

ACT 92

S.B. NO. 2723

A Bill for an Act Relating to Limited Liability Companies.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
UNIFORM LIMITED LIABILITY COMPANY ACT**

**PART I. GENERAL PROVISIONS**

**§ -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” means a person other than an individual.

“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 -303 and is not required to obtain a certificate of authority to transact business under any law of this State other than this chapter.

“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 -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 -103 concerning the relations among the members, managers, and limited liability company. The term includes amendments to the agreement.

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

“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.

**§ -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.

**§ -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, which must be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(b) The operating agreement may not:

- (1) Unreasonably restrict a right to information or access to records under section -408;
- (2) Eliminate the duty of loyalty under section -409(b) or -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 -409(c) or -603(b)(3);
- (4) Eliminate the obligation of good faith and fair dealing under section -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 -601(5);
- (6) Vary the requirement to wind up the limited liability company's business in a case specified in section -801(4) or -801(5); or
- (7) Restrict rights of third parties under this chapter, other than managers, members, or their transferees.

**§ -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.

**§ -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 must not be the same as, or substantially identical to,:

- (1) The name of any corporation, partnership, or limited liability company existing under the laws of this State;
- (2) The name of any foreign corporation, foreign partnership, or foreign limited liability company 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 -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, service mark, or trademark 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 of the name, and one or more words are added to make the name distinguishable upon the records of the director from the name applied for; 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.

**§ -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 nonrenewable 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.

**§ -107 Designated office and agent for service of process.** (a) A limited liability company and a foreign limited liability company authorized to do business in this State shall designate and continuously maintain in this State:

- (1) An office, which need not be a place of its business in this State; and
- (2) An agent and street address of the agent for service of process on the company.

(b) An agent shall be an individual resident of this State, a domestic corporation, or another limited liability company.

**§ -108 Change of designated office or agent for service of process.** A limited liability company or a foreign limited liability company may change its designated office or agent for service of process by delivering to the director for filing a statement of change which sets forth:

- (1) The name of the company;
- (2) The street address of its current designated office, 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;
- (3) If the current designated office is to be changed, the street address of the new designated office, 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;
- (4) The name and street address of its current agent for service of process; and
- (5) If the current agent for service of process or street address of that agent is to be changed, the new street address or the name and street address of the new agent for service of process.

**§ -109 Resignation of agent for service of process.** (a) An agent for service of process of a limited liability company or a foreign limited liability company may resign by delivering to the director for filing a record of the statement of resignation.

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

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

**§ -110 Service of process.** (a) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(b) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address, service of process may be made upon the limited liability company or foreign limited liability company by registered or certified mail, return receipt requested, addressed to the limited liability company or foreign limited liability company at its last designated office or principal office as disclosed by the records in the office of the director.

(c) Service by registered or certified mail is effected under subsection (b) at the earliest of:

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

(d) This section shall not affect the right to serve process, notice, or demand in any other manner provided by law.

**§ -111 Nature of business and powers.** (a) A limited liability company may be organized under this chapter for any lawful purpose; provided that the following purposes are prohibited:

- (1) Activities of a financial institution under chapter 412;
- (2) Activities under chapter 431; or
- (3) Activities under chapter 442, 448, 453, 455, 459, 460, 461, 463E, 465, 466, 471, or 605, or section 554-2.

A limited liability company shall be subject to any law of this State governing or regulating business. If the purpose for which a limited liability company is organized or its form makes it subject to a special provision of law, the limited liability company shall also comply with that provision.

(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.

## PART II. ORGANIZATION

§ -201 **Limited liability company as legal entity.** A limited liability company is a legal entity distinct from its members.

§ -202 **Organization.** (a) One or more persons may organize a limited liability company, consisting of two 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.

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

- (1) The name of the company;
- (2) The street address of the initial designated office, 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;
- (3) The name and street address of the initial agent for service of process;
- (4) The name and address of each organizer;
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is to be manager-managed, and:
  - (A) If so, the name and residence street address of each initial manager, 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 the number of initial members; or
  - (B) If not, the name and residence street address of each initial member, 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

(7) Whether the members of the company are to be liable for its debts and obligations under section -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 -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.

**§ -204 Amendment or restatement of articles of organization.** (a)

Articles of organization of a limited liability company may be amended at any time by delivering articles of amendment to the director for filing. The articles of amendment shall contain the following:

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

(2) The amendment to the articles of organization, referencing specifically the provisions being amended.

(b) A limited liability company at any time may restate its articles of organization as theretofore amended. Restated articles of organization shall be signed and filed in the same manner as articles of amendment. Restated articles of organization shall set forth all of the operative provisions of the articles of organization as theretofore amended, together with a statement that, except for the amendments specifically referenced therein, the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as theretofore amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.

**§ -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;

(2) Member of a member-managed company;

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

or

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

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

(c) 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.

**§ -206 Filing in office of director.** (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) Articles of organization or amendment accepted for filing by the director are effective as of the date and time they are filed with the director.

(d) Articles of termination and merger may become effective at a later time and date, as specified in the record, but not more than thirty days after the date of filing with the director.

(e) If a delayed effective date for a record is specified but no time is specified, the record is effective at 12:01 a.m. on that date. 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.

**§ -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 attach 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) Corrects the incorrect statement or defective certification or signing; and

(2) By delivering the corrected record 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.

**§ -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.

**§ -209 Filing by judicial act.** If a person required by section -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.

**§ -210 Filing of 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 state or country under whose law it is organized;
- (2) The street address of its designated office and the name and street address of its agent for service of process in this State, provided that 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;
- (3) The street address of its principal office, 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
- (4) Whether the company is manager-managed, and:
  - (A) If so, the name and residence street address of each manager, 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 the number of members; or
  - (B) If not, the name and residence street address of each member, 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.

(b) The information in an annual report shall be current as of December 31 of the year preceding the year of filing.

(c) The first annual report shall be delivered to the director by June 30 of the year following the calendar year in which a limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the director by June 30 of the following calendar year.

(d) 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.

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

**§ -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 -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.

**§ -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.

**§ -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.

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

§ -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.

§ -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 executors, 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 -404(c)(5), may enforce the original obligation.

§ -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.

§ -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;
- (2) Except as specified in subsection (c) or in section -801(3)(A), any matter relating to the business of the company may be decided by a majority of the members; and
- (3) Each member who is not an individual must be qualified to transact business in this State.

(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) or in section -801(3)(A), 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;

- (B) Be qualified to transact business in this State if the manager is an entity; and
  - (C) Remain in office until a successor has been elected and qualified, unless the manager resigns or is removed sooner.
- (c) The following matters require the consent of all the members of the limited liability company:
- (1) Amendments to the operating agreement under section -103;
  - (2) Authorization or ratification of acts or transactions under section -103(b)(2)(B) which would otherwise violate the duty of loyalty;
  - (3) Amendments to the articles of organization under section -204;
  - (4) Compromising an obligation to make a contribution under section -402(b);
  - (5) Compromising among members, of an obligation of a member to make a contribution or return money or other property paid or distributed in violation of this chapter;
  - (6) Making interim distributions under section -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 -801(2);
  - (10) Waiving of the right to have the company's business wound up and the company terminated under section -802(b);
  - (11) Merging the company with another entity under section -904(c)(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.

**§ -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.

**§ -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.

**§ -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 -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 -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 -409.

(b) A member of a manager-managed limited liability company who knew a distribution was made in violation of section -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 -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.

**§ -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.

**§ -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.

**§ -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.

**§ -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.

## PART V. TRANSFEREES AND CREDITORS OF MEMBERS

**§ -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 -502 and -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 -503, may also provide for the transfer of any interest represented by the certificate.

§ **-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.

§ **-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 -402 and for obligations under section -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 -801(6), a judicial determination that it is equitable to dissolve and wind up the company's business.

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

§ **-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.

## PART VI. MEMBER'S DISSOCIATION

**§ -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 -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.

**§ -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 -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.

**§ -603 Effect of a member's dissociation.** (a) If under section -801 a member's dissociation from a limited liability company results in a dissolution and winding up of the company's business, part VIII shall apply. If a member's

dissociation from the company does not result in a dissolution and winding up of the company's business under section -801:

- (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 -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 -409(b)(3) terminates; and
  - (3) The member's duty of loyalty under section -409(b)(1) and (2) and duty of care under section -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 -803.

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

**§ -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 -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 -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 -801(5).

(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 -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 -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.

**§ -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 -801(5)(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 -701(b).

(f) Interest shall be paid on the amount awarded from the date determined under section -701(a) to the date of payment.

**§ -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 -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 -704.

**§ -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 -301 and -703, a person not a member is deemed to have notice of the dissociation ninety days after the statement of dissociation is filed.

## **PART VIII. WINDING UP THE COMPANY'S BUSINESS**

**§ -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) Dissociation of a member-manager or, if none, a member of an at-will company, and dissociation of a member manager or, if none, a member of a company having a specified term but only if the dissociation was for a reason provided in section -601(6) to (10) and occurred before the expiration of the specified term, provided that the company is not dissolved and required to be wound up by reason of the dissociation:
  - (A) If, within ninety days after the dissociation, a majority of the remaining members agree to continue the business of the company; or
  - (B) The business of the company is continued under a right to continue stated in the operating agreement;
- (4) An event that makes it unlawful for all or substantially all of the business of the company to be continued, 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;
- (5) 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 -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;
- (6) On application by a transferee of a member's interest, a judicial determination that it is equitable to wind up the company's business:
  - (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; or
- (7) The expiration of a specified term.

**§ -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 -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.

**§ -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 -806, settle disputes by mediation or arbitration, and perform other necessary acts and shall publish notice of intent to terminate as provided in section -808.

**§ -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 -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.

**§ -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 -808 and the name of the newspaper publishing the notice;
- (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.

**§ -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.

**§ -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 within thirty days from the first publication of the notice of intent to terminate published pursuant to section -808. 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.

**§ -808 Notice; other claims against dissolved limited liability company.** (a) A dissolved limited liability company that intends to terminate shall publish notice of its intent to terminate and request persons having claims against the company to present them in accordance with the notice; provided that a dissolved limited liability company, with the approval of the director, may omit the publication of the notice if the limited liability company has insufficient assets to pay for publication.

- (b) The notice shall:
  - (1) Be published at least once in each of four successive weeks (four publications) in a newspaper of general circulation in this State;
  - (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 -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.

**§ -809 Grounds for administrative termination.** The director may commence a proceeding to terminate a limited liability company administratively if the company has not, pursuant to section -210, filed its annual report for a period of two years.



**§ -810 Procedure for and effect of administrative termination.** (a) If the director determines that a ground exists to terminate administratively, 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 shall publish notice of the intention to terminate the limited liability company once in each of three successive weeks (three publications) in a newspaper of general circulation in this State.

(b) If the 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 and the last publication date 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 for termination and its effective date.

(c) A 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 -802 and to notify claimants under sections -807 and -808. The company ceases existence upon the completion of these matters.

(d) The administrative termination of a 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 -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.

(f) The director shall deliver a copy of the decree of termination for each administratively terminated limited liability company to the director of taxation and financial officer of each county.

**§ -811 Reinstatement following administrative termination.** (a) A limited liability company administratively terminated may apply to the director for reinstatement within ninety days after the effective date of termination. The application shall:

- (1) Recite the name of the company and the effective date of its administrative termination;
  - (2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid, and
  - (3) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid.
- (b) The director shall issue an order of reinstatement if:
- (1) The application for reinstatement meets the requirements of subsection (a);
  - (2) The name of the limited liability company satisfies the requirements of section -105;
  - (3) Articles of amendment to change the name of the limited liability company are filed if the name of the company does not satisfy the requirements of section -105; and
  - (4) The delinquent annual reports have been filed and the appropriate fees and penalties have been paid.

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

§ -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.

## PART IX. CONVERSIONS AND MERGERS

§ -901 **Definitions.** In this part:

"Corporation" means a corporation under the Hawaii Business Corporation Act, chapter 415, 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 425D, a predecessor law, or comparable law of another jurisdiction.

"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.

§ -902 **Conversion of partnerships or limited partnerships to limited liability company.** (a) A domestic partnership or domestic limited partnership may be converted into a domestic limited liability company pursuant to this section.

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

(c) An agreement of conversion approved under subsection (b) shall set forth the terms and conditions of the conversion of the interests of the general partners in the case of a general partnership and the interests of the general partners and limited partners in the case of limited partnership, being converted into interests in the limited liability company and any cash or other consideration to be paid or delivered as a result of the conversion or any combination thereof.

(d) Upon compliance with subsection (b) and section -908, the general partnership or limited partnership shall file articles of organization in the office of the director which satisfy the requirements of section -203 and contain:

- (1) A statement that the general partnership or limited partnership was converted to a limited liability company;
- (2) The name of the former partnership or limited partnership;

- (3) A statement detailing the approvals by the general partners in the case of a general partnership conversion, and the general partners and limited partners in the case of a limited partnership conversion, noting the respective votes taken required to approve the conversion under subsection (b);
- (4) A statement of cancellation of the partnership registration statement in the case of a general partnership conversion, or a statement of cancellation of the certificate of limited partnership in the case of a limited partnership conversion, specifying an effective date as provided in subsection (f) if the effective date is not to be the date of filing; and
- (5) A statement of compliance with section -908.

(e) In the case of a general or limited partnership, the filing of the articles of organization under subsection (d) cancels the partnership registration statement or the certificate of limited partnership.

(f) A conversion becomes effective upon the filing of the articles of organization or upon the time and date subsequent to the filing as set forth in the articles but not more than thirty days after being filed.

(g) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a general partner for any obligation incurred by the general partnership or limited partnership before the conversion has taken effect. A general partner's liability for all obligations of the limited liability company incurred after the conversion becomes effective shall be that of a member of the limited liability company.

(h) A limited partner who becomes a member as a result of a conversion remains liable only to the extent the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

**§ -903 Effect of conversion; entity unchanged.** (a) A general partnership or limited partnership that has been converted to a limited liability company pursuant to section -902 shall be considered the same legal entity that existed prior to the conversion, the only change shall be the form in which the legal entity now exists.

(b) When the conversion takes effect:

- (1) All property owned by the converting general partnerships or limited partnerships is vested in the limited liability company;
- (2) All debts, liabilities, and other obligations of the converting general partnership or limited partnership continue as obligations of the limited liability company;
- (3) Any action or proceeding pending by or against the converting general partnership or limited partnership may be continued as if the conversion had not occurred and the limited liability company may be substituted as a party to the action or proceeding;
- (4) Except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of the converting general partnership or limited partnership are vested in the limited liability company; and
- (5) Except as otherwise provided in the agreement of the conversion under section -902(c), all of the partners of the converting general partnership or limited partnership shall continue as members of the limited liability company.

**§ -904 Merger.** (a) Pursuant to a plan of merger approved under subsection (c), one or more domestic or foreign limited liability companies, one or more domestic or foreign general or limited partnerships, and one or more domestic or

foreign corporations may be merged into a domestic or foreign limited liability company.

(b) A 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 limited liability company 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 company, or into money or other property in whole or in part;
- (5) The street address of the surviving company'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 articles of organization of the surviving company.

(c) A plan of merger shall be approved:

- (1) In the case of a limited liability company that is a party to the merger, 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;
- (2) In the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;
- (3) In the case of a corporation that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the corporation is organized;
- (4) In the case of a domestic limited partnership that is a party to the merger, by all of the partners;
- (5) In the case of a foreign limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited partnership is organized;
- (6) In the case of a domestic general partnership that is a party to the merger, by the vote of all partners; and
- (7) In the case of a foreign general partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign general partnership is organized.

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

(e) The merger shall be effective upon the filing of the articles of merger with the director or at such later date and time as the articles may provide, but not more than thirty days after the filing.

**§ -905 Articles of merger.** (a) After approval of the plan of merger under section -904(c) and compliance with section -908, if applicable, unless the merger is abandoned under section -904(d), 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 delivered to the director for filing. The articles shall set forth and contain:

- (1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger;
  - (2) The plan of merger;
  - (3) A statement, signed by each entity that is a party to the merger, that the plan of merger was approved;
  - (4) As to each entity, the total authorized votes and the number voted for and against the plan;
  - (5) The name and address of the surviving company;
  - (6) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger;
  - (7) If the surviving entity is a foreign limited liability company, it shall file with the director;
    - (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 which is to merge;
    - (B) An irrevocable appointment of a resident of this State including the 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 member, shareholder or partner to receive payment for their interest against the surviving entity; and
  - (8) A statement of compliance with section -908, if applicable.
- (b) 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 that authority is filed with the director.
- (c) The surviving company 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.
- (d) Articles of merger operate as an amendment to the limited liability company's articles of organization.

**§ -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 company, terminates;
  - (2) All property owned by each of the entities that are parties to the merger vests in the surviving company;
  - (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving company.
  - (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 company 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 company.
- (b) If the surviving foreign limited liability company fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving foreign limited liability company by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving company at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

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

(c) A member of the surviving limited liability company 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 does not require the limited liability company to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

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

**§ -907 Dissenters' rights.** The shareholders of a domestic corporation that is a party to a merger authorized by section -904 have the rights of dissenting shareholders in the manner provided in section 415-81.

**§ -908 Notice of conversion or merger of partnership or limited partnership.** A partnership or limited partnership which intends to be converted to a limited liability company pursuant to sections -902 and -903 or which intends to be party to a merger into a limited liability company pursuant to sections -905 to -907, shall:

- (1) Publish, once in each of three successive weeks (three publications) in a newspaper of general circulation published in the State, notice thereof to the public, and
- (2) Make reasonable efforts to give notice thereof in a reasonable manner to persons with whom the partnership or limited partnership expects to have a continuing business relationship as of the time of the conversion or merger. A partnership or limited partnership which determines in a reasonable manner the persons to whom such notice is given shall be in compliance with this section even if notice is not received by all persons with whom the partnership or limited partnership conducted business prior to the conversion or merger or by all persons with whom the limited liability conducts business after the conversion.

## PART X. FOREIGN LIMITED LIABILITY COMPANIES

**§ -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.

**§ -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 -1005;
- (2) The name of the state or country under whose law it is organized;
- (3) The street address of its principal office, 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 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 this principal office until cancellation, in accordance with section -1007, of the foreign limited liability company's authority to transact business in this State;
- (4) The street address of its initial designated office in this State 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;
- (5) The name and street address of its initial agent for service of process in this State;
- (6) Whether the duration of the company is for a specified term and, if so, the period specified;
- (7) Whether the company is manager-managed, and:
  - (A) If so, the name and residence street address of each manager, 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; or
  - (B) If not, the name and residence street address of each member, 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;
- (8) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section -303(c); and
- (9) 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 thirty days prior to the filing of the application. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

**§ -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.

**§ -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.

**§ -1005 Name of foreign limited liability company.** (a) If the name of a foreign limited liability company does not satisfy the requirements of section -105, 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 corporation, partnership, or limited liability company existing under the laws of this State;
- (2) The name of any foreign corporation, foreign partnership, or foreign limited liability company 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 tradename, service mark, or trademark 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 -105, it shall not transact business in this State under the name as changed until it adopts a name satisfying the requirements of section -105 and obtains an amended certificate of authority.

**§ -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 -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 a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to the office required to be maintained by section -107. 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 in duplicate, file one of the certificates in the office of the director and mail the other certificate addressed as described in the preceding sentence to the foreign limited liability company. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.

**§ -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; 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 shall 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 newspaper of general circulation in this State; 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.

(d) A cancellation does not terminate the authority of the director to accept service of process on a foreign limited liability company with respect to causes of action arising out of the transaction of business in this State.

(e) The foreign limited liability company, with the approval of the director, may omit the publication of the notice if the limited liability company has insufficient assets to pay for the publication.

**§ -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 -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.

**§ -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.

§ **-1010 Merger of foreign limited liability companies authorized to transact business in this State.** (a) Whenever a foreign limited liability company authorized to transact business in this State shall be a party to a statutory merger or consolidation under the laws of the jurisdiction in which it is organized, and is the surviving company, within thirty days after the merger or consolidation becomes effective, it shall deliver to the director a certificate evidencing the merger duly authenticated by the proper officer of the jurisdiction under which the statutory merger was effectuated. The certificate evidencing the merger or consolidation shall be evidence of an amendment changing the name if the name of the surviving entity is changed thereby. If the certificate is in a foreign language, a translation into English under oath of the translator shall accompany the certificate.

(b) If the surviving or new entity is not authorized to transact business in this State and does not intend to do so after the merger, it shall file an application for cancellation of the nonsurviving or consolidated foreign limited liability company's authority to transact business in this State in accordance with section -1007, together with the certificate evidencing the merger or consolidation.

(c) If the surviving or new entity intends to transact business in this State after the merger or consolidation, it may not do business in this State until an application for authority has been filed with the director.

## PART XI. DERIVATIVE ACTIONS

§ **-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.

§ **-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.

§ **-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.

§ **-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.

## PART XII. MISCELLANEOUS PROVISIONS

§ **-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.

§ **-1202 Application of corporation case law to set aside limited liability.** In any case in which a party seeks to hold the members of a limited liability company personally responsible for the liabilities or alleged improper actions of the limited liability company, the court shall apply the case law which interprets the conditions and circumstances under which the corporate veil of a corporation may be pierced under the law of this State.

§ **-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.

§ **-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 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.

### **PART XIII. FEES, CHARGES, AND PENALTIES**

§ **-1301 Fees.** 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, \$50;
- (3) Restated articles of organization, \$50;
- (4) Articles of merger, \$200;
- (5) Statement of dissociation, \$50;

- (6) Articles of termination, \$50;
- (7) Application for reinstatement for administratively terminated limited liability company, \$50;
- (8) Annual report, \$25;
- (9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, \$50;
- (10) Statement of resignation of agent for service of process, \$50;
- (11) Any other statement or document of a domestic or foreign limited liability company, \$50;
- (12) Application for certificate of authority for foreign limited liability company, \$100;
- (13) Application for cancellation of authority of foreign limited liability company, \$50;
- (14) Reservation of name, \$25;
- (15) Good standing certificate, \$25;
- (16) Any other record not otherwise covered in this part, \$50;
- (17) Certified copy of any record relating to a limited liability company or limited liability company, 25 cents per page, and \$10 for the certificate and affixing the seal thereto;
- (18) Special handling fee for review of any record other than articles of merger, \$80;
- (19) Special handling fee for review of articles of merger, \$200;
- (20) Special handling fee for certificates issued by the director not otherwise covered by this part, \$10 per certificate; and
- (21) Special handling fee for certification of record, \$1 per page; and
- (22) 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, \$50, 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.

All special handling fees shall be credited to the special fund authorized by section 415-128.

**§ -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."

SECTION 2. Chapter 415, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§415- Merger with or into domestic or foreign limited liability company.** (a) As used in this section, the terms "limited liability company" and "foreign limited liability company" shall have the meanings defined in section -101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections 415-71 and 415-73, and in the case of a foreign corporation it complies with section 415-77.

(c) In addition to the requirements of section 415-74, the plan of merger shall also set forth:

- (1) The name of each limited liability company and foreign limited liability company proposing to merge; and
- (2) If the surviving entity is a limited liability company or a foreign limited liability company:
  - (A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to such merger, or a statement that such information is contained in the operating agreement proposed for such surviving entity;
  - (B) The contents of the articles of organization of the surviving entity pursuant to such merger in accordance with section -203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and
  - (C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which shall, if not separately provided in the plan of merger, state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by such persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section -904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the office of the director for filing articles of merger complying with section 415-74, executed on behalf of each party to the merger.

(e) Section 415-76 shall be applicable to each corporation that is a party to the plan of merger.

(f) If a foreign corporation is a party to the merger, section 415-77 shall apply to such foreign corporation."

SECTION 3. Chapter 425, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§425- Merger or conversion of domestic partnerships.** One or more domestic partnerships may be converted into or merged with a domestic limited liability company pursuant to section -902 or sections -904 to -906, as the case may be."

SECTION 4. Chapter 425D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§425D-<sup>1</sup> Merger or conversion of domestic limited partnerships.** One or more domestic limited partnerships may be converted into or merged with a domestic limited liability company pursuant to section -902 or sections -904 to -906, as the case may be."

SECTION 5. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

**"§415-8 Corporate name.** The corporate name:

- (1) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words; and
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation [or], domestic partnership, or domestic limited liability company existing under the laws<sup>2</sup> this State, any foreign corporation [or], foreign partnership, or foreign limited liability company authorized to transact business in this State, any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision shall not apply if the applicant files with the director either of the following:
  - (A) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name, or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 6. Section 415-95, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within ninety days after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the ninety-day period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation [or], partnership, or limited liability company, or should such 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 involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 7. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

**“§415-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any domestic corporation [or], domestic partnership, or domestic limited liability company existing under the laws of this State or any foreign corporation [or], foreign partnership, or foreign limited liability company authorized to transact business in this State, any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
  - (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name;
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or
  - (C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will transact business in this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 8. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

**“§415A-8 Corporate name.** The name of a professional corporation:

- (1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership [or trade name], or limited liability company, existing or registered under the laws of this State or any



foreign corporation [or], partnership, or limited liability company authorized to transact business, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415; except that this section shall not apply if the applicant files with the director either of the following:

- (A) The written consent of such other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name, or
- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to use the name in this State.”

SECTION 9. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Within ninety days after the involuntary dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfilled. Within the ninety-day period, should the name of the professional corporation, or a name substantially identical thereto be registered or reserved by another corporation [or], partnership, or limited liability company, 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 involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter.”

SECTION 10. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

“**§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, or trade name existing or registered under the laws of this State or any foreign corporation [or], partnership, or limited liability company authorized to transact business, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time reserved in the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of this State, except that this provision shall not apply if the applicant delivers to the director for filing either of the following:

- (1) The written consent of the other corporation or holder of a reserved or registered name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name, or
- (2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 11. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) Within ninety days after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfilled. Within the ninety-day period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, or limited liability company or such 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 involuntarily dissolved corporation pursuant to the amendment provisions of this chapter.”

SECTION 12. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

“**\$415B-122 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

- (1) Is not the same as, or substantially identical to, the name of any profit or nonprofit corporation [or], partnership, or limited liability company existing under the laws of this State, or any profit or nonprofit foreign corporation [or], foreign partnership, or foreign limited liability company authorized to transact business or conduct affairs in this State, or a corporate or trade name, trademark, or service mark reserved or registered pursuant to the laws of this State; and
- (2) Is transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 13. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

“**\$425-6 Partnership name.** No statement or certificate of any partnership having a name substantially identical with the name of any corporation [or], partnership, or limited liability company registered to do business under the laws of the State or with any trade name, service mark, or trademark previously registered shall be recorded by the director. The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation [or], partnership, or limited liability company name, trade name [or], trademark[,], or service mark.

The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section.”

SECTION 14. Section 425D-102, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) May not contain the name of a limited partner unless:
  - (A) It is also the name of a general partner or the corporate name of a corporate general partner, or

- (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
- (2) Shall not be the same as, or substantially identical to, the name of any domestic corporation [or], partnership, or limited liability company existing under the laws of this State, any foreign corporation [or], partnership or, limited liability company authorized to transact business in this State, any trade name, trademark, or service mark previously registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
  - (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words may be added to make the name distinguishable from the other name, or
  - (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.”

SECTION 15. Section 425D-203.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within ninety days after the involuntary cancellation of a limited partnership under this section, the limited partnership may be reinstated by the director upon written application executed by any general partner of the limited partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfilled. Within the ninety-day period, should the name of the limited partnership, or a name substantially identical thereto, be registered or reserved by another corporation [or], partnership, or limited liability company, or should such 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 involuntarily canceled limited partnership pursuant to the amendment provisions of this chapter.”

SECTION 16. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No registration for a foreign limited partnership shall be accepted by the director if the name of such foreign limited partnership:

- (1) Is the same as, or substantially identical to, the name of any domestic or foreign corporation [or], partnership[,] whether general or limited, [domestic or foreign,] or limited liability company, previously authorized or registered to do business under the laws of the State, or with any trade name, service mark, or trademark previously registered under the laws of the State, or a name the exclusive right to which is, at the time, reserved, except that this provision shall not apply if the foreign limited partnership applying for registration files with the director any one of the following:
  - (A) The written consent of the holder of the registered or reserved name to use the same or substantially identical name and one or more words are added to make the name distinguishable from the other name; or

- (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
- (2) Is not transliterated into letters of the English alphabet, if the name is not in English.”

SECTION 17. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any partnership [or], corporation, or limited liability company registered in accordance with the laws on partnerships [or domestic or foreign], corporations[.], or limited liability companies.”

SECTION 18. Section 487-14, Hawaii Revised Statutes, is amended to read as follows:

“**§487-14 Restitution.** (a) In any action brought by the director of the office of consumer protection, the court may include in its orders or judgments such provisions as may be necessary to effect restitution. Any person in whose favor restitution is ordered need not accept restitution, but the person’s acceptance and full performance of restitution shall bar recovery by the person of any other damages in any action on account of the same acts or practices against the person making restitution.

(b) Whenever a corporation is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the corporation and the individual directors, officers, or agents of the corporation who authorized, ordered, or had done, or participated in any of the unlawful acts and practices which caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

(c) Whenever a domestic or foreign limited liability company is ordered to pay restitution under subsection (a), the court hearing the action may include in its orders or judgments that the limited liability company and the individual members, managers, or agents of the limited liability company who authorized, ordered, had done, or participated in any of the unlawful acts and practices that caused, in whole or in part, injuries to any person, are jointly and severally liable for the payment of restitution.

[(c)] (d) The office of consumer protection may establish and maintain an account for purposes of holding and disbursing moneys received or recovered by it and which are due consumers as restitution.

[(d)] (e) The director of the office of consumer protection may assign to a consumer for collection that portion of any judgment awarding restitution to that consumer.”

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1 or so much thereof as may be necessary for fiscal year 1996-1997 to carry out the purposes this Act, including the hiring of necessary staff. The sum appropriated shall be expended by the department of commerce and consumer affairs.

SECTION 20. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>3</sup>

**SECTION 21.** This Act shall take effect on April 1, 1997; provided that section 19 shall take effect on July 1, 1996.

(Approved June 7, 1996.)

**Notes**

1. “425D-” substituted for “25D-”.
2. Prior to amendment “of” appeared here.
3. Edited pursuant to HRS §23G-16.5.