

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Maienschein

February 23, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Maienschein. Limited liability companies.

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

This bill would specify that upon dissociation a person's right to vote as a member in the management and conduct of the limited liability company's activities terminates. The bill would authorize, if a member dies or a guardian or general conservator is appointed for the member, the member's executor, administrator, guardian, conservator, or other

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

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

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

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

This bill would eliminate that requirement.

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

This bill would require the limited liability company to indemnify the agent of a limited liability company to the extent that the agent has been successful on the merits in defense or settlement of any claim, issue, or matter if the agent acted in good faith and in a manner that the agent reasonably believed to be in the best interests of the limited liability company and its members, as provided.

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

Existing law provides that a limited partnership is formed when the Secretary of State files the certificate of limited partnership.

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

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

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

1 SECTION 1. Section 15902.01 of the Corporations Code is
2 amended to read:

3 15902.01. (a) In order for a limited partnership to be formed,
4 a certificate of limited partnership must be filed with and on a form
5 prescribed by the Secretary of State and, either before or after the
6 filing of a certificate of limited partnership, the partners shall have
7 entered into a partnership agreement. The certificate must state:

8 (1) the name of the limited partnership, which shall comply with
9 Section 15901.08;

10 (2) the street address of the initial designated office;

11 (3) the name and street address of the initial agent for service
12 of process in accordance with paragraph (1) of subdivision (d) of
13 Section 15901.16;

14 (4) the name and the address of each general partner; and

15 (5) the mailing address of the limited partnership, if different
16 from the address of the initial designated office.

17 (b) A certificate of limited partnership may also contain any
18 other matters but may not vary or otherwise affect the provisions
19 specified in subdivision (b) of Section 15901.10 in a manner
20 inconsistent with that section.

21 (c) ~~Subject to subdivision (c) of Section 15902.06,~~ a limited
22 partnership is formed when the Secretary of State files the
23 certificate of limited partnership and the partners enter into a
24 partnership agreement before or after the filing of a certificate of
25 limited partnership.

26 (d) Subject to subdivision (b), if any provision of a partnership
27 agreement is inconsistent with the filed certificate of limited

1 partnership or with a filed certificate of dissociation, cancellation,
2 or amendment or filed certificate of conversion or merger:

3 (1) the partnership agreement prevails as to partners and
4 transferees; and

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

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

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

38 (g) The Secretary of State shall include with instructional
39 materials, provided in conjunction with the form for filing a
40 certificate of limited partnership under subdivision (a), a notice

1 that the filing of the certificate of limited partnership will obligate
2 the limited partnership to pay an annual tax for that taxable year
3 to the Franchise Tax Board pursuant to Section 17935 of the
4 Revenue and Taxation Code. That notice shall be updated annually
5 to specify the dollar amount of the annual tax.

6 *SEC. 2. Section 17701.02 of the Corporations Code is amended*
7 *to read:*

8 17701.02. In this title:

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

11 (1) Formally acknowledged as provided in Article 3
12 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
13 4 of Division 2 of the Civil Code.

14 (2) Executed to include substantially the following wording
15 preceding the signature:

16
17 “It is hereby declared that I am the person who executed this
18 instrument which execution is my act and deed.”

19
20 Any certificate of acknowledgment taken without this state
21 before a notary public or a judge or clerk of a court of record
22 having an official seal need not be further authenticated.

23 (b) “Articles of organization” means the articles required by
24 Section 17702.01. The term includes the articles of organization
25 as amended or restated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (i) The communication is delivered to a recipient who has
36 provided an unrevoked consent to the use of those means of
37 transmission.

38 (ii) The communication creates a record that is capable of
39 retention, retrieval, and review, and that may thereafter be rendered
40 into clearly legible tangible form. ~~However, an electronic~~

1 ~~transmission by a limited liability company to an individual~~
2 ~~member is not authorized unless, in addition to satisfying the~~
3 ~~requirements of this section, the transmission satisfies the~~
4 ~~requirements applicable to consumer consent to electronic records~~
5 ~~as set forth in the federal Electronic Signatures in Global and~~
6 ~~National Commerce Act (15 U.S.C. Sec. 7001(e)(1)).~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 ~~(6) Unreasonably restrict the duties and rights stated in Section~~
22 ~~17704.10.~~

23 (6) *Vary the requirements of Section 17701.13 to 17701.16,*
24 *inclusive, or any provision under Article 8 (commencing with*
25 *Section 17708.01).*

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

30 (8) Except as ~~stated herein~~, *provided therein*, vary the
31 requirements of Sections ~~17707.04 to 17707.08, inclusive~~: *Article*
32 *2 (commencing with Section 17702.01) or Article 7 (commencing*
33 *with Section 17707.01).*

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

36 (10) Restrict the right to ~~approve a merger, conversion, or~~
37 ~~domestication under Section 17710.14 to a member that will have~~
38 ~~personal liability with respect to a surviving, converted, or~~
39 ~~domesticated organization~~: *of a member that will have personal*
40 *liability with respect to a surviving or converted organization to*

1 *approve a merger or conversion under Article 10 (commencing*
2 *with Section 17710.01).*

3 (11) Except as otherwise provided in subdivision (b) of Section
4 17701.12, restrict the rights under this title of a person other than
5 a member or manager.

6 (12) ~~Vary~~ *Except as provided therein, vary* any provision under
7 Article 10 (commencing with Section 17710.01).

8 (13) Vary any provision under *Article 11 (commencing with*
9 *Section 17711.01), Article 12 (commencing with Section*
10 ~~17712.01), 17712.01), or Article 13 (commencing with Section~~
11 ~~17713.01).~~

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

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

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

21 (15) Unreasonably reduce the duty of care under subdivision
22 (c) of Section 17704.09.

23 ~~(16) Eliminate the obligation of good faith and fair dealing under~~
24 ~~subdivision (d) of Section 17704.09, but the operating agreement~~
25 ~~may prescribe the standards by which the performance of the~~
26 ~~obligation is to be measured, if the standards are not manifestly~~
27 ~~unreasonable.~~

28 (d) Except as provided in subdivision (c) and subdivisions (e)
29 to (g), inclusive, the effects of the provisions of this title may be
30 varied as among the members or as between the members and the
31 limited liability company by the operating agreement; provided,
32 however, that the provisions of Sections 17701.13, 17703.01,
33 ~~17704.07, and 17704.08 and subdivisions (f) to (r), inclusive, and~~
34 ~~(u) to (w), inclusive, of Section 17704.07 shall only be varied by~~
35 a written operating agreement. Notwithstanding the first sentence
36 of this subdivision and in addition to the matters specified in
37 subdivision (c), the operating agreement shall not do ~~either~~ *any* of
38 the following:

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

1 (2) Vary a member's rights under ~~Sections 17703.01 and Section~~
2 17704.10.

3 (3) *Vary any of the provisions of this section or Section*
4 *17701.12, except as provided therein.*

5 (4) *Vary any of the provisions of subdivisions (s) and (t) of*
6 *Section 17704.07.*

7 (e) The fiduciary duties of a manager to ~~the a manager-managed~~
8 limited liability company and to the members of the limited liability
9 company *and of a member to a member-managed limited liability*
10 *company and to the members of such limited liability company*
11 shall only be modified in a written operating agreement with the
12 informed consent of the members. Assenting to the operating
13 agreement pursuant to subdivision (b) of Section 17701.11 shall
14 not constitute informed consent.

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

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

28 (1) Breach of the duty of loyalty.

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

31 (3) A member's liability for excess distributions under Section
32 17704.06.

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

35 (5) An intentional violation of criminal law.

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

38 17701.12. (a) An operating agreement may specify that its
39 amendment requires the approval of a person that is not a party to
40 the operating agreement or the satisfaction of a condition. An

1 amendment is ineffective if its adoption does not include the
2 required approval or satisfy the specified condition.

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

13 (c) If a record that has been delivered by a limited liability
14 company to the Secretary of State for filing and has become
15 effective under this title contains a provision that would be
16 ineffective under ~~subdivision (e)~~ of Section 17701.10 if contained
17 in the operating agreement, the provision is likewise ineffective
18 in the record.

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

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

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

27 *SEC. 5. Section 17701.13 of the Corporations Code is amended*
28 *to read:*

29 17701.13. (a) A limited liability company shall designate and
30 continuously maintain in this state both of the following:

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

33 (2) An agent for service of process.

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

37 (c) An agent for service of process of a limited liability company
38 or foreign limited liability company shall be an individual who is
39 a resident of this state or a corporation that has complied with
40 Section 1505 and whose capacity to act as an agent has not

1 terminated. If a limited liability company or foreign limited liability
2 company designates a corporation as its agent for service of process
3 in an instrument filed with the Secretary of State, no address for
4 that agent for service of process shall be set forth in that instrument.

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

9 (1) A current list of the full name and last known business or
10 residence address of each member and of each ~~holder of a~~
11 ~~transferable interest in the limited liability company~~ *transferee* set
12 forth in alphabetical order, together with the contribution and the
13 share in profits and losses of each member and ~~holder of a~~
14 ~~transferable interest.~~ *transferee.*

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

18 (3) A copy of the articles of organization and all amendments
19 thereto, together with any powers of attorney pursuant to which
20 the articles of organization or any amendments thereto were
21 executed.

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

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

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

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

34 (e) Upon request of an assessor, a domestic or foreign limited
35 liability company owning, claiming, possessing, or controlling
36 property in this state subject to local assessment shall make
37 available at the limited liability company's principal office in this
38 state or at the office required to be kept pursuant to subdivision
39 (a) or at a place mutually acceptable to the assessor and the limited
40 liability company a true copy of the business records relevant to

1 the amount, cost, and value of all property that the limited liability
2 company owns, claims, possesses, or controls within the county.

3 *SEC. 6. Section 17704.01 of the Corporations Code is amended*
4 *to read:*

5 17704.01. (a) If a limited liability company is to have only
6 one member upon formation, the person becomes a member as
7 agreed by that person and the organizer of the limited liability
8 company. That person and the organizer may be, but need not be,
9 different persons. If different, the organizer acts on behalf of the
10 initial member.

11 (b) If a limited liability company is to have more than one
12 member upon formation, those persons become members as agreed
13 by the persons before the formation of the limited liability
14 company. The organizer acts on behalf of the persons in forming
15 the limited liability company and may be, but need not be, one of
16 the persons.

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

19 (1) As provided in the operating agreement.

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

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

23 (4) If, within 90 consecutive days after the limited liability
24 company ceases to have any members, the last person to have been
25 a member, or the legal representative of that person, designates a
26 person to become a member, and the designated person consents
27 to become a member.

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

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

34 (1) *Any employee of the limited liability company or foreign*
35 *limited liability company or of any parent or subsidiary of either,*
36 *pursuant to a membership interest purchase plan or agreement,*
37 *or a membership interest option plan or agreement.*

38 (2) *In any transaction in connection with securing employment,*
39 *a person who is or is about to become an officer or a manager (as*
40 *appointed or elected by the members) of the limited liability*

1 *company or the foreign limited liability company or of any parent*
2 *or subsidiary of either.*

3 *SEC. 7. Section 17704.04 of the Corporations Code is amended*
4 *to read:*

5 17704.04. (a) Any distributions made by a limited liability
6 company before its dissolution and winding up shall be among the
7 members in accordance with the operating agreement. If the
8 operating agreement does not otherwise provide, distributions shall
9 be on the basis of the value, as stated in the required records when
10 the limited liability company decides to make the distribution, of
11 the contributions the limited liability company has received from
12 each member, except to the extent necessary to comply with any
13 transfer effective under Section 17705.02 and any charging order
14 in effect under Section 17705.03.

15 (b) A person has a right to a distribution before the dissolution
16 and winding up of a limited liability company only if the limited
17 liability company decides to make an interim distribution. Unless
18 the articles of organization or written operating agreement provides
19 otherwise, a person's dissociation does not entitle the person to a
20 distribution, and, beginning on the date of dissociation, the
21 dissociated person shall have only the right of a transferee of a
22 transferable interest with respect to that person's interest in the
23 limited liability company, and then only with respect to
24 distributions, if any, to which a transferee is entitled under the
25 operating agreement. If the dissociation is in violation of the
26 operating agreement, the limited liability company shall have the
27 right to offset any damages for the breach of the operating
28 agreement from the amounts, if any, otherwise distributable to the
29 dissociated person with respect to that person's interest in the
30 limited liability company.

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

37 (d) If a member or transferee becomes entitled to receive a
38 distribution, the member or transferee has the status of, and is
39 entitled to all remedies available to, a creditor of the limited
40 liability company with respect to the distribution.

1 (e) The profits and losses of a limited liability company shall
2 be allocated among the members, and among classes of members,
3 in the manner provided in the operating agreement. If the operating
4 agreement does not otherwise provide, profits and losses shall be
5 allocated in proportion to the value, as stated in the required
6 records, of the contributions the limited liability company has
7 received from each member.

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

10 17704.07. (a) A limited liability company is a
11 member-managed limited liability company unless the articles of
12 organization ~~and the operating agreement do either of the~~
13 ~~following:~~ contain the statement required by paragraph (5) of
14 subdivision (b) of Section 17702.01.

15 (1) ~~Expressly provide that:~~

16 (A) ~~The limited liability company is or will be~~
17 ~~“manager-managed.”~~

18 (B) ~~The limited liability company is or will be “managed by~~
19 ~~managers.”~~

20 (C) ~~Management of the limited liability company is or will be~~
21 ~~“vested in managers.”~~

22 (2) ~~Include words of similar import.~~

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

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

27 (2) Except as provided in subdivision (r), each member has
28 equal rights in the management and conduct of the limited liability
29 company’s activities including equal voting rights.

30 (3) A difference arising among members as to a matter in the
31 ordinary course of the activities of the limited liability company
32 shall be decided by a majority of the ~~members of the limited~~
33 ~~liability company which the difference among the members has~~
34 ~~arisen.~~ members.

35 (4) ~~An~~ Except as otherwise provided in Article 10 (commencing
36 with Section 17710.01), an act outside the ordinary course of the
37 activities of the limited liability company may be undertaken only
38 with the consent of all members.

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

1 (c) In a manager-managed limited liability company, the
 2 following rules apply:
 3 (1) Except as otherwise expressly provided in this title, any
 4 matter relating to the activities of the limited liability company is
 5 decided exclusively by the managers.
 6 (2) Each manager has equal rights in the management and
 7 conduct of the activities of the limited liability company.
 8 (3) A difference arising among managers as to a matter in the
 9 ordinary course of the activities of the limited liability company
 10 may be decided by a majority of the managers of the limited
 11 liability company.
 12 (4) The consent of all members of the limited liability company
 13 is required to do any of the following:
 14 (A) Sell, lease, exchange, or otherwise dispose of all, or
 15 substantially all, of the limited liability company’s property, with
 16 or without the goodwill, outside the ordinary course of the limited
 17 liability company’s activities.
 18 ~~(B) Approve a merger or conversion under Article 10~~
 19 ~~(commencing with Section 17710.01).~~
 20 ~~(C) Undertake any other act outside the ordinary course of the~~
 21 ~~limited liability company’s activities.~~
 22 ~~(D) Amend the operating agreement.~~
 23 (B) *Except as otherwise provided in Article 10 (commencing*
 24 *with Section 17710.01), any other act outside the ordinary course*
 25 *of the limited liability company’s activities.*
 26 (5) A manager may be chosen at any time by the consent of a
 27 majority of the members and remains a manager until a successor
 28 has been chosen, unless the manager at an earlier time resigns, is
 29 removed, or dies, or, in the case of a manager that is not an
 30 individual, terminates. A manager may be removed at any time by
 31 the consent of a majority of the members without ~~notice or cause.~~
 32 *cause, subject to the rights, if any, of the manager under any*
 33 *service contract with the limited liability company.*
 34 (6) A person need not be a member to be a manager, but the
 35 dissociation of a member that is also a manager removes the person
 36 as a manager. If a person that is both a manager and a member
 37 ceases to be a manager, that cessation does not by itself dissociate
 38 the person as a member.

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

4 (d) The dissolution of a limited liability company does not affect
5 the applicability of this section. However, a person that wrongfully
6 causes dissolution of the limited liability company loses the right
7 to participate in management as a member and a manager.

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

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

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

37 (h) (1) Whenever members are required or permitted to take
38 any action at a meeting, a written notice of the meeting shall be
39 given not less than 10 days nor more than 60 days before the date
40 of the meeting to each member entitled to vote at the meeting. The

1 notice shall state the place, date, and hour of the meeting, the means
2 of electronic transmission by and to the limited liability company
3 or electronic video screen communication, if any, and the general
4 nature of the business to be transacted. No other business may be
5 transacted at that meeting.

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

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

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

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

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

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

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

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

38 (j) The actions taken at any meeting of members, however called
39 and noticed, and wherever held, have the same validity as if taken
40 at a meeting duly held after regular call and notice, if a quorum is

1 present either in person or by proxy, and if, either before or after
2 the meeting, each of the members entitled to vote, not present in
3 person or by proxy, provides a waiver of notice or consents to the
4 holding of the meeting or approves the minutes of the meeting in
5 writing. All waivers, consents, and approvals shall be filed with
6 the limited liability company records or made a part of the minutes
7 of the meeting after conversion to the form in which those records
8 or minutes are kept. Attendance of a person at a meeting shall
9 constitute a waiver of notice of the meeting, except when the person
10 objects, at the beginning of the meeting, to the transaction of any
11 business because the meeting is not lawfully called or convened.
12 Attendance at a meeting is not a waiver of any right to object to
13 the consideration of matters required by this title to be included
14 in the notice but not so included, if the objection is expressly made
15 at the meeting. Neither the business to be transacted nor the purpose
16 of any meeting of members need be specified in any written waiver
17 of notice, unless otherwise provided in the articles of organization
18 or operating agreement, except as provided in subdivision (l).

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

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

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

33 (2) The members present at a duly called or held meeting at
34 which a quorum is present may continue to transact business until
35 adjournment, notwithstanding the loss of a quorum, if any action
36 taken after loss of a quorum, other than adjournment, is approved
37 by the requisite percentage of interests of members specified in
38 this title or in the articles of organization or a written operating
39 agreement.

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

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

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

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

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

38 (p) In order that the limited liability company may determine
39 the members of record entitled to notices of any meeting or to vote,
40 or entitled to receive any distribution or to exercise any rights in

1 respect of any other lawful action, a manager, or members
2 representing more than 10 percent of the interests of members,
3 may fix, in advance, a record date, that is not more than 60 days
4 nor less than 10 days prior to the date of the meeting and not more
5 than 60 days prior to any other action. If no record date is fixed
6 the following shall apply:

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

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

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

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

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

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

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

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

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

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

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

21 (s) Notwithstanding any provision to the contrary in the articles
22 of organization or operating agreement, in no event shall the
23 articles of organization be amended by a vote of less than a
24 majority of the members.

25 (t) Notwithstanding any provision to the contrary in the articles
26 of organization or operating agreement, members shall have the
27 right to vote on a dissolution of the limited liability company as
28 provided in subdivision (b) of Section ~~17707.0~~ 17707.01, *on a*
29 *conversion to another business entity as provided in subdivision*
30 *(b) of Section 17710.03*, and on a merger of the limited liability
31 company as provided in Section 17710.12.

32 (u) A written operating agreement may provide for the
33 appointment of officers, including, but not limited to, a chairperson
34 or a president, or both a chairperson and a president, a secretary,
35 a chief financial officer, and any other officers with the titles,
36 powers, and duties as shall be specified in the articles of
37 organization or operating agreement or as determined by the
38 managers or members. An officer may, but does not need to, be a
39 member or manager of the limited liability company, and any
40 number of offices may be held by the same person.

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

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

22 *SEC. 9. Section 17704.08 of the Corporations Code is amended*
23 *to read:*

24 17704.08. (a) A limited liability company shall reimburse for
25 any payment made and indemnify for any debt, obligation, or other
26 liability incurred by a member of a member-managed limited
27 liability company or the manager of a manager-managed limited
28 liability company in the course of the member's or manager's
29 activities on behalf of the limited liability company, if, in making
30 the payment or incurring the debt, obligation, or other liability,
31 the member or manager complied with the duties stated in Section
32 17704.09.

33 (b) *Except as provided in subdivision (g) of Section 17701.10,*
34 *a limited liability company may reimburse for any payment made*
35 *and may indemnify for any debt, obligation, or other liability*
36 *incurred by a person not identified in subdivision (a), including*
37 *without limitation, any officer, employee, or agent of the limited*
38 *liability company, in the course of that person's activities on behalf*
39 *of the limited liability company.*

40 (b)

1 (c) A limited liability company may purchase and maintain
2 insurance on behalf of a member or manager of the limited liability
3 company any person against liability asserted against or incurred
4 by the member or manager in that capacity or arising from that
5 status that person even if, under subdivision (g) of Section
6 17701.10, the operating agreement could not eliminate or limit the
7 person's liability to the limited liability company for the conduct
8 giving rise to the liability.

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

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

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

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

38 (C) "Proceeding" means any threatened, pending, or completed
39 action or proceeding, whether civil, criminal, administrative, or
40 investigative.

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

3 17704.09. (a) The fiduciary duties that a member owes to a
4 member-managed limited liability company and the other members
5 of the limited liability company are the duties of loyalty and care
6 under subdivisions (b) and (c).

7 (b) A member's duty of loyalty to ~~a~~ *the* limited liability company
8 and the other members is limited to the following:

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

15 (2) To refrain from dealing with ~~a~~ *the* limited liability company
16 in the conduct or winding up of the activities of ~~a~~ *the* limited
17 liability company as or on behalf of ~~a party~~ *person* having an
18 interest adverse to ~~a~~ *the* limited liability company.

19 (3) To refrain from competing with ~~a~~ *the* limited liability
20 company in the conduct or winding up of the activities of the
21 limited liability company.

22 (c) A member's duty of care to a limited liability company and
23 the other members in the conduct and winding up of the activities
24 of the limited liability company is limited to refraining from
25 engaging in grossly negligent or reckless conduct, intentional
26 misconduct, or a knowing violation of law.

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

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

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

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

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

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

4 *SEC. 11. Section 17704.10 of the Corporations Code is*
5 *amended to read:*

6 17704.10. (a) Upon the request of a member or ~~holder of a~~
7 ~~transferable interest~~, *transferee*, for purposes reasonably related
8 to the interest of that person as a member or a ~~holder of a~~
9 ~~transferable interest~~, *transferee*, a manager or, if the limited liability
10 company is member-managed, a member in possession of the
11 requested information, shall promptly deliver, in writing, to the
12 member or ~~holder of a transferable interest~~, *transferee*, at the
13 expense of the limited liability company, a copy of the information
14 required to be maintained by paragraphs (1), (2), and (4) of
15 subdivision (d) of Section 17701.13, and any written operating
16 agreement of the limited liability company.

17 (b) Each member, manager, and ~~holder of a transferable interest~~
18 *transferee* has the right, upon reasonable request, for purposes
19 reasonably related to the interest of that person as a member,
20 manager, or ~~holder of a transferable interest~~, *transferee*, to each
21 of the following:

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

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

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

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

37 (2) Members representing at least 5 percent of the voting
38 interests of members, or three or more members, may make a
39 written request to a manager for an income statement of the limited
40 liability company for the initial three-month, six-month, or

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

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

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

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

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

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

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

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

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

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

27 *SEC. 12. Section 17705.02 of the Corporations Code is*
28 *amended to read:*

29 17705.02. (a) With respect to a transfer, in whole or in part,
30 of a transferable interest, all of the following apply:

31 (1) A transfer is permissible.

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

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

37 (A) ~~Participate~~ *Vote or otherwise participate* in the management
38 or conduct of the activities of a limited liability company.

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

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

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

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

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

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

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

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

37 **SECTION 1.**

38 *SEC. 13.* Section 17706.03 of the Corporations Code is
39 amended to read:

1 17706.03. (a) When a person is dissociated as a member of a
2 limited liability company all of the following apply:

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

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

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

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

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

24 *SEC. 14. Section 17707.01 of the Corporations Code is*
25 *amended to read:*

26 17707.01. A limited liability company is dissolved, and its
27 activities shall be wound up, upon the happening of the first to
28 occur of the following:

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

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

35 (c) The passage of 90 consecutive days during which the limited
36 liability company has no members, except *that*, on the death of a
37 natural person who is the sole member of a limited liability
38 company, the status of the member, including a membership
39 interest, may pass to ~~the~~ *one or more* heirs, successors, and assigns
40 of the member by will or applicable law. ~~The~~ *An* heir, successor,

1 or assign of the member's interest becomes a substituted member
2 pursuant to *paragraph (4) of subdivision*~~(d)~~ *(c)* of Section
3 17704.01, subject to administration as provided by applicable law,
4 without the permission or consent of the heirs, successors, or
5 assigns or, those administering the estate of the deceased member.

6 (d) Entry of a decree of judicial dissolution pursuant to Section
7 17707.03.

8 *SEC. 15. Section 17707.03 of the Corporations Code is*
9 *amended to read:*

10 17707.03. (a) Pursuant to an action filed by any manager or
11 by any member or members of a limited liability company, a court
12 of competent jurisdiction may decree the dissolution of a limited
13 liability company whenever any of the events specified in
14 subdivision (b) occurs.

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

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

20 (3) The business of the limited liability company has been
21 abandoned.

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

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

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

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

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

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

37 (5) For the purposes of this section, the valuation date shall be
38 the date upon which the action for judicial dissolution was
39 commenced. However, the court may, upon the hearing of a motion

1 by any party, and for good cause shown, designate some other date
2 as the valuation date.

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

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

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

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

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

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

21 (b) The certificate of continuation shall set forth all of the
22 following:

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

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

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

30 *SEC. 17. Section 17708.07 of the Corporations Code is*
31 *amended to read:*

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

36 (b) The failure of a foreign limited liability company to have a
37 certificate of registration to transact intrastate business in this state
38 does not ~~impair the validity of a contract or act of the foreign~~
39 ~~limited liability company~~ or prevent the foreign limited liability
40 company from defending an action or proceeding in this state.

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

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

12 *SEC. 18. Section 17710.03 of the Corporations Code is*
13 *amended to read:*

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

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

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

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

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

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

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

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

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

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

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

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

34 (f) The converted entity shall keep the plan of conversion at the
35 principal place of business of the converted entity if the converted
36 entity is a domestic limited liability company or foreign other
37 business entity, at the principal office of, or registrar or transfer
38 agent of, the converted entity, if the converted entity is a domestic
39 corporation, or at the office where records are to be kept pursuant
40 to Section 17701.13 if the converted entity is a domestic limited

1 liability company. Upon the request of a member of a converting
2 limited liability company, the authorized person on behalf of the
3 converted entity shall promptly deliver to the member or the holder
4 of shares, interests, or other securities, at the expense of the
5 converted entity, a copy of the plan of conversion. A waiver by a
6 member of the rights provided in this subdivision shall be
7 unenforceable.

8 *SEC. 19. Section 17710.06 of the Corporations Code is*
9 *amended to read:*

10 17710.06. (a) Upon conversion of a limited liability company,
11 one of the following applies:

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

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

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

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

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

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

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

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

2 (1) The name, form, and jurisdiction of organization of the
3 converted entity.

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

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

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

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

19 *SEC. 20. Section 17710.12 of the Corporations Code is*
20 *amended to read:*

21 17710.12. (a) Each limited liability company and other
22 business entity that desires to merge shall approve an agreement
23 of merger.

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

1 company, may be parties to the agreement of merger. The
2 agreement of merger shall state all of the following:

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

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

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

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

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

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

37 (b) (1) Each membership interest of the same class of any
38 constituent limited liability company, other than a membership
39 interest in another constituent limited liability company that is
40 being canceled and that is held by a constituent limited liability

1 company or its parent or a limited liability company of which the
2 constituent limited liability company is a parent shall, unless all
3 members of the class consent, be treated equally with respect to
4 any distribution of cash, property, rights, interests, or securities.

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

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

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

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

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

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

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

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

1 entity, a copy of the agreement of merger. A waiver by a member
2 or holder of shares, interests, or other securities of the rights
3 provided in this subdivision shall be unenforceable.

4 *SEC. 21. Section 17713.04 of the Corporations Code is*
5 *amended to read:*

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

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

35 (c) ~~Except as otherwise specified in this title, any~~ Any vote or
36 consent by the managers or members of a limited liability company
37 prior to January 1, 2014, shall be governed by prior law. If a
38 certificate or document is required to be filed in a public office of
39 this state relating to a vote or consent by the managers or members
40 of the limited liability company prior to January 1, 2014, it may

1 be filed after that date pursuant to the filing requirements of this
2 title, even though the vote or consent is governed by prior law.

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

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

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

14 17713.12. (a) A limited liability company is liable for a civil
15 penalty in an amount not exceeding one million dollars
16 (\$1,000,000) if the limited liability company does both of the
17 following:

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

20 (A) Makes, publishes, or posts, or has made, published, or
21 posted, either generally or privately to the ~~shareholders~~ *members*
22 or other persons, either of the following:

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

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

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

37 (C) Misstates or conceals or has misstated or concealed from a
38 regulatory body a material fact in order to deceive a regulatory
39 body to avoid a statutory or regulatory duty, or to avoid a statutory
40 or regulatory limit or prohibition.

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

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

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

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

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

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

27 (e) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (8) “Refuse to post any notice required by law” means an
2 intentional decision not to post a notice required by law when all
3 of the following conditions exist:
4 (A) The decision not to post the notice has not been approved
5 by the limited liability company’s audit committee.
6 (B) The decision is intended to give the membership shares in
7 the limited liability company a materially greater or a materially
8 less apparent market value than they really possess.
9 (9) “Misstate or conceal material facts from a regulatory body”
10 means an intentional decision not to disclose material facts when
11 all of the following conditions exist:
12 (A) The decision not to disclose material facts has not been
13 approved by the limited liability company’s audit committee.
14 (B) The decision is intended to give the membership shares in
15 the limited liability company a materially greater or a materially
16 less apparent market value than they really possess.
17 (10) “Material false statement or omission” means an untrue
18 statement of material fact or an omission to state a material fact
19 necessary in order to make the statements made under the
20 circumstances under which they were made not misleading.
21 (11) “Officer” means a person appointed pursuant to Section
22 17703.02, except an officer of a specified subsidiary limited
23 liability company who is not also an officer of the parent limited
24 liability company.
25 (f) This section only applies to limited liability companies that
26 are issuers, as defined in Section 2 of the federal Sarbanes-Oxley
27 Act of 2002 (15 U.S.C. Sec. 7201 et seq.).
28 (g) An action to enforce this section may only be brought by
29 the Attorney General or a district attorney or city attorney in the
30 name of the people of the State of California.

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