, is obligated at the option of the company to contribute money equal to that portion of the value of the stated contribution which has not been made.

(b) A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (a), and without notice of any compromise under section 428-404(c)(5), may enforce the original obligation. [L 1996, c 92, pt of §1; am L 2001, c 129, §93]

" [\$428-403] Member's and manager's rights to payments and reimbursement. (a) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of its business or property.

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

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

(d) A member is not entitled to remuneration for services performed for a limited liability company, except for reasonable compensation for services rendered in winding up the business of the company. [L 1996, c 92, pt of §1]

" §428-404 Management of the limited liability company. (a) In a member-managed limited liability company:

- (1) Each member has equal rights in the management and conduct of the company's business; and
- (2) Except as specified in subsection (c), any matter relating to the business of the company may be decided by a majority of the members.
- (b) In a manager-managed limited liability company:
 - (1) The manager or managers have the exclusive authority to manage and conduct the company's business;
 - (2) Except as specified in subsection (c), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and
- (3) A manager shall:
 - (A) Be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and
 - (B) Remain in office until a successor has been elected, unless the manager resigns or is removed sooner.
- (c) The only matters of a limited liability company's business that require the consent of all the members are:
 - (1) Amendments to the operating agreement under section 428-103;
 - (2) Authorization or ratification of acts or transactions under section 428-103(b)(2)(B) which would otherwise violate the duty of loyalty;
 - (3) Amendments to the articles of organization under section 428-204;
 - (4) Compromising an obligation to make a contribution under section 428-402(b);
 - (5) Compromising among members, an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
 - (6) Making interim distributions under section 428-405(a);
 - (7) Admission of a new member;
 - (8) Use of the company's property to redeem an interest subject to a charging order;
 - (9) Consent to dissolve the company under section 428-801(2);
 - (10) Waiving of the right to have the company's business wound up and the company terminated under section 428-802(b);
 - (11) Merging the company with another entity under section [428-904(e)(1)]; and

(12) Selling, leasing, exchanging, or otherwise disposing of all, or substantially all, of the company's property with or without goodwill.

(d) Action requiring the consent of members or managers under this chapter may be taken with or without a meeting. If a meeting is otherwise required and written action in lieu thereof is not prohibited, the written action must be evidenced by one or more consents reflected in a record describing the action taken and signed by all of the members or managers entitled to vote on the action.

(e) A member or manager may appoint a proxy to vote or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact. An appointment of a proxy is valid for eleven months unless a different time is specified in the appointment instrument. An appointment is revocable by the member or manager unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest, in which case the appointment is revoked when the interest is extinguished. [L 1996, c 92, pt of §1; am L 1999, c 164, §4; am L 2001, c 129, §94]

" **[\$428-405] Sharing of and right to distributions.** (a) Any distributions made by a limited liability company, prior to dissolution and winding up, must be in equal shares.

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

(c) If a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution. [L 1996, c 92, pt of §1]

" **[\$428-406] Limitations on distributions.** (a) A distribution may not be made if:

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

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

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

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

- (1) In the case of distribution by purchase, redemption, or other acquisition of a distributional interest in a limited liability company, as of the date money or other property is transferred or debt incurred by the company; and
- (2) In all other cases, as of the date the:
 - (A) Distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or
 - (B) Payment is made if it occurs more than one hundred twenty days after the date of authorization.

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

(e) Indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of determinations under subsection (a) if its terms provide that payment of principal and interest is made only if and to the extent that payment of a distribution to members could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made. [L 1996, c 92, pt of §1]

" **[§428-407] Liability for unlawful distributions.** (a) A member of a member-managed limited liability company or a member or manager of a manager-managed company who votes for or assents to a distribution made in violation of section 428-406, the articles of organization, a written operating agreement, or a signed record is personally liable to the company for the amount of the distribution which exceeds the amount that could have been distributed without violating section 428-406, the articles of organization, a written operating agreement, or a signed record if it is established that the member or manager did not

perform the member's or manager's duties in compliance with section 428-409.

(b) A member of a manager-managed limited liability company who knew a distribution was made in violation of section 428-406 is personally liable to the limited liability company, but only to the extent that the distribution received by the member exceeded the amount that could properly have been paid under section 428-406.

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

- (1) Other members or managers who voted for or assented to the distribution in violation of subsection (a) and may compel contribution from them; and
- (2) Members who received a distribution in violation of subsection (b) and may compel contribution from the member in the amount received in violation of subsection (b).

(d) A proceeding under this section is barred unless it is commenced within two years after the distribution. [L 1996, c 92, pt of §1]

" **[\$428-408] Member's right to information.** (a) A limited liability company shall provide members and their agents and attorneys access to any of its records at reasonable locations specified in the operating agreement. The company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access includes the opportunity to inspect and copy records during ordinary business hours. The company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

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

- (1) Without demand, information concerning the company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and
- (2) On demand, other information concerning the company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) A member has the right, upon a signed record given to the limited liability company, to obtain at the company's expense a copy of any operating agreement in record form. [L 1996, c 92, pt of §1]

" **[§428-409] General standards of member's and manager's conduct.** (a) The only fiduciary duties a member owes to a member-managed limited liability company and its other members are the duty of loyalty and the duty of care imposed by subsections (b) and (c).

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

- (1) To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by the member of the company's property, including the appropriation of a company's opportunity;
- (2) To refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and
- (3) To refrain from competing with the company in the conduct of the company's business before the dissolution of the company.

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

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

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

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

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

(h) In a manager-managed limited liability company:

- (1) A member who is not also a manager owes no duty to the company or to the other members solely by reason of being a member;
- (2) A manager is held to the same standards of conduct prescribed for members in subsections (b) to (f);
- (3) A member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct in subsections (b) to (f) to the extent that the member exercises the managerial authority vested in a manager by this chapter; and
- (4) A manager is relieved of liability imposed by law for violation of the standards prescribed by subsections (b) to (f) to the extent of the managerial authority delegated to the members by the operating agreement. [L 1996, c 92, pt of §1]

" **[\$428-410] Actions by members.** (a) A member may maintain an action against a limited liability company or another member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

- (1) The member's rights under the operating agreement;
- (2) The member's rights under this chapter; and
- (3) The rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(b) The accrual, and any time limited for the assertion, of a right of action for a remedy under this section shall be governed by other laws. A right to an accounting upon dissolution and winding up does not revive a claim barred by law. [L 1996, c 92, pt of §1]

" **[\$428-411] Continuation of limited liability company after expiration of specified term.** (a) If a limited liability company that has a specified term is continued after the expiration of the term, the rights and duties of the members and managers remain the same as they were at the expiration of the term, except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(b) If the members in a member-managed limited liability company or the managers in a manager-managed company continue the business without winding up the business of the company, the company shall continue as an at-will company. [L 1996, c 92, pt of §1]

"PART V. TRANSFEREES AND CREDITORS OF MEMBERS

[\$428-501] Member's distributional interest. (a) A member is not a co-owner of, and has no transferable interest in, property of a limited liability company.

(b) A distributional interest in a limited liability company is personal property and, subject to sections 428-502 and 428-503, may be transferred in whole or in part.

(c) An operating agreement may provide that a distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to section 428-503, may also provide for the transfer of any interest represented by the certificate. [L 1996, c 92, pt of §1]

Case Notes

Where plaintiff was not an owner of the Haina Mill property nor was plaintiff an owner of any other property or assets of the limited liability companies, plaintiff lacked standing to pursue certain amended counts because each claim sought to recover losses by, or other damages to, the limited liability companies, and the claims did not assert that plaintiff, as an individual, suffered an injury in fact as a result of defendants' allegedly wrongful actions. Whether further amendment of certain counts would still be futile even after plaintiff added allegations regarding harm to plaintiff's distributional interests, discussed. 23 F. Supp. 3d 1152 (2014).

" **[\$428-502] Transfer of distributional interest.** A transfer of a distributional interest does not entitle the transferee to become or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled. A member ceases to be a member upon transfer of all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed. [L 1996, c 92, pt of §1]

" **§428-503 Rights of a transferee.** (a) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee such a right in accordance with authority

described in the operating agreement or all of the other members consent.

(b) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under section 428-402 and for obligations under section 428-407 to return unlawful distributions; provided that the transferee shall not be obligated for the transferor member's liabilities unknown to the transferee at the time the transferee becomes a member and shall not be personally liable for any obligation of the company incurred before the transferee's admission as a member.

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

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

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

- (1) Receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;
- (2) Receive, upon dissolution and winding up of the limited liability company's business:
 - (A) In accordance with the transfer, the net amount otherwise distributable to the transferor; and
 - (B) A statement of account only from the date of the latest statement of account agreed to by all the members; and
- (3) Seek under section 428-801(5), a judicial determination that it is equitable to dissolve and wind up the company's business.

(f) A limited liability company need not give effect to a transfer until the company has notice of the transfer. [L 1996, c 92, pt of §1; am L 1999, c 164, §5]

" **[§428-504] Rights of creditors.** (a) On application by a judgment creditor of a member of a limited liability company or a member's transferee, a court having jurisdiction may order that the distributional interest of the judgment debtor be used

to satisfy the judgment. The court may appoint a receiver to carry out the provisions of the charging order.

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

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

- (1) By the judgment debtor;
- (2) With property other than the company's property, by one or more of the other members; or
- (3) With the company's property, but only if permitted by the operating agreement.

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

(e) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company. [L 1996, c 92, pt of §1]

"PART VI. MEMBER'S DISSOCIATION

[\$428-601] Events causing a member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

- (1) The company's having notice of the member's express will to withdraw upon the date of notice or on a later date specified by the member;
- (2) An event agreed to in the operating agreement as causing the member's dissociation;
- (3) The member's expulsion pursuant to the operating agreement;
- (4) The member's expulsion by the unanimous vote of the other members if:
 - (A) It is unlawful to carry on the company's business with the member;
 - (B) There has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes, or a court order charging the member's distributional interest, which has not been foreclosed;
 - (C) Within ninety days after the company notifies a corporate member that it will be expelled because it has filed articles of dissolution or the

- equivalent, its registration has been revoked, dissolved, or canceled, or its right to conduct business has been suspended by the jurisdiction of its incorporation, the member fails to obtain a revocation of the dissolution proceedings or a reinstatement of its articles or its right to conduct business; or
- (D) A partnership or a limited liability company that is a member has been dissolved and its business is being wound up;
- (5) On application by the company or another member, the member's expulsion by judicial determination because the member:
- (A) Engaged in wrongful conduct that adversely and materially affected the company's business;
 - (B) Wilfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under section 428-409; or
 - (C) Engaged in conduct relating to the company's business which makes it not reasonably practicable to carry on the business with the member;
- (6) If the member:
- (A) Becomes a debtor in bankruptcy;
 - (B) Executes an assignment for the benefit of creditors;
 - (C) Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property; or
 - (D) Fails, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a member who is an individual:
- (A) The member's death;
 - (B) The appointment of a guardian or general conservator for the member; or
 - (C) A judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

- (8) In the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative;
- (10) Termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust; or
- (11) A termination of a member's continued membership in a limited liability company for any other reason. [L 1996, c 92, pt of §1]

" **[§428-602] Member's power to dissociate; wrongful dissociation.** (a) A member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, by express will.

(b) A member's dissociation from a limited liability company is wrongful only if:

- (1) It is in breach of an express provision of the operating agreement; or
- (2) Before the expiration of the term of a company having a specified term:
 - (A) The member withdraws by express will;
 - (B) The member is expelled by judicial determination under section 428-601(5);
 - (C) The member is dissociated by becoming a debtor in bankruptcy; or
 - (D) In the case of a member who is not an individual, trust other than a business trust, or estate, the member is expelled or otherwise dissociated because it wilfully dissolved or terminated its existence.

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

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

distributions otherwise due the member after the dissociation.
[L 1996, c 92, pt of §1]

" **§428-603 Effect of a member's dissociation.** (a) Upon a member's dissociation from a limited liability company:

- (1) In an at-will company, the company shall cause the dissociated member's company interest to be purchased under part VII; and
- (2) In a company having a specified term:
 - (A) If the company dissolves and winds up its business on or before the expiration of its specified term, part VIII applies to determine the dissociated member's rights to distributions; and
 - (B) If the company does not dissolve and wind up its business on or before the expiration of its specified term, the company must cause the dissociated member's distributional interest to be purchased under part VII on the date of the expiration of the term specified at the time of the member's dissociation.

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

- (1) The member's right to participate in the management and conduct of the company's business terminates, except as provided in section 428-803, and the member ceases to be a member and is treated the same as a transferee;
- (2) The member's duty of loyalty under section 428-409(b)(3) terminates; and
- (3) The member's duty of loyalty under section 428-409(b)(1) and (2) and duty of care under section 428-409(c) continue only with regard to matters arising and events occurring prior to the member's dissociation, unless the member participates in winding up the company's business pursuant to section 428-803. [L 1996, c 92, pt of §1; am L 1999, c 164, §6]

"PART VII. MEMBER'S DISSOCIATION WHEN BUSINESS NOT WOUND UP

§428-701 Company purchase of distributional interest. (a) A limited liability company shall purchase a distributional interest of a member of:

- (1) An at-will limited liability company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not

result in a dissolution and winding up of the company's business under section 428-801; or

- (2) A company having a specified term for its fair value determined as of the date of the expiration of the specified term that existed on the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under section 428-801.

(b) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased no later than thirty days after the date determined under subsection (a). The purchase offer shall be accompanied by:

- (1) A statement of the company's assets and liabilities as of the date determined under subsection (a);
- (2) The latest available balance sheet and income statement, if any; and
- (3) An explanation of how the estimated amount of the payment was calculated.

(c) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. In that case the dissociated member is entitled to commence a proceeding to have the company dissolved under section 428-801(4).

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

(e) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in section 428-702 together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(f) Damages for wrongful dissociation under section 428-602(b), and all other amounts owed, whether or not currently due, from the dissociated member to a limited liability company, shall be offset against the purchase price. [L 1996, c 92, pt of §1; am L 1999, c 164, §7]

" **§428-702 Court action to determine fair value of distributional interest.** (a) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

- (1) Determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price, or specifying a formula for determining the value of distributional interests for any purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;
- (2) Specify the terms of the purchase, including if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restrictions on a dissociated member; and
- (3) Require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(b) After an order to purchase is entered, a party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the limited liability company or other purchaser to complete the purchase justify a modification.

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

(d) If the purchase is not completed in accordance with the specified terms, the company is to be dissolved upon application under section 428-801(4)(D). If a limited liability company is so dissolved, the dissociated member shall have the same rights and priorities in the company's assets as if the sale had not been ordered.

(e) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties their reasonable expenses, including attorney's fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with section 428-701(b).

(f) Interest shall be paid on the amount awarded from the date determined under section 428-701(a) to the date of payment. [L 1996, c 92, pt of §1; am L 1999, c 164, §8]

" **[\$428-703] Dissociated member's power to bind the limited liability company.** Provided that the dissociation does not result in a dissolution and winding up of a limited liability company's business, for two years after a member dissociates from the company, the company, including a surviving company under part IX, shall be bound by an act of the dissociated member which would have bound the company under section 428-301 before dissociation only if at the time of entering into the transaction the other party:

- (1) Reasonably believed that the dissociated member was then a member;
- (2) Did not have notice of the member's dissociation; and
- (3) Is not deemed to have had notice under section 428-704. [L 1996, c 92, pt of §1]

" **[\$428-704] Statement of dissociation.** (a) A dissociated member or a limited liability company may file in the office of the director a statement of dissociation stating the name of the company and that the member is dissociated from the company.

(b) For the purposes of sections 428-301 and 428-703, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed. [L 1996, c 92, pt of §1]

"PART VIII. WINDING UP THE COMPANY'S BUSINESS

§428-801 Events causing dissolution and winding up of company's business. A limited liability company is dissolved, and its business shall be wound up, upon the occurrence of any of the following events:

- (1) An event specified in the operating agreement;
- (2) Consent of the number or percentage of members specified in the operating agreement;
- (3) An event that makes it unlawful for all or substantially all of the business of the company to be continued; provided that any cure of illegality within ninety days after notice to the company of the event shall be effective retroactively to the date of the event for purposes of this section;
- (4) On application by a member or a dissociated member, upon entry of a judicial decree that:
 - (A) The economic purpose of the company is likely to be unreasonably frustrated;

- (B) Another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member;
 - (C) It is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;
 - (D) The company failed to purchase the petitioner's distributional interest as required by section 428-701; or
 - (E) The managers or members in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner; or
- (5) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:
- (A) After the expiration of the specified term, if the company was for a specified term at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or
 - (B) At any time, if the company was at-will at the time the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer. [L 1996, c 92, pt of §1; am L 1999, c 164, §9]

" **[§428-802] Limited liability company continues after dissolution.** (a) Subject to subsection (b), a limited liability company continues after dissolution only for the purpose of winding up its business.

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

- (1) The limited liability company resumes carrying on its business as if dissolution had never occurred and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and
- (2) The rights of a third party accruing under section 428-804(a) or arising out of conduct in reliance on the dissolution before the third party knew or

received a notification of the waiver are not adversely affected. [L 1996, c 92, pt of §1]

" **§428-803 Right to wind up the limited liability company's business.**

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

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

(c) A person winding up a limited liability company's business may preserve the company's business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the company's business, dispose of and transfer the company's property, discharge the company's liabilities, distribute the assets of the company pursuant to section 428-806, settle disputes by mediation or arbitration, and perform other necessary acts and may publish notice of intent to terminate as provided in section 428-808. [L 1996, c 92, pt of §1; am L 2001, c 129, §95]

" **[§428-804] Member's or manager's power and liability as agent after dissolution.**

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

- (1) Is appropriate for winding up the company's business; or
- (2) Would have bound the company under section 428-301 before dissolution if the other party to the transaction did not have notice of the dissolution.

(b) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for winding up the company's business is liable to the company for any damage caused to the company arising from the liability. [L 1996, c 92, pt of §1]

" **§428-805 Articles of termination.** (a) At any time after dissolution and winding up, and when all debts, liabilities, and obligations of the limited liability company have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the limited liability company, if any, have been distributed to its members, a limited liability company may terminate its existence by delivering for filing with the director articles of termination stating:

- (1) The name of the company;

- (2) The dates the notice of intent to terminate was published pursuant to section 428-808 and the name of the newspaper publishing the notice, or a statement that publication was not made;
- (3) That all debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made therefor;
- (4) That all of the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests;
- (5) That there are no suits pending against the limited liability company in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and
- (6) That the company's business has been wound up and the legal existence of the company has been terminated.

(b) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date which shall be not later than thirty days after the date of filing of the articles of termination, if specified in the articles of termination. [L 1996, c 92, pt of §1; am L 2000, c 219, §74]

" **[§428-806] Distribution of assets in winding up the limited liability company's business.** (a) In winding up a limited liability company's business, the assets of the company shall be used to discharge its obligations to creditors, including members who are creditors. Any surplus shall be used to pay in money the net amount distributable to members in accordance with their rights to distribution under subsection (b).

(b) Each member is entitled to a distribution upon the winding up of the limited liability company's business consisting of a return of all contributions which have not previously been returned and a distribution of any remainder in equal shares. [L 1996, c 92, pt of §1]

" **§428-807 Known claims against dissolved limited liability company.** (a) A dissolved limited liability company may dispose of the known claims against it by following the procedure described in this section.

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

- (1) Specify the information required to be included in a claim;
- (2) Provide a mailing address where the claim is to be sent;
- (3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and
- (4) State that the claim will be barred if not received by the deadline.

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

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

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution. [L 1996, c 92, pt of §1; am L 2000, c 219, §75]

" **§428-808 Notice; other claims against dissolved limited liability company.** (a) A dissolved limited liability company that intends to terminate may publish notice of its intent to terminate and request persons having claims against the company to present them in accordance with the notice.

(b) The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a daily or weekly publication of statewide circulation or in separate daily or weekly publications whose combined circulation is statewide;
- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim is to be sent; and
- (3) State that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within two years after the later of the last publication date of the notice or the date of filing of the articles of termination.

(c) If a dissolved limited liability company publishes a notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved company

within two years after the later of the last publication date of the notice or the date of filing of the articles of termination:

- (1) A claimant who did not receive written notice under section 428-807;
 - (2) A claimant whose claim was timely sent to the dissolved company but not acted on; and
 - (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (d) A claim not barred under this section may be enforced:
- (1) Against the dissolved limited liability company, to the extent of its undistributed assets; or
 - (2) If the assets have been distributed in liquidation, against a member of the dissolved company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less; provided that a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member. [L 1996, c 92, pt of §1; am L 2000, c 219, §76; am L 2001, c 129, §96]

" **§428-809 Grounds for administrative termination.** The director may commence a proceeding to terminate a limited liability company administratively if the company fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two years pursuant to section 428-210;
- (3) Appoint and maintain an agent for service of process as required by this part; or
- (4) File a statement of a change in the name or business address of the agent as required by this part. [L 1996, c 92, pt of §1; am L 2001, c 129, §97]

" **§428-810 Procedure for and effect of administrative termination.** (a) If the director determines that one or more grounds exist to administratively terminate a limited liability company, the director may declare the company terminated. Before the director declares a limited liability company terminated, the director shall mail a notice of the grounds for termination to the company and may give public notice of the intention to terminate the limited liability company.

(b) If the limited liability company does not correct each ground for termination or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after mailing of the

notice of intention to terminate the limited liability company, the director shall administratively terminate the company by signing a decree of termination that recites the ground or grounds for termination and its effective date. The decree shall be filed in the director's office.

(c) A limited liability company administratively terminated continues its existence temporarily but may carry on only business necessary to wind up and liquidate its business and affairs under section 428-802 and to notify claimants under section 428-807. The company ceases existence upon the completion of these matters.

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

(e) Any manager, member, or creditor of an administratively terminated limited liability company may petition the circuit court to appoint a trustee to settle its affairs. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's possession as trustee, a sum equal to any penalties imposed pursuant to section 428-1302. Up until the time a trustee is appointed by the circuit court, or indefinitely if a trustee is not appointed by the circuit court, the last managers of the limited liability company if the company was manager-managed, or if not manager-managed the last members of the limited liability company, shall be and act as trustees for the creditors and members of the limited liability company with full powers to settle its affairs. [L 1996, c 92, pt of §1; am L 2000, c 219, §77; am L 2008, c 54, §9]

" **§428-811 Reinstatement following administrative termination.** (a) A limited liability company administratively terminated under section 428-810 may apply to the director for reinstatement within two years after the effective date of termination. The application shall:

- (1) Recite the name of the limited liability company and the effective date of its administrative termination;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate or other writing from the director of taxation reciting that all taxes owed by the company have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.

(b) Within the applicable reinstatement period, should the name of the limited liability company or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the administratively terminated company pursuant to the amendment provisions of this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative termination and the limited liability company resumes carrying on its business as if the administrative termination had never occurred. [L 1996, c 92, pt of §1; am L 1999, c 164, §10; am L 2006, c 184, §34 and c 235, §21; am L 2012, c 58, §21]

" **[§428-812] Appeal from denial of reinstatement.** (a) If the director denies a limited liability company's application for reinstatement following administrative dissolution, the director shall notify the company of the reason or reasons for denial.

(b) The company may appeal the denial of reinstatement to the circuit court within thirty days after the mailing of notification of the denial. The company appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the director's decree of termination, the company's application for reinstatement, and the director's notice of denial.

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

(d) The court's final decision may be appealed as in other civil proceedings. [L 1996, c 92, pt of §1]

"PART IX. CONVERSIONS AND MERGERS

§428-901 Definitions. In this part:

"Association" means an association organized under chapter 421 or 421C.

"Corporation" means a corporation under the Hawaii Business Corporation Act, chapter 414, a predecessor law, or comparable law of another jurisdiction.

"General partner" means a partner in a partnership and a general partner in a limited partnership.

"Limited partner" means a limited partner in a limited partnership.

"Limited partnership" means a limited partnership created under the Uniform Limited Partnership Act, chapter 425E, a predecessor law, or comparable law of another jurisdiction.

"Merger" means the procedure authorized by this part in which one domestic or foreign entity combines with one or more domestic or foreign entities resulting in either one surviving entity or one new entity.

"Organizing articles" means:

- (1) For an association, corporation, or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

"Other business entity" means a corporation, general partnership, limited partnership, limited liability partnership, or association.

"Other entity" includes a foreign or domestic corporation, whether organized for profit or not, a domestic or foreign partnership, limited partnership, limited liability partnership, or a domestic professional corporation.

"Partner" includes a general partner and a limited partner.

"Partnership" or "general partnership" means a general partnership created under chapter 425, a predecessor law, or comparable law of another jurisdiction.

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

"Shareholder" means a shareholder in a corporation. [L 1996, c 92, pt of §1; am L 1999, c 280, §12; am L 2002, c 40, §66 and c 41, §22; am L 2003, c 124, §74 and c 210, §10; am L 2004, c 121, §45]

Cross References

Limited liability partnerships, see §§425-151 to 173.

" **§428-901.5 Foreign mergers.** (a) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and the foreign entity shall be the surviving entity, it shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger, duly authenticated

by the proper officer of the state or country under the laws of which the statutory merger was effectuated. The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language a translation attested to under oath of the translator shall accompany the certificate.

(b) Whenever a foreign entity authorized to transact business in this State shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is organized, and that entity shall not be the surviving entity, the surviving entity shall, within sixty days after the merger becomes effective, file with the director a certificate evidencing the merger in the form prescribed by subsection (a). [L 2002, c 41, §5; am L 2003, c 124, §75; am L 2004, c 121, §46]

" **§428-902 REPEALED.** L 1999, c 280, §24.

" **§428-902.5 Conversion into and from limited liability companies.** (a) A domestic limited liability company may adopt a plan of conversion and convert to a foreign limited liability company or any other entity if:

- (1) The domestic limited liability company acts on and its members approve a plan of conversion in the manner prescribed by sections 428-904 to 428-906 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by, and complies with, the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with such laws;
- (3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by that member, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;
- (4) The members of the domestic limited liability company shall not, as a result of the conversion, become personally liable without the members' consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign limited liability company or other entity may adopt a plan of conversion and convert to a domestic limited liability company if the conversion is permitted by and complies with the laws of the state or country in which the foreign limited liability company or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

- (1) The name of the converting entity and the converted entity;
- (2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;
- (3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized; and
- (4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a limited liability company is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the converting entity without member action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan of conversion, in the manner determined by the members. If articles of conversion have been filed with the director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the director prior to the effective date of the conversion. If the director finds that the statement satisfies the requirements provided by law, the director, after all fees have been paid shall:

- (1) Stamp the word "Filed" on the statement and the date of the filing;
- (2) File the document in the director's office; and
- (3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the director, the conversion shall be deemed abandoned and

shall not be effective. [L 1999, c 280, pt of §6; am L 2001, c 129, §98]

" **§428-902.6 Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section 428-902.5 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, type of entity, and state or country of incorporation, formation, or organization of the converting and converted entities;
 - (B) That a plan of conversion has been approved;
 - (C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
 - (D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any member, shareholder, partner, or owner of the converting entity or the converted entity;
- (2) If the converting entity is a domestic limited liability company, the total number of authorized votes, and the number voted for and against the plan; and
- (3) If the converting entity is a foreign limited liability company or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the director. The converted entity, if a domestic corporation, domestic professional corporation, domestic nonprofit corporation, general partnership, limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents with the articles of conversion.

(c) If the director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the director, after all fees have been paid shall:

- (1) Stamp the articles of conversion and include the date of the filing;
- (2) File the document in the director's office; and
- (3) Issue a certificate of conversion to the converted entity or its authorized representatives. [L 1999, c

280, pt of §6; am L 2001, c 129, §99; am L 2009, c 23, §13]

" **§428-903 Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to the conversion;
- (4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
- (5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
- (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the former members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 414-342;
- (7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by

becoming a shareholder, partner, member, or other owner of the converted entity; and

(8) If the converted entity is a foreign limited liability company or other business entity incorporated, formed, or organized under a law other than the law of this State, such converted entity shall file with the director:

- (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic limited liability company;
- (B) An irrevocable appointment of a resident of this State, including the resident's street address, as its agent to accept service of process in any such proceeding; and
- (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity. [L 1996, c 92, pt of §1; am L 1999, c 280, §21; am L 2001, c 129, §100; am L 2003, c 124, §76; am L 2004, c 121, §47; am L 2006, c 235, §22]

" **§428-904 Merger.** (a) Pursuant to a plan of merger, a domestic or foreign limited liability company may merge with one or more domestic professional corporations, or with one or more limited liability companies or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign limited liability companies, or other business entities whether domestic or foreign, being the surviving entity as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

- (b) The plan of merger shall set forth:
 - (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
 - (2) The name of the surviving entity with or into which the other entity or entities will merge;
 - (3) The terms and conditions of the merger;
 - (4) The manner and basis for converting the interests of each party to the merger into interests or obligations

of the surviving entity, or into money or other property in whole or in part;

- (5) The street address of the surviving entity's principal place of business, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
 - (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.
- (c) A plan of merger may:
- (1) Amend the operating agreement of a limited liability company; or
 - (2) Adopt a new operating agreement for a limited liability company if it is the surviving entity in the merger.

Any amendment to a limited liability company agreement or adoption of a new limited liability company agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited liability company agreement or other agreement or as otherwise permitted by law; provided that the limited liability company agreement of any constituent limited liability company to the merger (including a limited liability company formed for the purpose of consummating a merger or consolidation) shall be the limited liability company agreement of the surviving or resulting limited liability company.

(d) A plan of merger may set forth other provisions relating to the merger.

- (e) A plan of merger shall be approved:
- (1) In the case of a limited liability company that is a party to the merger, unless otherwise provided in the operating agreement, by the members representing the percentage of ownership specified in the operating agreement, but not fewer than the members holding a majority of the ownership, or if provision is not made in the operating agreement, by all the members; and
 - (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized.

(f) If a foreign limited liability company is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited liability company is not already authorized to do business in the State.

(g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.

(h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the members or managers of any limited liability company notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the members or managers of the constituent limited liability companies to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the members or managers of any constituent limited liability company shall not:

- (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the constituent company; or
- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

(i) A merger takes effect on the filing date of the articles of merger or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date. [L 1996, c 92, pt of §1; am L 2002, c 41, §23 and c 130, §107]

" **§428-905 Articles of merger.** (a) After a plan of merger is approved in accordance with section 428-904(e), unless the merger is terminated under section 428-904(h), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger, and shall be delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
- (2) A statement that the plan of merger has been approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- (5) A statement that includes:
 - (A) An agreement that the surviving entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State that is to merge;
 - (B) An irrevocable appointment of a resident of this State as its agent to accept service of process in a proceeding under subparagraph (A), that includes the resident's street address in this State; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving entity.

(b) If the articles of merger provide for a future effective date, and:

- (1) The plan of merger is amended to change the future effective date;
- (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
- (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if a plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the limited liability company's organizing articles. [L 1996, c 92, pt of §1; am L 1999, c 249, §32; am L 2000, c 219, §78; am L 2002, c 41, §24; am L 2003, c 124, §77; am L 2004, c 121, §48; am L 2006, c 184, §35]

" **§428-906 Effect of merger.** (a) When a merger takes effect:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be served, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

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

(d) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger shall not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter. [L 1996, c 92, pt of §1; am L 2002, c 41, §25; am L 2009, c 55, §57]

" §428-907 REPEALED. L 2004, c 121, §60.

" §428-908 REPEALED. L 2000, c 219, §84.

"PART X. FOREIGN LIMITED LIABILITY COMPANIES

[§428-1001] Law governing foreign limited liability companies. (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs and the liability of its managers, members, and their transferees.

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

(c) A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this State. [L 1996, c 92, pt of §1]

" §428-1002 **Application for certificate of authority.** (a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

- (1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
- (2) The name of the state or country under whose law it is organized;
- (3) A representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at its principal office until cancellation, in accordance with section 428-1007, of the foreign limited

liability company's authority to transact business in this State;

- (4) The mailing address of its principal office and the information required by section 425R-4(a);
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is manager-managed, and:
 - (A) If so, the name and address of each manager; or
 - (B) If not, the name and address of each member;
- (7) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and
- (8) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State.

(b) A foreign limited liability company shall deliver with the completed application a certificate of existence or a record of similar import authenticated by the secretary of state or other official having custody of company records in the state or country under whose law it is organized, which certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate. [L 1996, c 92, pt of §1; am L 2000, c 219, §79; am L 2002, c 130, §108; am L 2003, c 124, §78; am L 2004, c 121, §49; am L 2007, c 202, §2; am L 2009, c 55, §58]

" **[\$428-1003] Activities not constituting transacting business.** (a) The activities of a foreign limited liability company that do not constitute transacting business in this State within the meaning of this part include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its members or managers or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;

- (6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
- (9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner; or
- (10) Transacting business in interstate commerce.

(b) For purposes of this part, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

(c) This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under any other law of this State. [L 1996, c 92, pt of §1]

" **[§428-1004] Issuance of certificate of authority.** Unless the director determines that an application for a certificate of authority fails to comply as to form with the filing requirements of this chapter, the director, upon payment of all filing fees, shall file the application and issue a certificate of authority and mail it to the limited liability company or its representative. [L 1996, c 92, pt of §1]

" **§428-1005 Name of foreign limited liability company.** (a) If the name of a foreign limited liability company does not satisfy the requirements of section 428-105(b), (c), and (d), the company, to obtain or maintain a certificate of authority to transact business in this State, shall use a fictitious name to transact business in this State if its real name is unavailable.

(b) Except as authorized by subsections (c) and (d), the name, including a fictitious name, of a foreign limited liability company shall not be the same as, or substantially identical to:

- (1) The name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
- (2) The name of any foreign corporation, partnership, limited liability company, or limited liability

partnership authorized to transact business in this State;

- (3) A name the exclusive right to which is reserved under the laws of this State;
- (4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
- (5) Any trade name, trademark, or service mark registered in this State.

(c) A foreign limited liability company may apply to the director for authority to use in this State a name that is the same as, or is substantially identical to, a name described in subsection (b). The director may authorize use of a substantially identical name applied for if:

- (1) The present user, registrant, or owner of a reserved name consents in writing to the use of the name, and one or more words are added to make the name distinguishable upon the records of the director from the name of the foreign limited liability company; or
- (2) The applicant delivers to the director a certified copy of a final judgment of a court establishing the applicant's right to use the name applied for in this State.

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

- (1) Has merged with the other entity; or
- (2) Has been formed by reorganization of the other entity.

(e) If a foreign limited liability company authorized to transact business in this State changes its name to one that does not satisfy the requirements of section 428-105(b), (c), and (d), it shall not transact business in this State under the name as changed until it adopts a name satisfying the requirements of section 428-105 and obtains an amended certificate of authority. [L 1996, c 92, pt of §1; am L 1999, c 249, §33; am L 2000, c 219, §80; am L 2006, c 184, §36]

" **[§428-1005.5] Change of name by foreign limited liability company.** (a) Whenever the name of a foreign limited liability company that is authorized to transact business in this State is changed by an amendment to its articles of organization, the foreign limited liability company, within sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change that is duly

authenticated by the proper officer of the state or country under the laws of which it is organized. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign limited liability company that is authorized to transact business in this State changes its name to one that is substantially identical to the name of any business entity or trade name registered in this State, the foreign limited liability company shall not thereafter transact any business in this State until it has changed its name to a name that is available to it under the laws of this State or has otherwise complied with this chapter.

(c) If a foreign limited liability company is unable to change its name to a name that is available to it under the laws of this State, it may deliver to the director a copy of a certificate of registration of a different name as a trade name and thereafter shall become authorized to transact business in this State under that name. [L 2003, c 124, §3]

" **§428-1006 Revocation of certificate of authority.** (a) A certificate of authority of a foreign limited liability company to transact business in this State may be revoked by the director in the manner provided in subsection (b) if:

- (1) The company fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two years pursuant to section 428-210;
 - (C) Appoint and maintain an agent for service of process as required by this part; or
 - (D) File a statement of a change in the name or business address of the agent as required by this part; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the company pursuant to this part.

(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by mailing the notice to the foreign limited liability company at its last known address appearing in the director's records. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation that shall be filed in the office of the director. The authority of the company to transact business

in this State shall cease upon the issuance of the certificate of revocation. [L 1996, c 92, pt of §1; am L 2001, c 129, §101; am L 2002, c 130, §109; am L 2003, c 124, §79]

" **§428-1007 Cancellation of authority.** (a) A foreign limited liability company may cancel its authority to transact business in this State by obtaining a certificate of cancellation. Cancellation does not terminate the authority of the director to accept service of process on the company for claims for relief arising out of the transactions of business in this State. In order to obtain a certificate of cancellation, the foreign limited liability company shall deliver to the director for filing an application for cancellation, which shall set forth:

- (1) The name and jurisdiction of formation or organization of the foreign limited liability company;
- (2) A statement that the foreign limited liability company is not transacting business in this State;
- (3) A statement that the foreign limited liability company surrenders its authority to transact business in this State;
- (4) A statement that the foreign limited liability company revokes the authority of its agent for service of process in this State and consents that the service of process for any claim for relief arising out of the transactions of business in this State may be made on such foreign limited liability company by service upon the director;
- (5) The address to which a person may mail a copy of any process against the foreign limited liability company;
- (6) The dates the notice of cancellation was published pursuant to subsection (b) and the name of the newspaper publishing the notice, or a statement that publication was not made; and
- (7) A statement that all taxes, debts, obligations, and liabilities of the foreign limited liability company in this State have been paid and discharged or that adequate provision has been made therefor.

(b) A foreign limited liability company intending to cancel its authority to transact business in this State may publish notice of its cancellation and request persons having claims against the company to present them in accordance with the notice. The notice shall:

- (1) Be published at least once in each of four successive weeks (four publications) in a daily or weekly publication of statewide circulation or in separate

daily or weekly publications whose combined circulation is statewide; and

- (2) Describe the information required to be contained in a claim and provide a mailing address where the claim may be sent.

(c) After the filing of the application for cancellation, the director shall issue a certificate of cancellation which shall be effective as of the date of the filing of the application for cancellation, and the authority of the foreign limited liability company to transact business in this State shall cease. [L 1996, c 92, pt of §1; am L 1998, c 11, §21; am L 2000, c 219, §81; am L 2001, c 129, §102]

" **[§428-1008] Effect of failure to obtain certificate of authority.** (a) A foreign limited liability company transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State.

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

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

(d) If a foreign limited liability company transacts business in this State without a certificate of authority, service of process may be made upon the company as set forth in section 428-110(b) at any address used by the company as its address for purposes of its business transactions.

(e) A foreign limited liability company which transacts business in this State without a certificate of authority, shall be liable to the State in an amount equal to all fees and penalties which would have been imposed by this chapter upon that foreign limited liability company had it obtained such a certificate and filed all records and reports required by this chapter. The attorney general may bring proceedings to recover all amounts due this State under the provisions of this section. [L 1996, c 92, pt of §1]

" **[§428-1009] Action by attorney general.** The attorney general may maintain an action to restrain a foreign limited liability company from transacting business in this State in violation of this part. [L 1996, c 92, pt of §1]

" **§428-1010 REPEALED.** L 2003, c 124, §106.

"PART XI. DERIVATIVE ACTIONS

[\$428-1101] Right of action. A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed. [L 1996, c 92, pt of §1]

" **[\$428-1102] Proper plaintiff.** In a derivative action for a limited liability company, the plaintiff shall be a member of the company when the action is commenced, and:

- (1) Shall have been a member at the time of the transaction of which the plaintiff complains; or
- (2) The plaintiff's status as a member shall have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction. [L 1996, c 92, pt of §1]

" **[\$428-1103] Pleading.** In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort. [L 1996, c 92, pt of §1]

" **[\$428-1104] Expenses.** If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received. [L 1996, c 92, pt of §1]

"PART XII. MISCELLANEOUS PROVISIONS

[\$428-1201] Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [L 1996, c 92, pt of §1]

" **§428-1202 REPEALED.** L 1999, c 164, §11.

" **[§428-1203] Certificates and certified copies to be received in evidence.** All certificates issued by the director in accordance with this chapter, and all copies of records filed in the office of the director in accordance with this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the director under the seal of the department, as to the existence or nonexistence of the facts relating to a limited liability company or foreign limited liability company, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated. [L 1996, c 92, pt of §1]

" **§428-1204 Interrogatories by director.** (a) The director may direct to any limited liability company or foreign limited liability company subject to this chapter, and to any member or manager of any limited liability company or foreign limited liability company subject to this chapter, any interrogatories reasonably necessary and proper to enable the director to ascertain whether the limited liability company or foreign limited liability company has complied with all of the provisions of this chapter applicable to the limited liability company or foreign limited liability company.

The interrogatories shall be answered within thirty days after the date of mailing, or within such additional time as shall be fixed by the director. The answers to the interrogatories shall be full and complete and shall be made in writing and under oath. If the interrogatories are directed to an individual, they shall be answered by the individual, and if directed to a limited liability company or foreign limited liability company, they shall be answered by a manager of a manager-managed company, a member of a member-managed company, or fiduciary if the company is in the hands of a receiver, trustee, or other court appointed fiduciary.

The director need not file any record in a court of competent jurisdiction to which the interrogatories relate until the interrogatories are answered as provided in this section, and not then if the answers thereto disclose that the record is not in conformity with the requirements of this chapter. The director shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers which disclose a violation of this chapter.

(b) Interrogatories initiated by the director and the answers shall not be open to public inspection, nor shall the director disclose any facts or information obtained through

interrogatories, except insofar as the director's official duty may require the disclosure to be made public, or in the event the interrogatories or the answers are required for evidence in any criminal proceedings, or in any other action by this State. [L 1996, c 92, pt of §1; am L 1998, c 11, §22]

"PART XIII. FEES, CHARGES, AND PENALTIES

§428-1301 Fees. (a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

- (1) Articles of organization, \$100;
- (2) Articles of amendment, \$25;
- (3) Restated articles of organization, \$25;
- (4) Articles of merger or conversion, \$100;
- (5) Statement of dissociation, \$25;
- (6) Articles of termination, \$25;
- (7) Application for reinstatement for administratively terminated limited liability company, \$25;
- (8) Annual report, \$25;
- (9) Any other statement or document of a domestic or foreign limited liability company, \$25;
- (10) Application for certificate of authority for foreign limited liability company, \$100;
- (11) Application for cancellation of authority of foreign limited liability company, \$25;
- (12) Reservation of name, \$10;
- (13) Good standing certificate, \$5;
- (14) Any other record not otherwise covered in this part, \$25;
- (15) Certified copy of any record relating to a limited liability company or foreign limited liability company, \$10 for the certificate and affixing the seal thereto;
- (16) Special handling fee for review of any record other than articles of merger or conversion, \$25;
- (17) Special handling fee for review of articles of merger or conversion, \$75;
- (18) Special handling fee for certificate issued by the director not otherwise covered by this section, \$10 per certificate;
- (19) Special handling fee for certification of record, \$10;
- (20) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, \$10, which amount may be recovered as taxable costs by the party to the suit or action causing such

service to be made if such party prevails in the suit or action; and

(21) For filings relating to registered agents, the fees established by section 425R-2.

(b) All fees collected under this section shall be managed in accordance with section 26-9(1). [L 1996, c 92, pt of §1; am L 1998, c 11, §23; am L 1999, c 129, §16 and c 280, §23; am L 2000, c 219, §82; am L 2001, c 129, §103; am L 2004, c 116, §9 and c 117, §6; am L 2009, c 55, §59]

" **[\$428-1302] Penalties.** (a) Each limited liability company and foreign limited liability company that fails or refuses to file its annual report for any year within the time prescribed by this chapter shall be subject to a forfeiture of an amount to be determined by the director not exceeding \$100 for every such offense, violation, neglect, or failure, to be recovered by action brought in the name of the State by the director. A continuance of a failure to file the required statement shall be a separate offense for each thirty days of the continuance. The director, for good cause shown, may reduce or waive the penalty imposed by this section.

(b) Each limited liability company, domestic or foreign, that delivers for filing to, files, or causes to be filed with the director any record, statement, or other document required by this chapter which is known to the limited liability company to be false in any material respect, shall be guilty of a class C felony.

(c) Any person who signs or certifies as correct any record, statement, or other document filed pursuant to this chapter, knowing the same to be false in any material respect, shall be guilty of a class C felony.

(d) Any person who negligently but without intent to defraud signs or certifies as correct any record, statement, or other document filed pursuant to this chapter, which is false in any material particular, shall be punished by a fine not exceeding \$500.

(e) Each domestic or foreign limited liability company that knowingly fails or intentionally refuses to answer truthfully and fully within the time prescribed by this chapter interrogatories directed to the limited liability company by the director in accordance with this chapter shall be guilty of a class C felony.

(f) Any manager or member of a domestic or foreign limited liability company who knowingly fails or intentionally refuses within the time prescribed by this chapter to answer truthfully and fully interrogatories directed to the manager or member of a

limited liability company by the director in accordance with this chapter shall be guilty of a class C felony.

(g) A person has "knowledge" of a fact within the meaning of this section not only when the person has actual knowledge, but also when the person has knowledge of the other facts as in the circumstances showing bad faith. [L 1996, c 92, pt of §1]