

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 15, 2015

AMENDED IN SENATE JUNE 29, 2015

AMENDED IN SENATE JUNE 10, 2015

AMENDED IN ASSEMBLY APRIL 23, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Maienschein

February 23, 2015

An act to amend Sections 17701.02, 17701.10, 17701.12, 17701.13, 17704.01, 17704.04, 17704.07, 17704.08, 17704.09, 17704.10, 17705.02, 17706.03, 17707.01, 17707.03, 17707.06, 17707.09, 17708.07, 17710.03, 17710.06, 17710.12, 17713.04, and 17713.12 of the Corporations Code, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

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

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

This bill would eliminate that requirement.

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

the debt, obligation, or other liability, the member or manager complied with specified duties.

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

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

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

This bill would limit the applicability of the act to acts or transactions by a limited liability company or by the members or managers of the limited liability company occurring, or an operating agreement or other contracts entered into by the limited liability company or by the members or managers of the limited liability company, on or after January 1, 2014.

This bill would incorporate additional changes to Section 17710.06 of the Corporations Code made by this bill and AB 1471 to take effect if both bills are chaptered and this bill is chaptered last.

This bill would incorporate additional changes to Section 17713.12 of the Corporations Code made by this bill and AB 1517 to take effect if both bills are chaptered and this bill is chaptered last.

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 17701.02 of the Corporations Code is
2 amended to read:

3 17701.02. In this title:

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

6 (1) Formally acknowledged as provided in Article 3
7 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
8 4 of Division 2 of the Civil Code.

9 (2) Executed to include substantially the following wording
10 preceding the signature:

11
12 “It is hereby declared that I am the person who executed this
13 instrument which execution is my act and deed.”
14

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

18 (b) “Articles of organization” means the articles required by
19 Section 17702.01. The term includes the articles of organization
20 as amended or restated.

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

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

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

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

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

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

37 (2) A comparable order under federal, state, or foreign law
38 governing bankruptcy or insolvency, an assignment for the benefit

1 of creditors, or an order appointing a trustee, receiver, or liquidator
2 of the person or of all or substantially all of the person's property.

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

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

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

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

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

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

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

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

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

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

31 (i) The communication is delivered to a recipient who has
32 provided an unrevoked consent to the use of those means of
33 transmission.

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

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

39 (A) Facsimile telecommunication or electronic mail when
40 directed to the facsimile number or electronic mail address,

1 respectively, that the limited liability company has provided from
2 time to time to members or managers for sending communications
3 to the limited liability company.

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

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

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

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

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

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

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

25 (m) “Majority of the members” unless otherwise provided in
26 the operating agreement, means more than 50 percent of the
27 membership interests of members in current profits of the limited
28 liability company.

29 (n) “Manager” means a person that under the operating
30 agreement of a manager-managed limited liability company is
31 responsible, alone or in concert with others, for performing the
32 management functions stated in subdivision (c) of Section
33 17704.07.

34 (o) “Manager-managed limited liability company” means a
35 limited liability company that qualifies under subdivision (a) of
36 Section 17704.07.

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

1 (q) “Member-managed limited liability company” means a
2 limited liability company that is not a manager-managed limited
3 liability company.

4 (r) “Membership interest” means a member’s rights in the
5 limited liability company, including the member’s transferable
6 interest, any right to vote or participate in management, and any
7 right to information concerning the business and affairs of the
8 limited liability company provided by this title.

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

21 (t) “Organization” means, whether domestic or foreign, a
22 partnership whether general or limited, limited liability company,
23 association, corporation, professional corporation, professional
24 association, nonprofit corporation, business trust, or statutory
25 business trust having a governing statute.

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

28 (v) “Person” means an individual, partnership, limited
29 partnership, trust, a trustee of a trust, including, but not limited to,
30 a trust described under Division 9 (commencing with Section
31 15000) of the Probate Code, estate, association, corporation, limited
32 liability company, or other entity, whether domestic or foreign.
33 Nothing in this subdivision shall be construed to confer any rights
34 under the California Constitution or the United States Constitution.

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

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

1 (y) “State” means a state of the United States, the District of
2 Columbia, Puerto Rico, the United States Virgin Islands, or any
3 territory or insular possession subject to the jurisdiction of the
4 United States.

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

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

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

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

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

20 17701.10. (a) Except as otherwise provided in this section,
21 the operating agreement governs all of the following:

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

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

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

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

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

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

36 (1) Vary a limited liability company’s capacity under Section
37 17701.05 to sue and be sued in its own name.

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

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

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

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

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

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

17 (8) Except as provided therein, vary the requirements of Article
18 2 (commencing with Section 17702.01) or Article 7 (commencing
19 with Section 17707.01).

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

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

26 (11) Except as otherwise provided in subdivision (b) of Section
27 17701.12, restrict the rights under this title of a person other than
28 a member or manager.

29 (12) Except as provided therein, vary any provision under Article
30 10 (commencing with Section 17710.01).

31 (13) Vary any provision under Article 11 (commencing with
32 Section 17711.01), Article 12 (commencing with Section
33 17712.01), or Article 13 (commencing with Section 17713.01).

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

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

39 (B) Specify the number or percentage of members that may
40 authorize or ratify, after full disclosure to all members of all

1 material facts, a specific act or transaction that otherwise would
2 violate the duty of loyalty.

3 (15) Unreasonably reduce the duty of care under subdivision
4 (c) of Section 17704.09.

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

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

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

18 (3) Vary any of the provisions of this section or Section
19 17701.12, except as provided therein.

20 (4) Vary any of the provisions of subdivisions (s) and (t) of
21 Section 17704.07.

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

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

38 (g) The operating agreement may alter or eliminate the
39 indemnification for a member or manager provided by subdivision
40 (a) of Section 17704.08 and may eliminate or limit a member or

1 manager's liability to the limited liability company and members
2 for money damages, except for the following:

- 3 (1) Breach of the duty of loyalty.
- 4 (2) A financial benefit received by the member or manager to
5 which the member or manager is not entitled.
- 6 (3) A member's liability for excess distributions under Section
7 17704.06.
- 8 (4) Intentional infliction of harm on the limited liability company
9 or a member.
- 10 (5) An intentional violation of criminal law.

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

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

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

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

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

- 37 (1) The operating agreement prevails as to members, dissociated
38 members, transferees, and managers.
- 39 (2) The record prevails as to other persons to the extent they
40 reasonably rely on the record.

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

3 17701.13. (a) A limited liability company shall designate and
4 continuously maintain in this state both of the following:

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

7 (2) An agent for service of process.

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

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

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

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

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

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

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

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

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

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

6 (e) Upon request of an assessor, a domestic or foreign limited
7 liability company owning, claiming, possessing, or controlling
8 property in this state subject to local assessment shall make
9 available at the limited liability company's principal office in this

10 state or at the office required to be kept pursuant to subdivision
11 (a) or at a place mutually acceptable to the assessor and the limited
12 liability company a true copy of the business records relevant to
13 the amount, cost, and value of all property that the limited liability
14 company owns, claims, possesses, or controls within the county.

15 SEC. 5. Section 17704.01 of the Corporations Code is amended
16 to read:

17 17704.01. (a) If a limited liability company is to have only
18 one member upon formation, the person becomes a member as
19 agreed by that person and the organizer of the limited liability
20 company. That person and the organizer may be, but need not be,
21 different persons. If different, the organizer acts on behalf of the
22 initial member.

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

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

31 (1) As provided in the operating agreement.

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

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

35 (4) If, within 90 consecutive days after the limited liability
36 company ceases to have any members, the last person to have been
37 a member, or the legal representative of that person, designates a
38 person to become a member, and the designated person consents
39 to become a member.

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

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

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

11 (2) In any transaction in connection with securing employment,
12 a person who is or is about to become an officer or a manager of
13 the limited liability company or the foreign limited liability
14 company or of any parent or subsidiary of either.

15 SEC. 6. Section 17704.04 of the Corporations Code is amended
16 to read:

17 17704.04. (a) Any distributions made by a limited liability
18 company before its dissolution and winding up shall be among the
19 members in accordance with the operating agreement. If the
20 operating agreement does not otherwise provide, distributions shall
21 be on the basis of the value, as stated in the required records when
22 the limited liability company decides to make the distribution, of
23 the contributions the limited liability company has received from
24 each member, except to the extent necessary to comply with any
25 transfer effective under Section 17705.02 and any charging order
26 in effect under Section 17705.03.

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

1 dissociated person with respect to that person's interest in the
2 limited liability company.

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

9 (d) If a member or transferee becomes entitled to receive a
10 distribution, the member or transferee has the status of, and is
11 entitled to all remedies available to, a creditor of the limited
12 liability company with respect to the distribution.

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

20 SEC. 7. Section 17704.07 of the Corporations Code is amended
21 to read:

22 17704.07. (a) A limited liability company is a
23 member-managed limited liability company unless the articles of
24 organization contain the statement required by paragraph (5) of
25 subdivision (b) of Section 17702.01.

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

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

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

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

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

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

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

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

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

10 (3) A difference arising among managers as to a matter in the
11 ordinary course of the activities of the limited liability company
12 may be decided by a majority of the managers of the limited
13 liability company.

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

16 (A) Sell, lease, exchange, or otherwise dispose of all, or
17 substantially all, of the limited liability company's property, with
18 or without the goodwill, outside the ordinary course of the limited
19 liability company's activities.

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

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

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

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

39 (d) Except for such orders as may be made by a court of
40 competent jurisdiction over a dissolution under Section 17707.03,

1 the dissolution of a limited liability company does not affect the
2 applicability of this section. However, a person that wrongfully
3 causes dissolution of the limited liability company loses the right
4 to participate in management as a member and a manager.

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

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

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

34 (h) (1) Whenever members are required or permitted to take
35 any action at a meeting, a written notice of the meeting shall be
36 given not less than 10 days nor more than 60 days before the date
37 of the meeting to each member entitled to vote at the meeting. The
38 notice shall state the place, date, and hour of the meeting, the means
39 of electronic transmission by and to the limited liability company
40 or electronic video screen communication, if any, and the general

1 nature of the business to be transacted. No other business may be
2 transacted at that meeting.

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

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

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

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

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

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

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

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

36 (j) The actions taken at any meeting of members, however called
37 and noticed, and wherever held, have the same validity as if taken
38 at a meeting duly held after regular call and notice, if a quorum is
39 present either in person or by proxy, and if, either before or after
40 the meeting, each of the members entitled to vote, not present in

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

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

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

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

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

38 (3) In the absence of a quorum, any meeting of members may
39 be adjourned from time to time by the vote of a majority of the

1 interests represented either in person or by proxy, but no other
2 business may be transacted, except as provided in paragraph (2).

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

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

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

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

36 (p) In order that the limited liability company may determine
37 the members of record entitled to notices of any meeting or to vote,
38 or entitled to receive any distribution or to exercise any rights in
39 respect of any other lawful action, a manager, or members
40 representing more than 10 percent of the interests of members,

1 may fix, in advance, a record date, that is not more than 60 days
2 nor less than 10 days prior to the date of the meeting and not more
3 than 60 days prior to any other action. If no record date is fixed
4 the following shall apply:

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

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

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

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

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

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

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

39 (r) The articles of organization or a written operating agreement
40 may provide to all or certain identified members of a specified

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

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

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

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

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

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

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

39 (v) Officers, if any, shall be appointed in accordance with the
40 written operating agreement or, if no such provision is made in

1 the operating agreement, any officers shall be appointed by the
2 managers and shall serve at the pleasure of the managers, subject
3 to the rights, if any, of an officer under any contract of
4 employment. Any officer may resign at any time upon written
5 notice to the limited liability company without prejudice to the
6 rights, if any, of the limited liability under any contract to which
7 the officer is a party.

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

20 SEC. 8. Section 17704.08 of the Corporations Code is amended
21 to read:

22 17704.08. (a) A limited liability company shall reimburse for
23 any payment made and indemnify for any debt, obligation, or other
24 liability incurred by a member of a member-managed limited
25 liability company or the manager of a manager-managed limited
26 liability company in the course of the member's or manager's
27 activities on behalf of the limited liability company, if, in making
28 the payment or incurring the debt, obligation, or other liability,
29 the member or manager complied with the duties stated in Section
30 17704.09.

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

38 (c) A limited liability company may purchase and maintain
39 insurance on behalf of any person against liability asserted against
40 or incurred by that person even if, under subdivision (g) of Section

1 17701.10, the operating agreement could not eliminate or limit the
2 person's liability to the limited liability company for the conduct
3 giving rise to the liability.

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

14 (2) For purposes of this subdivision, the following terms have
15 the following meanings:

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

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

32 (C) "Proceeding" means any threatened, pending, or completed
33 action or proceeding, whether civil, criminal, administrative, or
34 investigative.

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

37 17704.09. (a) The fiduciary duties that a member owes to a
38 member-managed limited liability company and the other members
39 of the limited liability company are the duties of loyalty and care
40 under subdivisions (b) and (c).

1 (b) A member's duty of loyalty to the limited liability company
2 and the other members is limited to the following:

3 (1) To account to the limited liability company and hold as
4 trustee for it any property, profit, or benefit derived by the member
5 in the conduct and winding up of the activities of a limited liability
6 company or derived from a use by the member of a limited liability
7 company property, including the appropriation of a limited liability
8 company opportunity.

9 (2) To refrain from dealing with the limited liability company
10 in the conduct or winding up of the activities of the limited liability
11 company as or on behalf of a person having an interest adverse to
12 the limited liability company.

13 (3) To refrain from competing with the limited liability company
14 in the conduct or winding up of the activities of the limited liability
15 company.

16 (c) A member's duty of care to a limited liability company and
17 the other members in the conduct and winding up of the activities
18 of the limited liability company is limited to refraining from
19 engaging in grossly negligent or reckless conduct, intentional
20 misconduct, or a knowing violation of law.

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

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

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

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

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

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

36 SEC. 10. Section 17704.10 of the Corporations Code is
37 amended to read:

38 17704.10. (a) Upon the request of a member or transferee, for
39 purposes reasonably related to the interest of that person as a
40 member or a transferee, a manager or, if the limited liability

1 company is member-managed, a member in possession of the
2 requested information, shall promptly deliver, in writing, to the
3 member or transferee, at the expense of the limited liability
4 company, a copy of the information required to be maintained by
5 paragraphs (1), (2), and (4) of subdivision (d) of Section 17701.13,
6 and any written operating agreement of the limited liability
7 company.

8 (b) Each member, manager, and transferee has the right, upon
9 reasonable request, for purposes reasonably related to the interest
10 of that person as a member, manager, or transferee, to each of the
11 following:

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

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

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

20 (1) A manager shall cause an annual report to be sent to each
21 of the members not later than 120 days after the close of the fiscal
22 year. The report, which may be sent by electronic transmission by
23 the limited liability company (paragraph (1) of subdivision (i) of
24 Section 17701.02) shall contain a balance sheet as of the end of
25 the fiscal year and an income statement and a statement of
26 cashflows for the fiscal year.

27 (2) Members representing at least 5 percent of the voting
28 interests of members, or three or more members, may make a
29 written request to a manager for an income statement of the limited
30 liability company for the initial three-month, six-month, or
31 nine-month period of the current fiscal year ending more than 30
32 days prior to the date of the request, and a balance sheet of the
33 limited liability company as of the end of that period. The statement
34 shall be delivered or mailed to the members within 30 days
35 thereafter.

36 (3) The financial statements referred to in this section shall be
37 accompanied by the report thereon, if any, of the independent
38 accountants engaged by the limited liability company or, if there
39 is no report, the certificate of the manager of the limited liability

1 company that the financial statements were prepared without audit
2 from the books and records of the limited liability company.

3 (d) A manager shall promptly furnish to a member a copy of
4 any amendment to the articles of organization or operating
5 agreement executed by a manager pursuant to a power of attorney
6 from the member. The articles of organization or operating
7 agreement may be sent by electronic transmission by the limited
8 liability company.

9 (e) The limited liability company shall send or cause information
10 to be sent in writing to each member or holder of a transferable
11 interest within 90 days after the end of each taxable year the
12 information necessary to complete federal and state income tax or
13 information returns and, in the case of a limited liability company
14 with 35 or fewer members, a copy of the limited liability
15 company's federal, state, and local income tax or information
16 returns for the year.

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

22 (g) In any action under this section or under Section 17713.07,
23 if the court finds the failure of the limited liability company to
24 comply with the requirements of this section is without
25 justification, the court may award an amount sufficient to reimburse
26 the person bringing the action for the reasonable expenses incurred
27 by that person, including attorney's fees, in connection with the
28 action or proceeding.

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

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

34 (j) Upon complaint that a limited liability company is failing to
35 comply with the provisions of this section, or to afford to the
36 members rights given to them in the articles of organization or
37 operating agreement, the Attorney General may, in the name of
38 the people of the State of California, send to the office required to
39 be maintained pursuant to Section 17701.13, notice of the
40 complaint.

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

17 SEC. 11. Section 17705.02 of the Corporations Code is
18 amended to read:

19 17705.02. (a) With respect to a transfer, in whole or in part,
20 of a transferable interest, all of the following apply:

21 (1) A transfer is permissible.

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

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

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

29 (B) Except as otherwise provided in subdivision (c) and Section
30 17704.10, have access to records or other information concerning
31 the activities of a limited liability company.

32 (b) A transferee has the right to receive, in accordance with the
33 transfer, distributions to which the transferor would otherwise be
34 entitled; provided, however, that the pledge or granting of a security
35 interest, lien, or other encumbrance in or against any or all of the
36 transferable interest of a transferor shall not cause the transferor
37 to cease to be a member or grant to the transferee or to anyone else
38 the power to exercise any rights or powers of a member, including,
39 without limitation, the right to receive distributions to which the
40 member is entitled.

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

4 (d) A transferable interest may be evidenced by a certificate of
5 the interest issued by the limited liability company in a record,
6 and, subject to this article, the interest represented by the certificate
7 may be transferred by a transfer of the certificate.

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

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

14 (g) Except as otherwise provided in subdivision (b) of this
15 section and paragraph (2) of subdivision (d) of Section 17706.02,
16 when a member transfers a transferable interest, the transferor
17 retains the rights of a member, other than the interest in
18 distributions transferred, and retains all duties and obligations of
19 a member.

20 (h) When a member transfers a transferable interest to a person
21 that becomes a member with respect to the transferred interest, the
22 transferee is liable for the member's obligations under Section
23 17704.03 and subdivision (c) of Section 17704.06 known to the
24 transferee when the transferee becomes a member.

25 SEC. 12. Section 17706.03 of the Corporations Code is
26 amended to read:

27 17706.03. (a) When a person is dissociated as a member of a
28 limited liability company all of the following apply:

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

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

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

39 (b) A person's dissociation as a member of a limited liability
40 company does not of itself discharge the person from any debt,

1 obligation, or other liability to the limited liability company or the
2 other members that the person incurred while a member.

3 (c) If a member dies, or a guardian or conservator of the estate
4 is appointed for the member, or a member's interest is being
5 administered by an attorney-in-fact under a valid power of attorney,
6 the member's executor, administrator, guardian, conservator,
7 attorney-in-fact, or other legal representative may exercise all of
8 the member's rights for the purpose of settling the member's estate
9 or administering the member's property, including any power the
10 member had under the articles of organization or an operating
11 agreement to give a transferee the right to become a member.

12 SEC. 13. Section 17707.01 of the Corporations Code is
13 amended to read:

14 17707.01. A limited liability company is dissolved, and its
15 activities shall be wound up, upon the happening of the first to
16 occur of the following:

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

19 (b) By the vote of a majority of the members of the limited
20 liability company or a greater percentage of the voting interests
21 of members as may be specified in the articles of organization, or
22 a written operating agreement.

23 (c) The passage of 90 consecutive days during which the limited
24 liability company has no members, except that, on the death of a
25 natural person who is the sole member of a limited liability
26 company, the status of the member, including a membership
27 interest, may pass to one or more heirs, successors, and assigns of
28 the member by will or applicable law. An heir, successor, or assign
29 of the member's interest becomes a substituted member pursuant
30 to paragraph (4) of subdivision (c) of Section 17704.01, subject
31 to administration as provided by applicable law, without the
32 permission or consent of the heirs, successors, or assigns or those
33 administering the estate of the deceased member.

34 (d) Entry of a decree of judicial dissolution pursuant to Section
35 17707.03.

36 SEC. 14. Section 17707.03 of the Corporations Code is
37 amended to read:

38 17707.03. (a) Pursuant to an action filed by any manager or
39 by any member or members of a limited liability company, a court
40 of competent jurisdiction may decree the dissolution of a limited

1 liability company whenever any of the events specified in
2 subdivision (b) occurs.

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

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

8 (3) The business of the limited liability company has been
9 abandoned.

10 (4) The management of the limited liability company is
11 deadlocked or subject to internal ~~dissent~~ *dissension*.

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

15 (c) (1) In any suit for judicial dissolution, the other members
16 may avoid the dissolution of the limited liability company by
17 purchasing for cash the membership interests owned by the
18 members so initiating the proceeding, the “moving parties,” at
19 their fair market value. In fixing the value, the amount of any
20 damages resulting if the initiation of the dissolution is a breach by
21 any moving party or parties of an agreement with the purchasing
22 party or parties, including, without limitation, the operating
23 agreement, may be deducted from the amount payable to the
24 moving party or parties; provided, that no member who sues for
25 dissolution on the grounds set forth in paragraph (3), (4), or (5) of
26 subdivision (b) shall be liable for damages for breach of contract
27 in bringing that action.

28 (2) If the purchasing parties elect to purchase the membership
29 interests owned by the moving parties, are unable to agree with
30 the moving parties upon the fair market value of the membership
31 interests, and give bond with sufficient security to pay the estimated
32 reasonable expenses, including attorney’s fees, of the moving
33 parties if the expenses are recoverable under paragraph (3), the
34 court, upon application of the purchasing parties, either in the
35 pending action or in a proceeding initiated in the superior court of
36 the proper county by the purchasing parties, shall stay the winding
37 up and dissolution proceeding and shall proceed to ascertain and
38 fix the fair market value of the membership interests owned by
39 the moving parties.

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

18 (4) If the purchasing parties desire to prevent the winding up
19 and dissolution of the limited liability company, they shall pay to
20 the moving parties the value of their membership interests
21 ascertained and decreed within the time specified pursuant to this
22 section, or, in the case of an appeal, as fixed on appeal. On
23 receiving that payment or the tender of payment, the moving parties
24 shall transfer their membership interests to the purchasing parties.

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

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

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

36 SEC. 15. Section 17707.06 of the Corporations Code is
37 amended to read:

38 17707.06. (a) A limited liability company that has filed a
39 certificate of cancellation nevertheless continues to exist for the
40 purpose of winding up its affairs, prosecuting and defending actions

1 by or against it in order to collect and discharge obligations,
2 disposing of and conveying its property, and collecting and dividing
3 its assets. A limited liability company shall not continue business
4 except so far as necessary for its winding up.

5 (b) No action or proceeding to which a limited liability company
6 is a party abates by the filing of a certificate of cancellation for
7 the limited liability company or by reason of proceedings for its
8 winding up and dissolution.

9 (c) Any assets inadvertently or otherwise omitted from the
10 winding up continue in the canceled limited liability company for
11 the benefit of the persons entitled to those assets upon cancellation
12 and on realization shall be distributed accordingly.

13 (d) After cancellation of the limited liability company, the
14 limited liability company is bound by both of the following:

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

18 (2) The act of a person authorized to act on behalf of the limited
19 liability company, if the act would have bound the limited liability
20 company before cancellation, if the other party to the transaction
21 did not have notice of the cancellation.

22 SEC. 16. Section 17707.09 of the Corporations Code is
23 amended to read:

24 17707.09. (a) Notwithstanding the filing of a certificate of
25 dissolution, a majority of the members may cause to be filed, in
26 the office of, and on a form prescribed by, the Secretary of State,
27 a certificate of continuation, in any of the following circumstances:

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

30 (2) The dissolution of the limited liability company was by vote
31 of the members pursuant to subdivision (b) of Section 17707.01
32 and each member who consented to the dissolution has agreed in
33 writing to revoke his or her vote in favor of or consent to the
34 dissolution.

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

36 (b) The certificate of continuation shall set forth all of the
37 following:

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

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

3 (c) Upon the filing of a certificate of continuation, the certificate
4 of dissolution shall be of no effect from the time of the filing of
5 the certificate of dissolution.

6 SEC. 17. Section 17708.07 of the Corporations Code is
7 amended to read:

8 17708.07. (a) A foreign limited liability company transacting
9 intrastate business in this state shall not maintain an action or
10 proceeding in this state unless it has a certificate of registration to
11 transact intrastate business in this state.

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

16 (c) A member or manager of a foreign limited liability company
17 is not liable for the debts, obligations, or other liabilities of the
18 foreign limited liability company solely because the foreign limited
19 liability company transacted intrastate business in this state without
20 a certificate of registration.

21 (d) If a foreign limited liability company transacts intrastate
22 business in this state without a certificate of registration or cancels
23 its certificate of registration, it shall be deemed to have appointed
24 the Secretary of State as its agent for service of process for rights
25 of action arising out of the transaction of intrastate business in this
26 state.

27 SEC. 18. Section 17710.03 of the Corporations Code is
28 amended to read:

29 17710.03. (a) A limited liability company that desires to
30 convert to an other business entity or a foreign other business entity
31 or a foreign limited liability company shall approve a plan of
32 conversion.

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

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

35 (2) The place of the organization of the converted entity and of
36 the converting limited liability company and the name of the
37 converted entity after conversion.

38 (3) The manner of converting the membership interests of each
39 of the members into shares of, securities of, or interests in, the
40 converted entity.

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

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

9 (b) (1) The plan of conversion shall be approved by all
10 managers and a majority of the members of each class of
11 membership interest or if there are no managers, a majority of the
12 members of each class of membership of the converting limited
13 liability company, unless a greater approval is required by the
14 operating agreement of the converting limited liability company.

15 (2) However, if the members of the limited liability company
16 would become personally liable for any obligations of the
17 converted entity as a result of the conversion, the plan of
18 conversion shall be approved by all of the members of the
19 converting limited liability company, unless the plan of conversion
20 provides that all members will have dissenters' rights as provided
21 in Article 11 (commencing with Section 17711.01).

22 (c) Upon the effectiveness of the conversion, all members of
23 the converting limited liability company, except those that exercise
24 dissenters' rights as provided in Article 11 (commencing with
25 Section 17711.01), shall be deemed parties to any governing
26 documents for the converted entity adopted as part of the plan of
27 conversion, regardless of whether or not the member has executed
28 the plan of conversion or the governing documents for the
29 converted entity. Any adoption of governing documents made
30 pursuant to the conversion shall be effective at the effective time
31 or date of the conversion.

32 (d) Notwithstanding its prior approval, a plan of conversion
33 may be amended before the conversion takes effect if the
34 amendment is approved by all managers and a majority of the
35 members or if there are no managers, a majority of the members
36 of the converting limited liability company and, if the amendment
37 changes any of the principal terms of the plan of conversion, the
38 amendment is approved by the managers and members of the
39 converting limited liability company in the same manner and to

1 the same extent as required for the approval of the original plan
2 of conversion.

3 (e) The managers by unanimous approval and the members of
4 a converting limited liability company may, by majority approval
5 at any time before the conversion is effective, in their discretion,
6 abandon a conversion, without further approval by the managers
7 or members, subject to the contractual rights of third parties other
8 than managers or members.

9 (f) The converted entity shall keep the plan of conversion at the
10 principal place of business of the converted entity if the converted
11 entity is a domestic limited liability company or foreign other
12 business entity, at the principal office of, or registrar or transfer
13 agent of, the converted entity, if the converted entity is a domestic
14 corporation, or at the office where records are to be kept pursuant
15 to Section 17701.13 if the converted entity is a domestic limited
16 liability company. Upon the request of a member of a converting
17 limited liability company, the authorized person on behalf of the
18 converted entity shall promptly deliver to the member or the holder
19 of shares, interests, or other securities, at the expense of the
20 converted entity, a copy of the plan of conversion. A waiver by a
21 member of the rights provided in this subdivision shall be
22 unenforceable.

23 SEC. 19. Section 17710.06 of the Corporations Code is
24 amended to read:

25 17710.06. (a) Upon conversion of a limited liability company,
26 one of the following applies:

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

31 (2) If the limited liability company is converting into a domestic
32 partnership, a statement of conversion shall be completed on the
33 statement of partnership authority for the converted entity. If no
34 statement of partnership authority is filed, a certificate of
35 conversion shall be filed separately with the Secretary of State.

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

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

4 (b) Any certificate or statement of conversion shall be executed
5 and acknowledged by all members of a member-managed limited
6 liability company or all managers of a manager-managed limited
7 liability company, unless a lesser number is provided in the articles
8 of organization or operating agreement, and shall set forth all of
9 the following:

10 (1) The name of the converting limited liability company and
11 the Secretary of State's file number of the converting limited
12 liability company.

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

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

18 (1) The name, form, and jurisdiction of organization of the
19 converted entity.

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

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

24 (d) The filing with the Secretary of State of a certificate of
25 conversion, a certificate of limited partnership, a statement of
26 partnership authority, or articles of incorporation containing a
27 statement of conversion as set forth in subdivision (a) shall have
28 the effect of the filing of a certificate of cancellation by the
29 converting limited liability company, and no converting limited
30 liability company that has made the filing is required to take any
31 action under Article 7 (commencing with Section 17707.01) as a
32 result of that conversion.

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

35 *SEC. 19.5. Section 17710.06 of the Corporations Code is*
36 *amended to read:*

37 17710.06. (a) Upon conversion of a limited liability company,
38 one of the following applies:

39 (1) If the limited liability company is converting into a domestic
40 limited partnership, a statement of conversion shall be completed

1 on a certificate of limited partnership for the converted entity and
2 shall be filed with the Secretary of State.

3 (2) If the limited liability company is converting into a domestic
4 partnership, a statement of conversion shall be completed on the
5 statement of partnership authority for the converted entity. If no
6 statement of partnership authority is filed, a certificate of
7 conversion shall be filed separately with the Secretary of State.

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

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

15 (b) Any certificate or statement of conversion shall be executed
16 and acknowledged by all ~~members~~, *members of a member-managed*
17 *limited liability company or all managers of a manager-managed*
18 *limited liability company*, unless a lesser number is provided in
19 the articles of organization or operating agreement, and shall set
20 forth all of the following:

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

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

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

29 (1) The name, form, and jurisdiction of organization of the
30 converted entity.

31 (2) The name, ~~street~~, *street address*, and mailing address of the
32 converted entity's agent for service of process. *If a corporation*
33 *qualified under Section 1505 is designated as the agent, no address*
34 *for it shall be set forth.*

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

37 (d) The filing with the Secretary of State of a certificate of
38 conversion, a certificate of limited partnership, a statement of
39 partnership authority, or articles of incorporation containing a
40 statement of conversion as set forth in subdivision (a) shall have

1 the effect of the filing of a certificate of cancellation by the
2 converting limited liability company, and no converting limited
3 liability company that has made the filing is required to take any
4 action under Article 7 (commencing with Section 17707.01) as a
5 result of that conversion.

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

8 SEC. 20. Section 17710.12 of the Corporations Code is
9 amended to read:

10 17710.12. (a) Each limited liability company and other
11 business entity that desires to merge shall approve an agreement
12 of merger.

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

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

33 (2) The name and place of the organization of the surviving
34 limited liability company or surviving other business entity, and
35 of each disappearing limited liability company and disappearing
36 other business entity, and the agreement of merger may change
37 the name of the surviving limited liability company, the new name
38 may be the same as or similar to the name of a disappearing
39 domestic or foreign limited liability company, subject to Section
40 17701.08.

1 (3) The manner of converting the membership interests of each
2 of the constituent limited liability companies into interests, shares,
3 or other securities of the surviving limited liability company or
4 surviving other business entity, and if limited liability company
5 interests of any of the constituent limited liability companies are
6 not to be converted solely into interests, shares, or other securities
7 of the surviving limited liability company or surviving other
8 business entity, the cash, property, rights, interests, or securities
9 that the holders of the limited liability company interests are to
10 receive in exchange for the membership interests, the cash,
11 property, rights, interests, or securities that may be in addition to
12 or in lieu of interests, shares, or other securities of the surviving
13 limited liability company or surviving other business entity, or
14 that the limited liability company interests are canceled without
15 consideration.

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

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

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

26 (b) (1) Each membership interest of the same class of any
27 constituent limited liability company, other than a membership
28 interest in another constituent limited liability company that is
29 being canceled and that is held by a constituent limited liability
30 company or its parent or a limited liability company of which the
31 constituent limited liability company is a parent shall, unless all
32 members of the class consent, be treated equally with respect to
33 any distribution of cash, property, rights, interests, or securities.

34 (2) Notwithstanding paragraph (1), except in a merger of a
35 limited liability company with a limited liability company that
36 controls at least 90 percent of the membership interests entitled to
37 vote with respect to the merger, the unredeemable membership
38 interests of a constituent limited liability company may be
39 converted only into unredeemable interests or securities of the
40 surviving limited liability company or other business entity, or a

1 parent if a constituent limited liability company or a constituent
2 other business entity or its parent owns, directly or indirectly, prior
3 to the merger, membership interests of another constituent limited
4 liability company or interests or securities of a constituent other
5 business entity representing more than 50 percent of the interests
6 or securities entitled to vote with respect to the merger of the other
7 constituent limited liability company or constituent other business
8 entity or more than 50 percent of the voting power, as defined in
9 Section 194.5, of a constituent other business entity that is a
10 domestic corporation, unless all of the members of the class
11 consent.

12 (3) The provisions of this subdivision do not apply to any
13 transaction if the commissioner has approved the terms and
14 conditions of the transaction and the fairness of those terms
15 pursuant to Section 25142.

16 (c) Notwithstanding its prior approval, an agreement of merger
17 may be amended prior to the filing of the certificate of merger or
18 the agreement of merger, as provided in Section 17710.14, if the
19 amendment is approved by the managers and members of each
20 constituent limited liability company in the same manner as
21 required for approval of the original agreement of merger and, if
22 the amendment changes any of the principal terms of the agreement
23 of merger, the amendment is approved by the managers and
24 members of each constituent limited liability company in the same
25 manner and to the same extent as required for the approval of the
26 original agreement of merger, and by each of the constituent other
27 business entities.

28 (d) The managers and members of a constituent limited liability
29 company may, in their discretion, abandon a merger, subject to
30 the contractual rights, if any, of third parties, including other
31 constituent limited liability companies and constituent other
32 business entities, without further approval by the membership
33 interests, at any time before the merger is effective.

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

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

38 (2) Effect the adoption of a new operating agreement for a
39 constituent limited liability company if it is the surviving limited
40 liability company in the merger. Any amendment to an operating

1 agreement or adoption of a new operating agreement made pursuant
2 to the foregoing sentence shall be effective at the effective time
3 or date of the merger. Notwithstanding the above provisions of
4 this subdivision, if a greater number of members is required to
5 approve an amendment to the operating agreement of a constituent
6 limited liability company than is required to approve the agreement
7 of merger pursuant to subdivision (a), and the number of members
8 that approve the agreement of merger is less than the number of
9 members required to approve an amendment to the operating
10 agreement of the constituent limited liability company, any
11 amendment to the operating agreement or adoption of a new
12 operating agreement of that constituent limited liability company
13 made pursuant to the first sentence of this subdivision shall be
14 effective only if the agreement of merger provides that all of the
15 members shall have the dissenters' rights provided in Article 11
16 (commencing with Section 17711.01).

17 (f) The surviving limited liability company or surviving other
18 business entity shall keep the agreement of merger at its designated
19 office or at the business address specified in paragraph (5) of
20 subdivision (a) of Section 17710.14, as applicable, and, upon the
21 request of a member of a constituent limited liability company or
22 a holder of shares, interests, or other securities of a constituent
23 other business entity, the managers or members of the surviving
24 limited liability company or the authorized person of the surviving
25 other business entity shall promptly deliver to the member or the
26 holder of shares, interests, or other securities, at the expense of the
27 surviving limited liability company or surviving other business
28 entity, a copy of the agreement of merger. A waiver by a member
29 or holder of shares, interests, or other securities of the rights
30 provided in this subdivision shall be unenforceable.

31 SEC. 21. Section 17713.04 of the Corporations Code is
32 amended to read:

33 17713.04. (a) Except as otherwise provided in subdivisions
34 (b) and (c), this title shall apply to all domestic limited liability
35 companies existing on or after January 1, 2014, to all foreign
36 limited liability companies registered with the Secretary of State
37 prior to January 1, 2014, whose registrations have not been
38 canceled as of January 1, 2014, to all foreign limited liability
39 companies registered with the Secretary of State on or after January

1 1, 2014, and to all actions taken by the managers or members of
2 a limited liability company on or after that date.

3 (b) Except as otherwise specified in this title, this title applies
4 only to the acts or transactions by a limited liability company or
5 by the members or managers of the limited liability company
6 occurring, or an operating agreement or other contracts entered
7 into by the limited liability company or by the members or
8 managers of the limited liability company, on or after January 1,
9 2014. The prior law governs all acts or transactions by a limited
10 liability company or by the members or managers of the limited
11 liability company occurring, and any operating agreement or other
12 contracts entered into by the limited liability company or by the
13 members or managers of the limited liability company, prior to
14 January 1, 2014.

15 (c) Any vote or consent by the managers or members of a limited
16 liability company prior to January 1, 2014, shall be governed by
17 prior law. If a certificate or document is required to be filed in a
18 public office of this state relating to a vote or consent by the
19 managers or members of the limited liability company prior to
20 January 1, 2014, it may be filed after that date pursuant to the filing
21 requirements of this title, even though the vote or consent is
22 governed by prior law.

23 (d) This title does not cancel or otherwise affect the status of,
24 or create a new filing requirement with the Secretary of State or
25 any other agency, board, commission, or department for, any
26 domestic limited liability company in existence on December 31,
27 2013, or any foreign limited liability company registered to transact
28 intrastate business in this state prior to January 1, 2014.

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

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

34 17713.12. (a) A limited liability company is liable for a civil
35 penalty in an amount not exceeding one million dollars
36 (\$1,000,000) if the limited liability company does both of the
37 following:

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

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

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

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

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

18 (C) Misstates or conceals or has misstated or concealed from a
19 regulatory body a material fact in order to deceive a regulatory
20 body to avoid a statutory or regulatory duty, or to avoid a statutory
21 or regulatory limit or prohibition.

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

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

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

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

38 (c) If the action reported to the Attorney General pursuant to
39 this section implicates the government authority of an agency other

1 than the Attorney General, the Attorney General shall promptly
2 forward the written notice to that agency.

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

9 (e) For purposes of this section:

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

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

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

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

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

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

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

40 (A) Department of Corporations.

1 (B) Department of Insurance.

2 (C) Department of Financial Institutions.

3 (D) Department of Managed Health Care.

4 (E) United States Securities and Exchange Commission.

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

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

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

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

18 (C) The decision is made for the primary purpose of rendering
19 the financial statements materially false or misleading.

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

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

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

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

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

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

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

1 (11) “Officer” means a person appointed pursuant to Section
2 17703.02, except an officer of a specified subsidiary limited
3 liability company who is not also an officer of the parent limited
4 liability company.

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

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

11 *SEC. 22.5. Section 17713.12 of the Corporations Code is*
12 *amended to read:*

13 17713.12. (a) A limited liability company is liable for a civil
14 penalty in an amount not exceeding one million dollars
15 (\$1,000,000) if the limited liability company does both of the
16 following:

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

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

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

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

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

36 (C) Misstates or conceals or has misstated or concealed from a
37 regulatory body a material fact in order to deceive a regulatory
38 body to avoid a statutory or regulatory duty, or to avoid a statutory
39 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~~. *Business Oversight*.
 20 (B) Department of Insurance.
 21 (C) Department of ~~Financial Institutions~~. *Managed Health Care*.
 22 ~~(D) Department of Managed Health Care.~~
 23 ~~(E)~~
 24 (D) United States Securities and Exchange Commission.
 25 (6) “Actual knowledge of the limited liability company” means
 26 the knowledge a member, officer, or manager of a limited liability
 27 company actually possesses or does not consciously avoid
 28 possessing, based on an evaluation of information provided
 29 pursuant to the limited liability company’s disclosure controls and
 30 procedures.
 31 (7) “Refuse to make a book entry” means the intentional decision
 32 not to record an accounting transaction when all of the following
 33 conditions are satisfied:
 34 (A) The independent auditors required recordation of an
 35 accounting transaction during the course of an audit.
 36 (B) The audit committee of the limited liability company has
 37 not approved the independent auditor’s recommendation.
 38 (C) The decision is made for the primary purpose of rendering
 39 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.

31 *SEC. 23. Section 19.5 of this bill incorporates amendments to*
32 *Section 17710.06 of the Corporations Code proposed by both this*
33 *bill and Assembly Bill 1471. It shall only become operative if (1)*
34 *both bills are enacted and become effective on or before January*
35 *1, 2016, (2) each bill amends Section 17710.06 of the Corporations*
36 *Code, and (3) this bill is enacted after Assembly Bill 1471, in which*
37 *case Section 19 of this bill shall not become operative.*

38 *SEC. 24. Section 22.5 of this bill incorporates amendments to*
39 *Section 17713.12 of the Corporations Code proposed by both this*
40 *bill and Assembly Bill 1517. It shall only become operative if (1)*

- 1 *both bills are enacted and become effective on or before January*
- 2 *1, 2016, (2) each bill amends Section 17713.12 of the Corporations*
- 3 *Code, and (3) this bill is enacted after Assembly Bill 1517, in which*
- 4 *case Section 22 of this bill shall not become operative.*

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