

AMENDED IN SENATE JULY 3, 1995

AMENDED IN SENATE JUNE 21, 1995

AMENDED IN SENATE JUNE 6, 1995

AMENDED IN SENATE APRIL 24, 1995

AMENDED IN SENATE APRIL 3, 1995

SENATE BILL

No. 141

Introduced by Senator Beverly

January 24, 1995

An act to amend Section 699.720 of the Code of Civil Procedure, to amend Sections 1113, 15503, 15616, 15642, 17001, ~~17002, 17005,~~ 17051, 17052, 17054, 17061, 17100, 17101, 17103, 17154, 17158, 17201, 17250, 17251, 17254, 17301, 17303, 17350, 17352, 17450, ~~17456,~~ 17701, 25102, and 25103 of the Corporations Code, to ~~amend Sections 1628 and 1647 of,~~ and to ~~add Section 1656.2 to,~~ the Insurance Code, relating to limited liability companies, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 141, as amended, Beverly. Limited liability companies: ~~insurance:~~ limited partnerships.

Under the Uniform Limited Partnership Act and the California Revised Limited Partnership Act, a limited partnership may engage in any business that may be engaged in by a partnership without limited partners, except the banking or insurance business. In addition, a limited

partnership organized under the California Revised Limited Partnership Act may also not engage in the trust company business. ~~Under the Beverly-Killea Limited Liability Company Act, a limited liability company has all the powers of a natural person and may engage in any lawful business activity, except the banking, insurance, or trust company business.~~ However, other entities are authorized, if properly licensed, to sell insurance as life agents or fire and casualty broker-agents. An organization license to act as a life agent or fire and casualty broker-agent may be held by certain individuals connected to partnerships, associations, and corporations.

This bill would authorize a limited partnership ~~or limited liability company~~ to engage in the insurance business. A general partner or employee of a limited partnership, ~~or a manager, member, officer, or employee of a limited liability company,~~ if properly licensed, would be able to sell insurance by obtaining an organization license to act as a life agent or fire and casualty broker-agent. However, a limited partnership ~~or limited liability company~~ would not be authorized to engage in the business of granting policies of insurance or assuming insurance risks.

~~Existing law provides that the articles of organization and operating agreement of a limited liability company generally govern the relations between the members of the company, and may deviate from the statutory framework in the Beverly-Killea Limited Liability Company Act. However, certain provisions in the act may not be varied by the articles or agreement, including the right of a member under an obligation to render services to withdraw.~~

~~This bill would allow the articles or operating agreement to eliminate that right of a member to withdraw.~~

Existing law provides that a person may acquire a membership interest directly from a limited liability company either in accordance with the company's operating agreement or, if there is no provision in the operating agreement, on the vote of all members of the company.

This bill would provide instead that if a person seeks to acquire a membership interest, and the operating agreement



does not provide for this event, the person must obtain the vote of a majority in interest of the members.

Existing law provides that a membership or economic interest in a limited liability company is assignable with the unanimous vote of the members, except as provided.

This bill would provide that a membership or economic interest may be assigned with the consent of a majority in interest of the members.

Existing law provides that the organization, internal affairs, and related matters of a foreign limited liability company are governed by the laws of the state where the company is organized.

This bill would provide that if the company is organized in a foreign country, these matters would be governed by the laws of that country.

Existing law authorizes the Secretary of State to charge specified filing and issuance fees for various documents relating to limited liability companies.

This bill would provide that the fee for issuing any certificate of the Secretary of State's office relating to limited liability companies, including a certificate of good standing, is \$6.

The bill would also make clarifying and technical changes.

This bill would declare that is it to take effect immediately as an urgency measure.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

- 1 SECTION 1. Section 699.720 of the Code of Civil
- 2 Procedure is amended to read:
- 3 699.720. (a) The following types of property are not
- 4 subject to execution:
- 5 (1) An alcoholic beverage license that is transferable
- 6 under Article 5 (commencing with Section 24070) of
- 7 Chapter 6 of Division 9 of the Business and Professions
- 8 Code.



1 (2) The interest of a partner in a partnership or
2 member in a limited liability company if the partnership
3 is not a judgment debtor.

4 (3) A cause of action that is the subject of a pending
5 action or special proceeding.

6 (4) A judgment in favor of the judgment debtor prior
7 to the expiration of the time for appeal from the
8 judgment or, if an appeal is filed, prior to the final
9 determination of the appeal.

10 (5) A debt (other than earnings) owing and unpaid by
11 a public entity.

12 (6) The loan value of an unexpired life insurance,
13 endowment, or annuity policy.

14 (7) A franchise granted by a public entity and all the
15 rights and privileges of the franchise.

16 (8) The interest of a trust beneficiary.

17 (9) A contingent remainder, executory interest, or
18 other interest in property that is not vested.

19 (10) Property in a guardianship or conservatorship
20 estate.

21 (b) Nothing in subdivision (a) affects or limits the
22 right of the judgment creditor to apply property to the
23 satisfaction of a money judgment pursuant to any
24 applicable procedure other than execution.

25 SEC. 2. Section 1113 of the Corporations Code is
26 amended to read:

27 1113. (a) Any one or more domestic corporations
28 may merge with one or more domestic other business
29 entities or one or more foreign other business entities.
30 One or more foreign corporations may be parties to the
31 merger. Any corporation or corporations and any one or
32 more other business entities may merge with or into a
33 corporation, which may be any one of the corporations,
34 or they may merge with or into an other business entity,
35 which may be any one of the other business entities.
36 Notwithstanding the provisions of this section, the
37 merger of any number of corporations with any number
38 of other business entities may be effected only if:

39 (1) In a merger in which a domestic other business
40 entity is a party to the merger the domestic other business



1 entity is authorized by the laws under which it is
2 organized to effect the merger.

3 (2) In a merger in which a foreign corporation is a
4 party to the merger the foreign corporation is authorized
5 by the laws under which it is organized to effect that
6 merger.

7 (3) In a merger in which a foreign other business
8 entity is the surviving other business entity the laws of the
9 jurisdiction under which the foreign other business entity
10 is organized authorize the merger.

11 (4) In a merger in which a foreign other business
12 entity is a disappearing other business entity it is not
13 prohibited by the laws under which it is organized from
14 effecting that merger.

15 (b) Each corporation and each other business entity
16 which desires to merge shall approve an agreement of
17 merger. The board of each corporation which desires to
18 merge shall approve the agreement of merger. The
19 agreement of merger shall be approved on behalf of each
20 constituent other business entity by those persons
21 required to approve the merger by the laws under which
22 it is organized. The constituent corporations and
23 constituent other business entities shall be parties to the
24 agreement of merger and other persons, including a
25 parent party corporation (Section 1200), may be parties
26 to the agreement of merger. The agreement of merger
27 shall state:

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

29 (2) The name and place of incorporation or
30 organization of each constituent corporation and
31 constituent other business entity and the identity of the
32 constituent corporation or constituent other business
33 entity that is the surviving corporation or surviving other
34 business entity.

35 (3) The amendments, if any, subject to Sections 900
36 and 907, to the articles of the surviving corporation, if
37 applicable, to be effected by the merger. If any
38 amendment changes the name of the surviving
39 corporation, if applicable, the new name may be the same
40 as or similar to the name of a disappearing domestic or



1 foreign corporation, subject to subdivision (b) of Section
2 201.

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

18 (5) Any other details or provisions as are required by
19 the laws under which any constituent other business
20 entity is organized, including, if a domestic limited
21 partnership is a party to the merger, subdivision (a) of
22 Section 15678.2 or, if a domestic limited liability company
23 is a party to the merger, subdivision (a) of Section 17551.

24 (6) Any other details or provisions as are desired,
25 including, without limitation, a provision for the payment
26 of cash in lieu of fractional shares or for any other
27 arrangement with respect thereto consistent with the
28 provisions of Section 407.

29 (c) Each share of the same class or series of any
30 constituent corporation (other than the cancellation of
31 shares held by a constituent corporation or its parent or
32 a wholly owned subsidiary of either in another
33 constituent corporation) shall, unless all shareholders of
34 the class or series consent and except as provided in
35 Section 407, be treated equally with respect to any
36 distribution of cash, property, rights, interests or
37 securities.

38 Notwithstanding paragraph (4) of subdivision (b), the
39 nonredeemable common shares of a constituent
40 corporation may be converted only into nonredeemable



1 common shares of a surviving corporation or a parent
2 party (Section 1200) if (1) a constituent corporation or a
3 constituent other business entity or its parent owns,
4 directly or indirectly, prior to the merger shares of
5 another constituent corporation representing more than
6 50 percent of the voting power of the other constituent
7 corporation or membership interests or limited
8 partnership interests of another constituent other
9 business entity representing more than 50 percent of the
10 membership interests or limited partnership interests of
11 the other constituent other business entity entitled to
12 vote with respect to the merger or (2) a constituent
13 corporation or constituent other business entity is a
14 general partner of a constituent limited partnership,
15 unless all of the shareholders of the class consent and
16 except as provided in Section 407.

17 (d) Notwithstanding its prior approval, an agreement
18 of merger may be amended prior to the filing of the
19 agreement of merger or the certificate of merger, as is
20 applicable, if the amendment is approved by the board of
21 any constituent corporation and, if the amendment
22 changes any of the principal terms of the agreement, by
23 the outstanding shares (Section 152), if required by
24 Chapter 12 (commencing with Section 1200), in the same
25 manner as the original agreement of merger. If the
26 agreement of merger so amended is approved by the
27 board and the outstanding shares, if required, of each of
28 the constituent corporations and is approved by each of
29 the constituent other business entities, the agreement of
30 merger so amended shall then constitute the agreement
31 of merger.

32 (e) The board of a constituent corporation may, in its
33 discretion, abandon a merger, subject to the contractual
34 rights, if any, of third parties, including other constituent
35 corporations and constituent other business entities
36 without further approval by the outstanding shares
37 (Section 152), at any time before the merger is effective.

38 (f) Each constituent corporation shall sign the
39 agreement of merger by its chairperson of the board,
40 president or a vice president and secretary or an assistant



1 secretary acting on behalf of their respective
2 corporations.
3 (g) (1) If the surviving entity is a corporation, after
4 approval of a merger by the constituent corporations
5 through approval by the board and any approval of the
6 outstanding shares (Section 152) required by Chapter 12
7 (commencing with Section 1200) and the constituent
8 other business entities, the surviving corporation shall file
9 a copy of the agreement of merger with an officers'
10 certificate of each constituent corporation attached
11 stating the total number of outstanding shares of each
12 class entitled to vote on the merger, that the principal
13 terms of the agreement in the form attached were
14 approved by that corporation by a vote of a number of
15 shares of each class which equaled or exceeded the vote
16 required, specifying each class entitled to vote and the
17 percentage vote required of each class, or that the merger
18 agreement was entitled to be and was approved by the
19 board alone under the provisions of Section 1201. In lieu
20 of an officers' certificate for any constituent other
21 business entities, a certificate of merger, on a form
22 prescribed by the Secretary of State, shall be filed. The
23 certificate of merger shall be executed and
24 acknowledged by each constituent other business entity
25 by those persons required to execute the certificate of
26 merger by the laws under which the other business entity
27 is organized and, if applicable, on behalf of each
28 constituent corporation by the chairperson of the board,
29 president or a vice president and secretary or an assistant
30 secretary of the respective corporation. The certificate of
31 merger shall set forth, if a vote of the members or limited
32 partners of a constituent other business entity was
33 required, a statement setting forth the total number of
34 outstanding interests of each class entitled to vote on the
35 merger and that the principal terms of the agreement of
36 merger were approved by a vote of the number of
37 interests of each class which equaled or exceeded the vote
38 required, specifying each class entitled to vote and the
39 percentage vote required of each class, and any other
40 information required to be set forth under the laws under



1 which the constituent other business entities are
2 organized, including, if a domestic limited partnership is
3 a party to the merger, subdivision (a) of Section 15678.4
4 and, if a domestic limited liability company is a party to
5 the merger, subdivision (a) of Section 17552. If equity
6 securities of a parent party (Section 1200) of a constituent
7 corporation are to be issued in the merger, the officers'
8 certificate of that constituent corporation shall state
9 either that no vote of the shareholders of the parent was
10 required or that the required vote was obtained. The
11 merger and any amendment of the articles of the
12 surviving corporation, if applicable, contained in the
13 agreement of merger shall thereupon be effective,
14 subject to subdivision (c) of Section 110 and subject to the
15 provisions of subdivision (j), and the several parties
16 thereto shall be one corporation. The agreement of
17 merger shall not be filed, however, until there has been
18 filed by or on behalf of each corporation taxed under the
19 Bank and Corporation Tax Law (Part 11 (commencing
20 with Section 23001) of Division 2 of the Revenue and
21 Taxation Code), the existence of which is terminated by
22 the merger, the certificate of satisfaction of the Franchise
23 Tax Board that all taxes imposed by that law have been
24 paid or secured. The Secretary of State may certify a copy
25 of the agreement of merger separate from the officers'
26 certificates and certificates of merger attached thereto.

27 (2) If the surviving entity is an other business entity,
28 after approval of a merger by the constituent
29 corporations through approval by the board and any
30 approval of the outstanding shares (Section 152) required
31 by Chapter 12 (commencing with Section 1200) and the
32 constituent other business entities, the constituent
33 corporations and constituent other business entities shall
34 file a certificate of merger in the office of, and on a form
35 prescribed by, the Secretary of State. The certificate of
36 merger shall be executed and acknowledged by each
37 constituent corporation by the chairperson of the board,
38 president or a vice president and secretary or an assistant
39 secretary of the respective corporation and by each
40 domestic constituent limited liability company by all of



1 the managers of the limited liability company (unless a
2 lesser number is specified in the articles of organization
3 or the operating agreement of the constituent limited
4 liability company) and by each domestic constituent
5 limited partnership by all general partners (unless a
6 lesser number is provided in the certificate of limited
7 partnership of the domestic constituent limited
8 partnership) and by each foreign constituent limited
9 liability company by one or more managers and by each
10 foreign constituent limited partnership by one or more
11 general partners. The certificate of merger shall set forth
12 all of the following:

13 (A) The names and the Secretary of State's file
14 numbers, if any, of each of the constituent corporations
15 and constituent other business entities, separately
16 identifying the disappearing corporations and
17 disappearing other business entities and the surviving
18 other business entity.

19 (B) If the approval of the outstanding shares of a
20 constituent corporation was required by Chapter 12
21 (commencing with Section 1200), a statement setting
22 forth the total number of outstanding shares of each class
23 entitled to vote on the merger and that the principal
24 terms of the agreement of merger were approved by a
25 vote of the number of shares of each class entitled to vote
26 and the percentage vote required of each class.

27 (C) The future effective date or time, not more than
28 90 days subsequent to the date of filing of the merger, if
29 the merger is not to be effective upon the filing of the
30 certificate of merger with the office of the Secretary of
31 State.

32 (D) Any other information required to be stated in the
33 certificate of merger by the laws under which each
34 constituent other business entity is organized, including,
35 if a domestic limited liability company is a party to a
36 merger, subdivision (a) of Section 17552 and, if a domestic
37 limited partnership is a party to the merger, subdivision
38 (a) of Section 15678.4.

39 Unless a future effective date or time is provided in a
40 certificate of merger, in which event the merger shall be



1 effective at that future effective date or time, a merger
2 shall be effective upon the filing of the certificate of
3 merger in the office of the Secretary of State and the
4 several parties thereto shall be one entity. The certificate
5 of merger shall not be filed, however, until there has been
6 filed by or on behalf of each corporation taxed under the
7 Bank and Corporation Tax Law (Part 11 (commencing
8 with Section 23001) of Division 2 of the Revenue and
9 Taxation Code), the existence of which is terminated by
10 the merger, the certificate of satisfaction of the Franchise
11 Tax Board that all taxes imposed by the Bank and
12 Corporation Tax Law have been paid or secured. The
13 surviving other business entity shall keep a copy of the
14 agreement of merger at the office referred to in Section
15 17057 if a domestic limited liability company, at the
16 business address specified in paragraph (5) of subdivision
17 (a) of Section 17552 if a foreign limited liability company,
18 at the office referred to in subdivision (a) of Section 15614
19 if a domestic limited partnership or at the business
20 address specified in paragraph (5) of subdivision (a) of
21 Section 15678.4 if a foreign limited partnership. Upon
22 request of a holder of shares of a constituent corporation
23 or a holder of interests of a constituent other business
24 entity, a person with authority to do so on behalf of the
25 surviving other business entity shall promptly deliver to
26 the holder of shares of a constituent corporation or a
27 holder of interests of a constituent other business entity,
28 a copy of the agreement of merger. A waiver by a
29 shareholder, partner, or member of the rights provided
30 in the foregoing sentence shall be unenforceable.

31 (h) (1) A copy of an agreement of merger certified on
32 or after the effective date by an official having custody
33 thereof has the same force in evidence as the original and,
34 except as against the state, is conclusive evidence of the
35 performance of all conditions precedent to the merger,
36 the existence on the effective date of the surviving
37 corporation or surviving other business entity and the
38 performance of the conditions necessary to the adoption
39 of any amendment to the articles, if applicable, contained
40 in the agreement of merger.



1 (2) For all purposes for a merger in which the
2 surviving entity is a domestic other business entity a copy
3 of the certificate of merger duly certified by the Secretary
4 of State is conclusive evidence of the merger of the
5 constituent corporations, either by themselves or
6 together with constituent other business entities, into the
7 surviving other business entity.

8 (i) (1) Upon a merger of corporations and other
9 business entities pursuant to this section the separate
10 existence of the disappearing corporations and
11 disappearing other business entities cease and the
12 surviving corporation or surviving other business entity
13 shall succeed, without other transfer, to all the rights and
14 property of each of the disappearing corporations and
15 disappearing other business entities and shall be subject
16 to all the debts and liabilities of each in the same manner
17 as if the surviving corporation or surviving other business
18 entity had itself incurred them.

19 (2) All rights of creditors and all liens upon the
20 property of each of the constituent corporations and
21 constituent other business entities shall be preserved
22 unimpaired, provided that those liens upon property of
23 a disappearing corporation or disappearing other
24 business entity shall be limited to the property affected
25 thereby immediately prior to the time the merger is
26 effective.

27 (3) Any action or proceeding pending by or against
28 any disappearing corporation or disappearing other
29 business entity may be prosecuted to judgment, which
30 shall bind the surviving corporation or surviving other
31 business entity, or the surviving corporation or surviving
32 other business entity may be proceeded against or
33 substituted in its place.

34 (4) If a limited partnership is a party to the merger,
35 nothing in this section is intended to affect the liability a
36 general partner of a disappearing limited partnership
37 may have in connection with the debts and liabilities of
38 the disappearing limited partnership existing prior to the
39 time the merger is effective.



1 (j) (1) The merger of any number of domestic
2 corporations with any number of foreign corporations or
3 foreign other business entities in a merger in which one
4 or more other business entities is a party shall comply with
5 subdivision (a) and this subdivision.

6 (2) If the surviving corporation or surviving other
7 business entity is a domestic corporation or domestic
8 other business entity, the merger proceedings with
9 respect to that corporation or other business entity and
10 any domestic disappearing corporation shall conform to
11 the provisions of this section, but if the surviving
12 corporation or surviving other business entity is a foreign
13 corporation or foreign other business entity, then, subject
14 to the requirements of paragraph (4) of subdivision (c),
15 and of Section 407 and Chapters 12 (commencing with
16 Section 1200) and 13 (commencing with Section 1300)
17 with respect to any domestic constituent corporations,
18 Chapter 13 (commencing with Section 17600) of Title 2.5
19 with respect to any domestic constituent limited liability
20 companies, and Article 7.6 (commencing with Section
21 15679.1) of Chapter 3 of Title 2 with respect to any
22 domestic constituent limited partnerships, the merger
23 proceedings may be in accordance with the laws of the
24 state or place of incorporation of the surviving
25 corporation or the laws of the state or place of
26 organization of the surviving other business entity.

27 (3) If the surviving corporation or surviving other
28 business entity is a domestic corporation or domestic
29 other business entity, the certificate of merger, if the
30 surviving entity is an other business entity, or the
31 agreement of merger with attachments, if the surviving
32 entity is a corporation, shall be filed as provided in
33 subdivision (g) and thereupon, subject to subdivision (c)
34 of Section 110 or paragraph (2) of subdivision (g), as is
35 applicable, the merger shall be effective as to each
36 domestic constituent corporation and domestic
37 constituent other business entity.

38 (4) If the surviving corporation or surviving other
39 business entity is a foreign corporation or foreign other
40 business entity, the merger shall become effective in



1 accordance with the law of the jurisdiction in which the
2 surviving corporation or surviving other business entity
3 is organized, but, except as provided in paragraph (5),
4 the merger shall be effective as to any domestic
5 disappearing corporation as of the time of effectiveness
6 in the foreign jurisdiction upon the filing in this state of
7 a copy of the agreement of merger with an officers'
8 certificate of the surviving foreign corporation and of
9 each constituent domestic corporation and a certificate of
10 merger of each constituent other business entity
11 attached, which officers' certificates and certificates of
12 merger shall conform to the requirements of paragraph
13 (1) of subdivision (g). If one or more domestic other
14 business entities is a disappearing other business entity in
15 a merger pursuant to this subdivision in which a foreign
16 other business entity is the surviving entity, a certificate
17 of merger as required by subdivision (a) of Section
18 15678.4 or subdivision (a) of Section 17552, as is
19 applicable, shall also be filed at the same time as the filing
20 of the agreement of merger.

21 (5) If the date of the filing in this state pursuant to this
22 subdivision is more than six months after the time of the
23 effectiveness in the foreign jurisdiction, or if the powers
24 of the domestic corporation are suspended at the time of
25 effectiveness in the foreign jurisdiction, the merger shall
26 be effective as to the domestic disappearing corporation
27 or corporations as of the date of filing in this state.

28 (6) In a merger described in paragraph (3) or (4),
29 each foreign disappearing corporation that is qualified for
30 the transaction of intrastate business shall automatically
31 by the filing pursuant to this subdivision surrender its
32 right to transact intrastate business as of the date of filing
33 in this state regardless of the time of effectiveness as to a
34 domestic disappearing corporation. With respect to each
35 foreign disappearing other business entity previously
36 registered for the transaction of intrastate business in this
37 state, the filing of the agreement of merger or certificate
38 of merger, as is applicable, pursuant to this subdivision
39 automatically has the effect of a cancellation of



1 registration for that foreign other business entity without
2 the necessity of the filing of a certificate of cancellation.

3 (7) A certificate of satisfaction of the Franchise Tax
4 Board for each domestic disappearing corporation shall
5 be filed when required by subdivision (g) or when
6 required by Section 23334 of the Revenue and Taxation
7 Code.

8 SEC. 3. Section 15503 of the Corporations Code is
9 amended to read:

10 15503. A limited partnership may carry on any
11 business which a partnership without limited partners
12 may carry on, except banking and the business of
13 granting policies of insurance, or assuming insurance
14 risks.

15 SEC. 4. Section 15616 of the Corporations Code is
16 amended to read:

17 15616. A limited partnership may carry on any
18 business that a partnership without limited partners may
19 carry on except the banking or trust company business,
20 or the business of granting policies of insurance or
21 assuming insurance risks.

22 SEC. 5. Section 15642 of the Corporations Code is
23 amended to read:

24 15642. A person ceases to be a general partner of a
25 limited partnership upon the happening of any of the
26 following events:

27 (a) The general partner withdraws from the limited
28 partnership as provided in Section 15662.

29 (b) The general partner is removed as a general
30 partner.

31 (c) Unless otherwise provided in the partnership
32 agreement, an order for relief against the general partner
33 is entered under Chapter 7 of the federal bankruptcy law,
34 or the general partner: (1) makes a general assignment
35 for the benefit of creditors, (2) files a voluntary petition
36 under the federal bankruptcy law, (3) files a petition or
37 answer seeking for that partner any reorganization,
38 arrangement, composition, readjustment, liquidation,
39 dissolution or similar relief under any statute, law, or
40 regulation, (4) files an answer or other pleading



1 admitting or failing to contest the material allegations of
2 a petition filed against that partner in any proceeding of
3 this nature, or (5) seeks, consents to, or acquiesces in the
4 appointment of a trustee, receiver, or liquidator of the
5 general partner or of all or any substantial part of that
6 partner's properties.

7 (d) Unless otherwise provided in the partnership
8 agreement, 60 days after the commencement of any
9 proceeding against the general partner seeking
10 reorganization, arrangement, composition,
11 readjustment, liquidation, dissolution or similar relief
12 under any statute, law, or regulation, the proceeding has
13 not been dismissed, or if within 60 days after the
14 appointment without that partner's consent or
15 acquiescence of a trustee, receiver, or liquidator of the
16 general partner or of all or any substantial part of that
17 partner's properties, the appointment is not vacated or
18 stayed, or within 60 days after the expiration of any such
19 stay, the appointment is not vacated.

20 (e) In the case of a general partner who is an
21 individual, either of the following:

22 (1) The death of that partner.

23 (2) The entry by a court of competent jurisdiction of
24 an order adjudicating the partner incompetent to
25 manage the general partner's estate.

26 (f) Unless otherwise provided in the partnership
27 agreement, in the case of a general partner who is acting
28 as a general partner by virtue of being a trustee of a trust,
29 the termination of the trust (but not merely the
30 substitution of a new trustee, in which case the new
31 trustee automatically becomes the new general partner).

32 (g) Unless otherwise provided in the partnership
33 agreement, in the case of a general partner that is a
34 separate partnership, the dissolution of the separate
35 partnership.

36 (h) In the case of a general partner that is a
37 corporation, the filing of a certificate of dissolution, or its
38 equivalent, for the corporation.



1 (i) In the case of a general partner that is an estate, the
2 distribution by the fiduciary of the estate's entire interest
3 in the limited partnership.

4 (j) In the case of a general partner that is a limited
5 liability company, the filing of a certificate of dissolution
6 or its equivalent for the limited liability company.

7 Notwithstanding the provisions of this section, a person
8 who ceases to be a general partner of a limited
9 partnership, shall be deemed to be acting as a general
10 partner with respect to a third party doing business with
11 the limited partnership, until an amended certificate of
12 limited partnership is filed in accordance with Section
13 15622.

14 SEC. 6. Section 17001 of the Corporations Code is
15 amended to read:

16 17001. Unless the context otherwise indicates, the
17 following definitions govern the construction of this title:

18 (a) "Acknowledged" means that an instrument is
19 either of the following:

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

23 (2) Executed to include substantially the following
24 wording preceding the signature: It is hereby declared
25 that I am the person who executed this instrument, which
26 execution is my act and deed.

27 Any certificate of acknowledgment taken without this
28 state before a notary public or a judge or clerk of a court
29 of record having an official seal need not be further
30 authenticated.

31 (b) "Articles of organization" means articles of
32 organization filed under Section 17050, including all
33 amendments thereto or restatements thereof, or, in the
34 case of a foreign limited liability company, all documents
35 that serve a like function under the laws of the jurisdiction
36 in which the foreign limited liability company is
37 organized.

38 (c) "Bankrupt" or "bankruptcy" means, with respect
39 to any person, being the subject of an order for relief
40 under Title 11 of the United States Code, or any successor



1 statute or other statute in any foreign jurisdiction having
2 like import or effect.

3 (d) “Capital account” means, unless otherwise
4 provided in the operating agreement, the amount of the
5 capital interest of a member in the limited liability
6 company consisting of that member’s original
7 contribution, as (1) increased by any additional
8 contributions and by that member’s share of the limited
9 liability company’s profits and (2) decreased by any
10 distribution to that member and by that member’s share
11 of the limited liability company’s losses.

12 (e) “Constituent limited liability company” means a
13 limited liability company that is merged with or into one
14 or more other limited liability companies or other
15 business entities and includes a surviving limited liability
16 company.

17 (f) “Constituent other business entity” means any
18 other business entity that is merged with or into one or
19 more limited liability companies and includes a surviving
20 other business entity.

21 (g) “Contribution” means any money, property, or
22 services rendered, or a promissory note or other binding
23 obligation to contribute money or property, or to render
24 services as permitted in this title, which a member
25 contributes to a limited liability company as capital in that
26 member’s capacity as a member pursuant to an
27 agreement between the members, including an
28 agreement as to value.

29 (h) “Disappearing limited liability company” means a
30 constituent limited liability company that is not the
31 surviving limited liability company.

32 (i) “Disappearing other business entity” means a
33 constituent other business entity that is not the surviving
34 other business entity.

35 (j) “Distribution” means the transfer of money or
36 property by a limited liability company to its members
37 without consideration.

38 (k) “Domestic” means organized under the laws of
39 this state when used in relation to any limited liability



1 company, other business entity or person (other than a
2 natural person).

3 (l) “Domestic corporation” means a corporation as
4 defined in Section 162.

5 (m) “Domestic limited partnership” means a
6 partnership formed by two or more persons under the
7 laws of this state and having one or more general partners
8 and one or more limited partners.

9 (n) “Economic interest” means a person’s right to
10 share in the income, gains, losses, deductions, credit, or
11 similar items of, and to receive distributions from, the
12 limited liability company, but does not include any other
13 rights of a member, including, without limitation, the
14 right to vote or to participate in management, or, except
15 as provided in Section 17106, any right to information
16 concerning the business and affairs of the limited liability
17 company.

18 (o) [RESERVED].

19 (p) “Foreign corporation” means a corporation
20 formed under the laws of any state other than this state
21 or under the laws of the United States or of a foreign
22 country.

23 (q) “Foreign limited liability company” means either
24 (1) an entity formed under the limited liability company
25 laws of any state other than this state, or (2) an entity
26 organized under the laws of any foreign country that is
27 (A) an unincorporated association, (B) organized under
28 a statute pursuant to which an association may be formed
29 that affords each of its members limited liability with
30 respect to the liabilities of the entity, and (C) not an
31 entity that is required to be registered or qualified
32 pursuant to the provisions of Title 1 (commencing with
33 Section 100) or Title 2 (commencing with Section 15001);
34 but the term “foreign limited liability company” does not
35 include a foreign association, as defined in Section 170.

36 (r) “Foreign limited partnership” means a
37 partnership formed under the laws of any state other than
38 this state or under the laws of a foreign country and
39 having as partners one or more general partners and one



1 or more limited partners or their equivalents under any
2 name.

3 (s) “Foreign other business entity” means any other
4 business entity formed under the laws of any state other
5 than this state or under the laws of the United States or
6 of a foreign country.

7 (t) “Limited liability company” or “domestic limited
8 liability company” means an entity having two or more
9 members that is organized under this title, provided an
10 entity may have only one member if the company is
11 dissolving pursuant to Section 17350 or the one member
12 is a trust in which at least two persons are treated as the
13 owners of any portion of the trust pursuant to Section
14 17731 of the Revenue and Taxation Code.

15 (u) “Mail” unless otherwise provided in the operating
16 agreement, means first-class mail, postage prepaid, unless
17 registered mail is specified. Registered mail includes
18 certified mail.

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

23 (w) “Manager” means a person elected by the
24 members of a limited liability company to manage the
25 limited liability company if the articles of organization
26 contain the statement referred to in subdivision (b) of
27 Section 17151 or, if the articles of organization do not
28 contain that statement, “manager” means each of the
29 members of the limited liability company.

30 (x) “Member” means a person who:

31 (1) Has been admitted to a limited liability company
32 as a member in accordance with the articles of
33 organization or operating agreement, or an assignee of an
34 interest in a limited liability company who has become a
35 member pursuant to Section 17303.

36 (2) Has not resigned, withdrawn, or been expelled as
37 a member or, if other than an individual, been dissolved.

38 (y) “Member of record” means a member named as a
39 member on the list maintained in accordance with
40 paragraph (1) of subdivision (a) of Section 17058.



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

7 (aa) “Officer” means any person elected or appointed
8 pursuant to Section 17154.

9 (ab) “Operating agreement” means any agreement,
10 written or oral, between all of the members as to the
11 affairs of a limited liability company and the conduct of
12 its business in any manner not inconsistent with law or the
13 articles of organization, including all amendments
14 thereto, or, in the case of a foreign limited liability
15 company, all documents that serve a like function under
16 the laws of the jurisdiction in which the foreign limited
17 liability company is organized. The term “operating
18 agreement” may include, without more, an agreement
19 between all the members to organize a limited liability
20 company pursuant to the provisions of this title.

21 (ac) “Other business entity” means a corporation,
22 limited partnership, general partnership, business trust,
23 real estate investment trust, or an unincorporated
24 association (other than a nonprofit association), but
25 excluding a domestic limited liability company and a
26 foreign limited liability company.

27 (ad) “Parent,” when used in relation to a specified
28 limited liability company, means a person who owns,
29 directly or indirectly, membership interests possessing
30 more than 50 percent of the voting power of the specified
31 limited liability company. When used in relation to a
32 specified corporation or limited partnership, the term
33 “parent” shall have the meanings set forth in Section 1200
34 and subdivision (v) of Section 15611, respectively.

35 (ae) “Person” means an individual, partnership,
36 limited partnership, trust, estate, association,
37 corporation, limited liability company, or other entity,
38 whether domestic or foreign.

39 (af) [RESERVED]

40 (ag) [RESERVED]



1 (ah) [RESERVED]

2 (ai) “Proxy,” unless otherwise provided in the
3 operating agreement, means a written authorization
4 signed or an electronic transmission authorized by a
5 member or the member’s attorney-in-fact giving another
6 person the power to exercise the voting rights of that
7 member. “Signed,” for the purpose of this section, means
8 the placing of the member’s name on the proxy (whether
9 by manual signature, typewriting, telegraphic or
10 electronic transmission, or otherwise) by the member or
11 member’s attorney-in-fact.

12 A proxy may be transmitted by an oral telephonic
13 transmission if it is submitted with information from
14 which it may be determined that the proxy was
15 authorized by the member, or by the member’s
16 attorney-in-fact.

17 (aj) “Return of capital,” unless otherwise provided in
18 the operating agreement, means any distribution to a
19 member to the extent that the member’s capital account,
20 immediately after the distribution, is less than the amount
21 of that member’s contributions to the limited liability
22 company as reduced by prior distributions that were a
23 return of capital.

24 (ak) “State” means a state, territory, or possession of
25 the United States, the District of Columbia, or the
26 Commonwealth of Puerto Rico.

27 (al) “Subsidiary of a specified limited liability
28 company” means a limited liability company or other
29 business entity in which shares, interests, or other
30 securities possessing more than 50 percent of the voting
31 power are owned by the specified limited liability
32 company.

33 (am) “Surviving limited liability company” means a
34 limited liability company into which one or more other
35 limited liability companies or other business entities are
36 merged.

37 (an) “Surviving other business entity” means an other
38 business entity into which one or more limited liability
39 companies are merged.



1 (ao) “Time a notice is given or sent,” unless otherwise
2 expressly provided, means the time a written notice is
3 deposited in the United States mails; is personally
4 delivered to the recipient, is delivered to a common
5 carrier for transmission, or is actually transmitted by the
6 person giving the notice by electronic means, to the
7 recipient; or the time any oral notice is communicated, in
8 person or by telephone, to the recipient or to a person at
9 the office of the recipient who the person giving the
10 notice has reason to believe will promptly communicate
11 it to the recipient.

12 (ap) “Transact intrastate business” means to enter
13 into repeated and successive transactions of business in
14 this state, other than in interstate or foreign commerce.

15 (1) Without excluding other activities which may not
16 be considered to be transacting intrastate business, a
17 foreign limited liability company shall not be considered
18 to be transacting intrastate business merely because its
19 subsidiary transacts intrastate business, or merely
20 because of its status as any one or more of the following:

21 (A) A shareholder of a domestic corporation.

22 (B) A shareholder of a foreign corporation transacting
23 intrastate business.

24 (C) A limited partner of a foreign limited partnership
25 transacting intrastate business.

26 (D) A limited partner of a domestic limited
27 partnership.

28 (E) A member or manager of a foreign limited liability
29 company transacting intrastate business.

30 (F) A member or manager of a domestic limited
31 liability company.

32 (2) Without excluding other activities which may not
33 be considered to be transacting intrastate business, a
34 foreign limited liability company shall not be considered
35 to be transacting intrastate business within the meaning
36 of this subdivision solely by reason of carrying on in this
37 state any one or more of the following activities:

38 (A) Maintaining or defending any action or suit or any
39 administrative or arbitration proceeding, or effecting the
40 settlement thereof or the settlement of claims or disputes.



1 (B) Holding meetings of its managers or members or
2 carrying on any other activities concerning its internal
3 affairs.

4 (C) Maintaining bank accounts.

5 (D) Maintaining offices or agencies for the transfer,
6 exchange, and registration of the foreign limited liability
7 company's securities or maintaining trustees or
8 depositaries with respect to those securities.

9 (E) Effecting sales through independent contractors.

10 (F) Soliciting or procuring orders, whether by mail or
11 through employees or agents or otherwise, where those
12 orders require acceptance without this state before
13 becoming binding contracts.

14 (G) Creating or acquiring evidences of debt or
15 mortgages, liens, or security interests in real or personal
16 property.

17 (H) Securing or collecting debts or enforcing
18 mortgages and security interests in property securing the
19 debts.

20 (I) Conducting an isolated transaction that is
21 completed within 180 days and not in the course of a
22 number of repeated transactions of a like nature.

23 (3) A person shall not be deemed to be transacting
24 intrastate business in this state merely because of its status
25 as a member or manager of a domestic limited liability
26 company or a foreign limited liability company registered
27 to transact intrastate business in this state.

28 (aq) "Vote" includes authorization by written
29 consent.

30 (ar) "Voting power" means the power to vote on any
31 matter at the time any determination of voting power is
32 made and does not include the right to vote upon the
33 happening of some condition or event which has not yet
34 occurred.

35 (as) "Withdrawal" includes the resignation or
36 retirement of a member as a member.

37 (at) "Written" or "in writing" includes facsimile and
38 telegraphic communication.

39 ~~SEC. 7. Section 17002 of the Corporations Code is~~
40 ~~amended to read:~~



1 ~~17002. Subject to any limitations contained in the~~
2 ~~articles of organization and compliance with any other~~
3 ~~applicable laws, a limited liability company may engage~~
4 ~~in any lawful business activity, except the banking or trust~~
5 ~~company business or the business of granting policies of~~
6 ~~insurance or assuming insurance risks.~~

7 ~~SEC. 8. Section 17005 of the Corporations Code is~~
8 ~~amended to read:~~

9 ~~17005. (a) Except as provided in subdivisions (b) and~~
10 ~~(c), relations among members and between the~~
11 ~~members and the limited liability company are governed~~
12 ~~by the articles of organization and operating agreement.~~
13 ~~To the extent the articles of organization or operating~~
14 ~~agreement do not otherwise provide, this title governs~~
15 ~~relations among the members and between the members~~
16 ~~and the limited liability company.~~

17 ~~(b) The effect of the provisions of this title may be~~
18 ~~varied as among the members or as between the~~
19 ~~members and the limited liability company by the articles~~
20 ~~of organization or operating agreement, provided,~~
21 ~~however, that the provisions of Sections 17059, 17103,~~
22 ~~17104, 17152, 17154, and 17155 may only be varied by the~~
23 ~~articles of organization or a written operating agreement.~~
24 ~~Notwithstanding the first sentence of this subdivision,~~
25 ~~neither the articles of organization nor the operating~~
26 ~~agreement may:~~

27 ~~(1) Vary the definitions in Section 17001, except as~~
28 ~~specifically provided therein.~~

29 ~~(2) Eliminate the right of a member pursuant to~~
30 ~~subdivision (c) of Section 17100 to assert that a provision~~
31 ~~in the operating agreement governing the termination of~~
32 ~~that member's interest and the return of that member's~~
33 ~~contribution was unreasonable under the circumstances~~
34 ~~existing at the time the agreement was made.~~

35 ~~(3) Vary the voting requirements or voting rights set~~
36 ~~forth in subdivisions (b) and (c) of Section 17103.~~

37 ~~(4) Vary a member's rights under Sections 17106 and~~
38 ~~17453.~~

39 ~~(c) The provisions of Chapter 2 (commencing with~~
40 ~~Section 17050), Chapter 8 (commencing with Section~~



1 17350), Chapter 10 (commencing with Section 17450),
2 Chapter 11 (commencing with Section 17500), Chapter
3 12 (commencing with Section 17550), and Chapter 13
4 (commencing with Section 17600) may be varied by the
5 articles of organization or by a written operating
6 agreement only to the extent expressly provided in those
7 chapters.

8 (d) The fiduciary duties of a manager to the limited
9 liability company and to the members of the limited
10 liability company may only be modified in a written
11 operating agreement with the informed consent of the
12 members.

13 (e) The presence in certain provisions of this title of
14 the words “unless otherwise provided in the articles of
15 organization or operating agreement” or words of similar
16 import does not imply that the effect of other provisions
17 may not be varied as among the members by the articles
18 of organization or operating agreement.

19 (f) If any provision of the articles of organization
20 conflicts with one or more provisions of a written
21 operating agreement, the articles of organization shall
22 control.

23 ~~SEC. 9.—~~

24 *SEC. 7.* Section 17051 of the Corporations Code is
25 amended to read:

26 17051. (a) The articles of organization shall set forth:

27 (1) The name of the limited liability company.

28 (2) The latest date on which the limited liability
29 company is to dissolve.

30 (3) The following statement:

31 The purpose of the limited liability company is to
32 engage in any lawful act or activity for which a limited
33 liability company may be organized under the
34 Beverly-Killea Limited Liability Company Act.

35 (4) [RESERVED]

36 (5) The name and address of the initial agent for
37 service of process on the limited liability company who
38 meets the qualifications specified in paragraph (1) of
39 subdivision (b) of Section 17061, unless a corporate agent



1 is designated, in which case only the name of the agent
2 shall be set forth.

3 (6) If the limited liability company is to be managed by
4 one or more managers and not by all its members, the
5 statement referred to in subdivision (b) of Section 17151.
6 If the limited liability company is to be managed by only
7 one manager, the articles of organization shall contain a
8 statement to that effect.

9 (b) It is not necessary to set out in the articles of
10 organization any of the powers of a limited liability
11 company enumerated in this title.

12 (c) The articles of organization may contain any other
13 provision not inconsistent with law, including, but not
14 limited to:

15 (1) A provision limiting or restricting the business in
16 which the limited liability company may engage or the
17 powers that the limited liability company may exercise or
18 both.

19 (2) Provisions governing the admission of members to
20 the limited liability company.

21 (3) Any events, other than or additional to the events
22 specified in subdivision (d) of Section 17350, that will
23 cause a dissolution of the limited liability company.

24 (4) A statement of whether there are limitations on
25 the authority of managers or members to bind the limited
26 liability company, and, if so, what the limitations are.

27 (5) The names of the managers of the limited liability
28 company.

29 (d) No limitation upon the business, purposes, or
30 powers of the limited liability company contained in or
31 implied by the articles of organization or the operating
32 agreement may be asserted by any person, except in one
33 of the following types of proceedings:

34 (1) In a proceeding by a member or the state to enjoin
35 the doing of unauthorized business by the limited liability
36 company or its managers or officers, if third parties have
37 not acquired rights thereby.

38 (2) In a proceeding to dissolve the limited liability
39 company.



1 (3) In a derivative proceeding by the limited liability
2 company or by a member suing on the company's behalf
3 against the officers or managers of the limited liability
4 company for violation of their authority. However, the
5 limitation may not be asserted if the person asserting the
6 limitation had actual knowledge of the limitation at the
7 time of the act or event complained of.

8 (e) The Secretary of State may cancel the filing of
9 articles of organization if a check or other remittance
10 accepted in payment of the filing fee is not paid upon
11 presentation. Upon receiving written notification that
12 the item presented for payment has not been honored for
13 payment, the Secretary of State shall give a first written
14 notice of the applicability of this section to the agent for
15 service of process or to the person submitting the
16 instrument. Thereafter, if the amount has not been paid
17 by cashier's check or equivalent, the Secretary of State
18 shall give a second written notice of cancellation and the
19 cancellation shall be effective at that time. The second
20 notice shall be given 20 days or more after the first notice
21 and 90 days or less after the original filing.

22 ~~SEC. 10.—~~

23 *SEC. 8.* Section 17052 of the Corporations Code is
24 amended to read:

25 17052. The name of each limited liability company as
26 set forth in its articles of organization:

27 (a) Shall contain either the words "limited liability
28 company" or the abbreviation "LLC" or "L.L.C." as the
29 last words in the name of the limited liability company.
30 The words "limited" and "company" may be abbreviated
31 to "Ltd." and "Co.," respectively.

32 (b) May contain the name of one or more members.

33 (c) Shall not be a name that the Secretary of State
34 determines is likely to mislead the public and shall not be
35 the same as, or resemble so closely as to tend to deceive,
36 (1) the name of any limited liability company that has
37 filed articles of organization pursuant to Section 17050,
38 (2) the name of any foreign limited liability company
39 registered to do business in this state pursuant to Section
40 17451, or (3) any name that is under reservation for



1 another domestic limited liability company or foreign
2 limited liability company pursuant to Section 17053.
3 However, a limited liability company may adopt a name
4 that is substantially the same as that of an existing
5 domestic limited liability company or foreign limited
6 liability company that is registered pursuant to Section
7 17451 upon proof of consent by that domestic limited
8 liability company or foreign limited liability company and
9 a finding by the Secretary of State that, under the
10 circumstances, the public is not likely to be misled.

11 (d) Shall not contain the words “bank,” “*insurance*,”
12 “trust,” “trustee,” “incorporated,” “inc.,” “corporation,”
13 or “corp.”

14 (e) The use by a limited liability company or a foreign
15 limited liability company of a name in violation of this
16 section may be enjoined, notwithstanding the filing of its
17 articles of organization or its registration with the
18 Secretary of State.

19 ~~SEC. 11.~~

20 *SEC. 9.* Section 17054 of the Corporations Code is
21 amended to read:

22 17054. (a) Subject to subdivision (b) of Section 17103,
23 the articles of organization may be amended at any time
24 and in any manner as the members may determine, as
25 long as the articles of organization as amended contain
26 only those provisions as it would be lawful to insert in
27 original articles of organization filed at the time of the
28 filing of the amendment. The articles of organization may
29 be amended regardless of whether any provision
30 contained in the amendment was permissible at the time
31 of the original organization of the limited liability
32 company.

33 (b) The articles of organization shall be amended by
34 filing a certificate of amendment thereto duly executed
35 by at least one manager, unless a greater number is
36 provided in the articles of organization. The certificate of
37 amendment shall be filed with, and on a form prescribed
38 by, the Secretary of State, and shall set forth all of the
39 following:



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

3 (2) The text of the amendment to the articles of
4 organization.

5 (c) A certificate of amendment to the articles of
6 organization shall be filed to effect any of the following:

7 (1) A change in the name of the limited liability
8 company.

9 (2) Any change in the statement referred to in
10 subdivision (b) of Section 17151.

11 (3) Any change in the time as stated in the articles of
12 organization for the dissolution of the limited liability
13 company.

14 (4) Any change in the events that will cause a
15 dissolution of the limited liability company.

16 (d) The managers shall cause to be filed a certificate
17 of amendment to the articles of organization within 30
18 days of the discovery by any of the managers of any false
19 or erroneous material statement contained in the articles
20 of organization or any amendment thereto.

21 (e) Any manager who executes a certificate of
22 amendment shall be liable for any statement materially
23 inconsistent with the operating agreement or any
24 material misstatement of fact contained in the certificate
25 of amendment if the manager knew or should have
26 known that the statement was false when made or that
27 the statement became false and an amendment required
28 by subdivision (d) was not filed, and the person suffering
29 the loss relied on the statement or misstatement.

30 (f) Articles of organization may be restated at any
31 time. Restated articles of organization shall be filed with,
32 and on a form prescribed by, the Secretary of State, shall
33 be specifically designated as restated in the heading, shall
34 set forth the limited liability company's name and the
35 Secretary of State's file number, may set forth the name
36 and address of the agent for service of process required
37 to be maintained by Section 17057, unless a corporate
38 agent is designated, in which case only the name of the
39 agent shall be set forth, shall set forth all the other matters
40 required by Section 17051 to be set forth in the articles of



1 organization, and may set forth any other matters that
2 may be set forth as authorized by Section 17051. If
3 restated articles of organization include the agent for
4 service of process, any previously filed statements
5 pursuant to Section 17060 are superseded as to the agent
6 for service of process until another statement pursuant to
7 Section 17060 is filed subsequent to the filing of the
8 restated articles of organization. If the name of the
9 limited liability company is to be changed by the filing of
10 the restated articles of organization, the old name shall
11 also be set forth in the heading in a manner to indicate the
12 intent to change the name.

13 ~~SEC. 12.—~~

14 *SEC. 10.* Section 17061 of the Corporations Code is
15 amended to read:

16 17061. (a) In addition to Chapter 4 (commencing
17 with Section 413.10) of Title 5 of Part 2 of the Code of Civil
18 Procedure, process may be served upon limited liability
19 companies and foreign limited liability companies as
20 provided in this section.

21 (b) Personal service of a copy of any process against
22 the limited liability company or the foreign limited
23 liability company by delivery (1) to any individual
24 designated by it as agent, or (2) if the designated agent
25 is a corporation, to any person named in the latest
26 certificate of the corporate agent filed pursuant to
27 Section 1505 at the office of the corporate agent, shall
28 constitute valid service on the limited liability company
29 or the foreign limited liability company. No change in the
30 address of the agent for service of process or appointment
31 of a new agent for service of process shall be effective
32 until an amendment to the statement described in
33 Section 17060 is filed. In the case of a foreign limited
34 liability company that has appointed the Secretary of
35 State as agent for service of process by reason of
36 subdivision (d) of Section 17456, process shall be
37 delivered by hand to the Secretary of State, or to any
38 person employed in the capacity of assistant or deputy,
39 and shall include one copy of the process for each
40 defendant to be served, together with a copy of the court



1 order authorizing the service and the fee therefor. The
2 order shall set forth the address to which the process shall
3 be sent by the Secretary of State.

4 (c) (1) If an agent for service of process has resigned
5 and has not been replaced or if the designated agent
6 cannot with reasonable diligence be found at the address
7 designated for personal delivery of the process, and it is
8 shown by affidavit to the satisfaction of the court that
9 process against a limited liability company or foreign
10 limited liability company cannot be served with
11 reasonable diligence upon the designated agent by hand
12 in the manner provided in Section 415.10, subdivision (a)
13 of Section 415.20, or subdivision (a) of Section 415.30 of
14 the Code of Civil Procedure, the court may make an
15 order that the service shall be made upon a domestic
16 limited liability company or upon a registered foreign
17 limited liability company by delivering by hand to the
18 Secretary of State, or to any person employed in the
19 Secretary of State's office in the capacity of assistant or
20 deputy, one copy of the process for each defendant to be
21 served, together with a copy of the order authorizing the
22 service. Service in this manner shall be deemed complete
23 on the 10th day after delivery of the process to the
24 Secretary of State.

25 (2) Upon receipt of the copy of process and the fee
26 therefor, the Secretary of State shall give notice of the
27 service of the process to the limited liability company or
28 foreign limited liability company, at its principal
29 executive office, by forwarding to that office, by
30 registered mail with request for return receipt, the copy
31 of the process.

32 (3) The Secretary of State shall keep a record of all
33 process served upon the Secretary of State under this title
34 and shall record therein the time of service and the action
35 taken by the Secretary of State. A certificate under the
36 Secretary of State's official seal, certifying to the receipt
37 of process, the giving of notice to the limited liability
38 company or foreign limited liability company, and the
39 forwarding of the process pursuant to this section, shall be



1 competent and prima facie evidence of the service of
2 process.

3 (d) (1) The articles of organization of a limited
4 liability company and the application for registration of
5 a foreign limited liability company shall designate, as the
6 agent for service of process, an individual residing in this
7 state or a corporation that has complied with Section 1505
8 and whose capacity to act as an agent has not terminated.
9 If an individual is designated, the statement shall set forth
10 that person's complete business or residence address in
11 this state.

12 (2) An agent designated for service of process may file
13 with the Secretary of State a signed and acknowledged
14 written statement of resignation as an agent. Upon filing
15 of the statement of resignation, the authority of the agent
16 to act in that capacity shall cease and the Secretary of
17 State shall give written notice of the filing of the
18 statement of resignation by mail to the limited liability
19 company or foreign limited liability company addressed
20 to its principal executive office.

21 (3) If an individual who has been designated agent for
22 service of process dies or resigns or no longer resides in
23 the state, or if the corporate agent for that purpose
24 resigns, dissolves, withdraws from the state, forfeits its
25 right to transact intrastate business, has its corporate
26 rights, powers, and privileges suspended, or ceases to
27 exist, the limited liability company or foreign limited
28 liability company shall promptly file an initial or
29 amended statement described in Section 17060
30 designating a new agent.

31 (e) In addition to any other discovery rights that may
32 exist, in any case pending in a California court in which
33 a party seeks records from a limited liability company
34 formed under this title, whether or not the limited
35 liability company is a party, the court may order the
36 production in California of the books and records of the
37 limited liability company on those terms and conditions
38 that the court deems appropriate.

39 (f) A member may, in a written operating agreement
40 or other writing, consent to be subject to the nonexclusive



1 jurisdiction of the courts of a specified jurisdiction, or the
2 exclusive jurisdiction of the courts of this state.

3 (g) If a member desires to use the arbitration process,
4 that member may, in a written operating agreement or
5 other writing, consent to be nonexclusively subject to
6 arbitration in a specified state, or to be exclusively subject
7 to arbitration in this state.

8 (h) Along with the consent to the jurisdiction of courts
9 or to be subject to arbitration as provided in subdivisions
10 (f) and (g), a member may consent to be served with
11 legal process in the manner prescribed in a written
12 operating agreement or other writing.

13 ~~SEC. 13.—~~

14 *SEC. 11.* Section 17100 of the Corporations Code is
15 amended to read:

16 17100. (a) After formation of a limited liability
17 company, a person may become a member:

18 (1) In the case of a person acquiring a membership
19 interest directly from the limited liability company, at the
20 time provided in and upon compliance with the articles
21 of organization or the operating agreement or, if the
22 articles of organization or operating agreement do not so
23 provide, only upon the vote of a majority in interest of the
24 members, excluding the vote of the person acquiring the
25 membership interest, and only when the person becomes
26 a party to the operating agreement.

27 (2) In the case of an assignee of a membership interest,
28 upon compliance with subdivision (a) of Section 17303
29 and at the time provided in and upon compliance with
30 the articles of organization or the operating agreement
31 or, if the articles of organization or operating agreement
32 do not so provide, when the assignee becomes a party to
33 the operating agreement.

34 (b) In each case under subdivision (a), the person
35 acquiring the membership interest shall be added as a
36 member to the list required by paragraph (1) of
37 subdivision (a) of Section 17058.

38 (c) The operating agreement may provide for the
39 termination in whole or in part of the membership
40 interest or economic interest of a member in the limited



1 liability company. If a member's economic interest in the
2 limited liability company is terminated pursuant to the
3 operating agreement, the member may demand and
4 shall be entitled to receive a return of that member's
5 contribution. Any provision in an operating agreement
6 governing the termination of a member's interest and the
7 return of a member's contribution shall be enforceable in
8 accordance with its terms unless the member seeking to
9 invalidate the provision establishes that the provision was
10 unreasonable under the circumstances existing at the
11 time the agreement was made. Upon any termination of
12 a membership interest, the list required by paragraph (1)
13 of subdivision (a) of Section 17058 shall be amended
14 accordingly.

15 ~~SEC. 14.—~~

16 *SEC. 12.* Section 17101 of the Corporations Code is
17 amended to read:

18 17101. (a) Except as otherwise provided in Section
19 17254 or in subdivision (e), no member of a limited
20 liability company shall be personally liable under any
21 judgment of a court, or in any other manner, for any debt,
22 obligation, or liability of the limited liability company,
23 whether that liability or obligation arises in contract, tort,
24 or otherwise, solely by reason of being a member of the
25 limited liability company.

26 (b) A member of a limited liability company shall be
27 personally liable under a judgment of a court or for any
28 debt, obligation, or liability of the limited liability
29 company, whether that liability or obligation arises in
30 contract, tort, or otherwise, under the same or similar
31 circumstances and to the same extent as a shareholder of
32 a corporation may be personally liable for any debt,
33 obligation, or liability of the corporation; except that the
34 failure to hold meetings of members or managers or the
35 failure to observe formalities pertaining to the calling or
36 conduct of meetings shall not be considered a factor
37 tending to establish that the members have personal
38 liability for any debt, obligation, or liability of the limited
39 liability company where the articles of organization or



1 operating agreement do not expressly require the
2 holding of meetings of members or managers.

3 (c) Nothing in this section shall be construed to affect
4 the liability of a member of a limited liability company (1)
5 to third parties for the member's participation in tortious
6 conduct, or (2) pursuant to the terms of a written
7 guarantee or other contractual obligation entered into by
8 the member, other than an operating agreement.

9 (d) A limited liability company or foreign limited
10 liability company shall carry insurance or provide an
11 undertaking to the same extent and in the same amount
12 as is required by any law, rule, or regulation of this state
13 that would be applicable to the limited liability company
14 or foreign limited liability company were it a corporation
15 organized and existing or duly qualified for the
16 transaction of intrastate business under the General
17 Corporation Law.

18 (e) Notwithstanding subdivision (a), a member of a
19 limited liability company may agree to be obligated
20 personally for any or all of the debts, obligations, and
21 liabilities of the limited liability company as long as the
22 agreement to be so obligated is set forth in the articles of
23 organization or in a written operating agreement that
24 specifically references this subdivision.

25 ~~SEC. 15.—~~

26 *SEC. 13.* Section 17103 of the Corporations Code is
27 amended to read:

28 17103. (a) The articles of organization or a written
29 operating agreement may provide to all or certain
30 identified members or a specified class or group of
31 members the right to vote separately or with all or any
32 class or group of members on any matter. Voting by
33 members may be on a per capita, number, financial
34 interest, class, group, or any other basis. If no voting
35 provision is contained in the articles of organization or
36 written operating agreement:

37 (1) The members of a limited liability company shall
38 vote in proportion to their interests in current profits of
39 the limited liability company or, in the case of a member
40 who has assigned his or her or its entire economic interest



1 in the limited liability company to a person who has not
2 been admitted as a member, in proportion to the interest
3 in current profits that the assigning member would have,
4 had the assignment not been made.

5 (2) The following matters shall require the unanimous
6 vote of all members:

7 (A) A decision to continue the business of the limited
8 liability company after dissolution of the limited liability
9 company pursuant to Section 17350.

10 (B) Any amendment of the articles of organization or
11 operating agreement.

12 (3) In all other matters in which a vote is required, a
13 vote of a majority in interest of the members shall be
14 sufficient.

15 (b) Notwithstanding any provision to the contrary in
16 the articles of organization or operating agreement, in no
17 event shall the articles of organization be amended by a
18 vote of less than a majority in interest of the members.

19 (c) Notwithstanding any provision to the contrary in
20 the articles of organization or operating agreement,
21 members shall have the right to vote on a dissolution of
22 the limited liability company as provided in subdivision
23 (c) of Section 17350 and on a merger of the limited
24 liability company as provided in Section 17551.

25 ~~SEC. 16.—~~

26 *SEC. 14.* Section 17154 of the Corporations Code is
27 amended to read:

28 17154. (a) A written operating agreement may
29 provide for the appointment of officers, including,
30 without limitation, a chairperson or a president, or both,
31 a secretary, a chief financial officer, and any other officers
32 with such titles, powers, and duties as shall be specified in
33 the articles of organization or operating agreement, or
34 determined by the managers or members. An officer
35 may, but need not, be a member or manager of the
36 limited liability company, and any number of offices may
37 be held by the same person.

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



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

9 (c) Subject to the provisions of subdivision (d) of
10 Section 17051, any note, mortgage, evidence of
11 indebtedness, contract, certificate, statement,
12 conveyance, or other instrument in writing, and any
13 assignment or endorsement thereof, executed or entered
14 into between any limited liability company and any other
15 person, when signed by the chairperson of the board, the
16 president or any vice president and any secretary, any
17 assistant secretary, the chief financial officer, or any
18 assistant treasurer of the limited liability company, is not
19 invalidated as to the limited liability company by any lack
20 of authority of the signing officers in the absence of actual
21 knowledge on the part of the other person that the
22 signing officers had no authority to execute the same.

23 ~~SEC. 17.—~~

24 *SEC. 15.* Section 17158 of the Corporations Code is
25 amended to read:

26 17158. (a) No person who is a manager or officer or
27 both a manager and officer of a limited liability company
28 shall be personally liable under any judgment of a court,
29 or in any other manner, for any debt, obligation, or
30 liability of the limited liability company, whether that
31 liability or obligation arises in contract, tort, or otherwise,
32 solely by reason of being a manager or officer or both a
33 manager and officer of the limited liability company.

34 (b) Notwithstanding subdivision (a), a manager of a
35 limited liability company may agree to be obligated
36 personally for any or all of the debts, obligations, and
37 liabilities of the limited liability company as follows:

38 (1) If the agreement to be so liable is set forth in the
39 articles of organization or in a written operating
40 agreement that specifically references this subdivision.



1 (2) Pursuant to the terms of a written guarantee or
2 other contractual obligation entered into by the
3 manager, other than an operating agreement.

4 ~~SEC. 18.~~

5 *SEC. 16.* Section 17201 of the Corporations Code is
6 amended to read:

7 17201. (a) (1) Subject to the terms of the articles of
8 organization or the operating agreement, a member is
9 not excused from an obligation to the limited liability
10 company to perform any promise to contribute cash or
11 property or to perform services because of death,
12 disability, dissolution, or any other reason.

13 (2) If a member does not make the required
14 contribution of property or services, that member is
15 obligated, at the option of the limited liability company,
16 to contribute cash equal to that portion of the fair market
17 value (or agreed value if stated in writing and signed by
18 the limited liability company and the member) of the
19 contribution that has not been made. The foregoing
20 option shall be in addition to, and not in lieu of, any other
21 rights, including the right to specific performance, that
22 the limited liability company may have against the
23 member under the articles of organization, operating
24 agreement, or applicable law.

25 (3) An operating agreement may provide that the
26 interest of a member who fails to make any contribution
27 or other payment that the member is required to make
28 will be subject to specific remedies for, or specific
29 consequences of, the failure. ~~Any such~~ A provision shall
30 be enforceable in accordance with its terms unless the
31 member seeking to invalidate the provision establishes
32 that the provision was unreasonable under the
33 circumstances existing at the time the agreement was
34 made. The specific remedies or consequences may
35 include loss of voting, approval, or other rights, loss of the
36 member's ability to actively participate in the
37 management and operations of the limited liability
38 company, liquidated damages, or a reduction of the
39 defaulting member's economic rights. The reduction of



1 the defaulting member's economic rights may include
2 one or more of the following provisions:

3 (A) Diluting, reducing, or eliminating the defaulting
4 member's proportionate interest in the limited liability
5 company.

6 (B) Subordinating the defaulting member's interest in
7 the limited liability company to that of nondefaulting
8 members.

9 (C) Permitting a forced sale of the membership
10 interest.

11 (D) Permitting the lending or contribution by other
12 members of the amount necessary to meet the defaulting
13 member's commitment.

14 (E) Adjusting the interest rates or other rates of
15 return, preferred, priority, or otherwise, with respect to
16 contributions by or capital accounts of the other
17 members.

18 (F) Fixing the value of the defaulting member's
19 interest in the limited liability company by appraisal,
20 formula and redemption, or sale of the defaulting
21 member's interest in the limited liability company at a
22 percentage of that value.

23 (b) (1) Unless otherwise provided in the articles of
24 organization or the operating agreement, the obligation
25 of a member to make a contribution or return money or
26 property paid or distributed in violation of this section
27 may be compromised only by the unanimous vote of the
28 members.

29 (2) Notwithstanding the compromise of an obligation
30 referred to in paragraph (1), a person whose claim
31 against a limited liability company arises before the
32 receipt of notice of the compromise may enforce the
33 original obligation of a member to make a contribution to
34 the limited liability company or to return a distribution
35 if the person had knowledge of the original obligation
36 prior to the time the claim arose and if the compromise
37 occurred after the time the claim arose. Any other person
38 with a claim against a limited liability company may
39 enforce only the existing obligation of a member to make
40 a contribution to the limited liability company or to



1 return to the limited liability company money or other
2 property paid or distributed.

3 (c) A person with a claim against a limited liability
4 company may not enforce a conditional obligation of a
5 member unless the conditions have been satisfied or
6 waived. Conditional obligations include, without
7 limitation, a capital contribution payable upon a
8 discretionary call of the limited liability company prior to
9 the time the call occurs.

10 (d) Nothing in this section shall be construed to affect
11 the rights of third-party creditors of the limited liability
12 company to seek equitable remedies nor any rights
13 existing under the Uniform Fraudulent Transfer Act
14 (Chapter 1 (commencing with Section 3439) of Title 2 of
15 Part 2 of Division 4 of the Civil Code).

16 ~~SEC. 19.—~~

17 *SEC. 17.* Section 17250 of the Corporations Code is
18 amended to read:

19 17250. Distributions of the money or property of a
20 limited liability company shall be made to the members
21 and to any classes of members in the manner provided in
22 the operating agreement. If the operating agreement
23 does not otherwise provide, distributions that are a return
24 of capital shall be made in proportion to the contributions
25 made by each member and distributions that are not a
26 return of capital shall be made in proportion to the
27 allocation of profits.

28 Subject to Sections 17254 and 17353, at the time a
29 member becomes entitled to receive a distribution, the
30 member has the status of, and is entitled to all remedies
31 available to, a creditor of the limited liability company
32 with respect to the distribution. An operating agreement
33 may provide for the establishment of a record date with
34 respect to the sharing of profits and distributions from a
35 limited liability company.

36 ~~SEC. 20.—~~

37 *SEC. 18.* Section 17251 of the Corporations Code is
38 amended to read:

39 17251. Except as provided in this section, a member
40 is entitled to receive distributions from a limited liability



1 company before the withdrawal of that member from the
2 company and before the dissolution and winding up of
3 the company, subject to the limitations contained in
4 Section 17254, to the extent and at the times or upon the
5 happening of the events specified in the operating
6 agreement.

7 ~~SEC. 21.~~

8 *SEC. 19.* Section 17254 of the Corporations Code is
9 amended to read:

10 17254. (a) No distribution shall be made if, after
11 giving effect to the distribution, either of the following
12 occurs:

13 (1) The limited liability company would not be able to
14 pay its debts as they become due in the usual course of
15 business.

16 (2) The limited liability company's total assets would
17 be less than the sum of its total liabilities plus, unless the
18 operating agreement provides otherwise, the amount
19 that would be needed, if the limited liability company
20 were to be dissolved at the time of the distribution, to
21 satisfy the preferential rights of other members upon
22 dissolution that are superior to the rights of the member
23 receiving the distribution.

24 (b) The limited liability company may base a
25 determination that a distribution is not prohibited under
26 subdivision (a) on any of the following:

27 (1) Financial statements prepared on the basis of
28 accounting practices and principles that are reasonable in
29 the circumstances.

30 (2) A fair valuation.

31 (3) Any other method that is reasonable in the
32 circumstances.

33 (c) Except as provided in subdivision (e), the effect of
34 a distribution under subdivision (a) is measured as of (1)
35 the date the distribution is authorized if the payment
36 occurs within 120 days after the date of authorization, or

37 (2) the date payment is made if it occurs more than 120
38 days after the date of authorization.

39 (d) (1) If terms of the indebtedness provide that
40 payment of principal and interest is to be made only if,



1 and to the extent that, payment of a distribution to
2 members could then be made under this section,
3 indebtedness of a limited liability company, including
4 indebtedness issued as a distribution, is not a liability for
5 purposes of determinations made under subdivision (b).

6 (2) If the indebtedness is issued as a distribution, each
7 payment of principal or interest on the indebtedness is
8 treated as a distribution, the effect of which is measured
9 on the date the payment is actually made.

10 (e) A member or assignee of a member is obligated to
11 return a distribution from a limited liability company to
12 the extent that (1) the member or assignee had actual
13 knowledge of facts indicating the impropriety of the
14 distribution, and (2) immediately after giving effect to
15 the distribution, and notwithstanding the compromise of
16 an obligation referred to in subdivision (b) of Section
17 17201, all liabilities of the limited liability company, other
18 than liabilities to members or assignees on account of
19 their interest in the limited liability company and
20 liabilities as to which recourse of creditors is limited to
21 specified property of the limited liability company,
22 exceed the fair market value of the limited liability
23 company's assets, provided that the fair market value of
24 any property that is subject to a liability as to which
25 recourse of creditors is so limited shall be included in the
26 limited liability company assets only to the extent that the
27 fair market value of the property exceeds this liability.

28 (f) A cause of action with respect to an obligation to
29 return a distribution pursuant to subdivision (e) is
30 extinguished unless the action is brought within four
31 years after the distribution is made.

32 ~~SEC. 22.—~~

33 *SEC. 20.* Section 17301 of the Corporations Code is
34 amended to read:

35 17301. (a) Except as provided in the articles of
36 organization or the operating agreement:

37 (1) A membership interest or an economic interest is
38 assignable in whole or in part, provided, however, that no
39 membership interest may be assigned without the
40 consent of a majority in interest of the members not



1 transferring their interests, as required pursuant to
2 Section 17303.

3 (2) An assignment of an economic interest does not of
4 itself dissolve the limited liability company or, other than
5 as set forth in the articles of organization or operating
6 agreement, entitle the assignee to vote or participate in
7 the management and affairs of the limited liability
8 company or to become or exercise any rights of a
9 member.

10 (3) An assignment of an economic interest merely
11 entitles the assignee to receive, to the extent assigned, the
12 distributions and the allocations of income, gains, losses,
13 deductions, credit, or similar items to which the assignor
14 would be entitled.

15 (4) Upon the assignment of all or part of an economic
16 interest, the assignor shall provide the manager or
17 member of the limited liability company responsible for
18 maintaining its books and records with the name and
19 address of the assignee, together with details of the
20 interest assigned. Upon receipt of that notice, the limited
21 liability company shall amend the list required by
22 paragraph (1) of subdivision (a) of Section 17058
23 accordingly. Until the assignee of that interest becomes
24 a member, the assignor continues to be a member and to
25 have the power to exercise any rights and powers of a
26 member, including the right to vote which, in the case of
27 a member who has assigned his or her or its entire
28 economic interest in the limited liability company, shall
29 include the right to vote in proportion to the interest in
30 current profits that the assigning member would have,
31 had the assignment not been made.

32 (b) Except to the extent assumed by agreement, until
33 an assignee of an economic interest in a limited liability
34 company becomes a member, the assignee shall have no
35 liability to the limited liability company under Chapter 5
36 (commencing with Section 17200) and Chapter 6
37 (commencing with Section 17250) solely as a result of the
38 assignment. The assignor of a membership interest is not
39 released from liability as a member solely as a result of the
40 assignment.



1 (c) The pledge of, or granting of, a security interest,
2 lien, or other encumbrance in or against any or all of the
3 membership interest of a member shall not cause the
4 member to cease to be a member or to grant to anyone
5 else the power to exercise any rights or powers of a
6 member.

7 ~~SEC. 23.—~~

8 *SEC. 21.* Section 17303 of the Corporations Code is
9 amended to read:

10 17303. (a) Except as otherwise provided in the
11 articles of organization or the operating agreement, an
12 assignee of an interest in a limited liability company may
13 become a member only if a majority in interest of the
14 other members vote in favor of the assignee's admission
15 to the limited liability company as a member.

16 (b) An assignee who has become a member has, to the
17 extent assigned, the rights and powers, and is subject to
18 the restrictions and liabilities, of a member under the
19 articles of organization, any operating agreement, and
20 this title. An assignee who becomes a member also is liable
21 for the obligations of the assignor to make contributions
22 as provided in Chapter 5 (commencing with Section
23 17200), and to return any unlawful distributions made to
24 the assignee under Chapter 6 (commencing with Section
25 17250) or Chapter 8 (commencing with Section 17350).
26 However, the assignee is not obligated for liabilities
27 unknown to the assignee at the time the assignee became
28 a member and that could not be ascertained from the
29 articles of organization or operating agreement.

30 (c) Whether or not an assignee of a membership
31 interest becomes a member, the assignor is not released
32 from the assignor's liability to the limited liability
33 company under Chapter 5 (commencing with Section
34 17200) and Chapter 6 (commencing with Section 17250).

35 ~~SEC. 24.—~~

36 *SEC. 22.* Section 17350 of the Corporations Code is
37 amended to read:

38 17350. A limited liability company shall be dissolved
39 and its affairs shall be wound up upon the happening of
40 the first to occur of the following:



- 1 (a) At the time specified in the articles of organization.
- 2 (b) Upon the happening of events specified in the
- 3 articles of organization or a written operating agreement.
- 4 (c) By the vote of a majority in interest of the
- 5 members, or a greater percentage of the voting interests
- 6 of members as may be specified in the articles of
- 7 organization or a written operating agreement.
- 8 (d) Except as otherwise provided in the articles of
- 9 organization or a written operating agreement, upon the
- 10 death, insanity, withdrawal, expulsion, bankruptcy, or
- 11 dissolution of a member, unless the business of the limited
- 12 liability company is continued by a vote of all of the
- 13 remaining members within 90 days of the happening of
- 14 that event.
- 15 (e) Entry of a decree of judicial dissolution pursuant to
- 16 Section 17351.

17 ~~SEC. 25.~~

18 *SEC. 23.* Section 17352 of the Corporations Code is

19 amended to read:

20 17352. In the event of a dissolution of a limited liability

21 company:

- 22 (a) The managers who have not wrongfully dissolved
- 23 the limited liability company or, if none, the members
- 24 may wind up the limited liability company's affairs, unless
- 25 the dissolution occurs pursuant to subdivision (e) of
- 26 Section 17350, in which event the winding up shall be
- 27 conducted in accordance with the decree of dissolution.
- 28 The persons winding up the affairs of the limited liability
- 29 company shall give written notice of the commencement
- 30 of winding up by mail to all known creditors and
- 31 claimants whose addresses appear on the records of the
- 32 limited liability company.

- 33 (b) Upon the petition of any manager or of any
- 34 member or members, or three or more creditors, a court
- 35 of competent jurisdiction may enter a decree ordering
- 36 the winding up of the limited liability company if that
- 37 appears necessary for the protection of any parties in
- 38 interest. The decree shall designate the managers or
- 39 members who are to wind up the limited liability
- 40 company's affairs.



1 (c) Except as otherwise provided in the articles of
2 organization or a written operating agreement, the
3 managers or members winding up the affairs of the
4 limited liability company pursuant to this section shall be
5 entitled to reasonable compensation.

6 ~~SEC. 26.—~~

7 *SEC. 24.* Section 17450 of the Corporations Code is
8 amended to read:

9 17450. Subject to the provisions of Section 17453:

10 (a) The laws of the state or foreign country under
11 which a foreign limited liability company is organized
12 shall govern its organization and internal affairs and the
13 liability and authority of its managers and members.

14 (b) A foreign limited liability company may not be
15 denied registration by reason of any difference between
16 those laws and the laws of this state.

17 ~~SEC. 27.~~ Section 17456 of the Corporations Code is
18 amended to read:

19 ~~17456.~~ (a) ~~A foreign limited liability company~~
20 ~~transacting intrastate business in this state shall not~~
21 ~~maintain any action, suit, or proceeding in any court of~~
22 ~~this state until it has registered in this state.~~

23 (b) ~~Any foreign limited liability company that~~
24 ~~transacts intrastate business in this state without~~
25 ~~registration is subject to a penalty of twenty dollars (\$20)~~
26 ~~for each day that unauthorized intrastate business is~~
27 ~~transacted, up to a maximum of ten thousand dollars~~
28 ~~(\$10,000). An action to recover this penalty may be~~
29 ~~brought, and any recovery shall be paid, as provided in~~
30 ~~Section 2258.~~

31 (c) ~~A member of a foreign limited liability company is~~
32 ~~not liable for the debts, obligations, and liabilities of the~~
33 ~~foreign limited liability company solely by reason of its~~
34 ~~having transacted business in this state without~~
35 ~~registration.~~

36 (d) ~~A foreign limited liability company, transacting~~
37 ~~business in this state without registration, appoints the~~
38 ~~Secretary of State as its agent for service of process with~~
39 ~~respect to causes of action arising out of the transaction~~
40 ~~of business in this state.~~



1 ~~SEC. 28.—~~

2 *SEC. 25.* Section 17701 of the Corporations Code is
3 amended to read:

4 17701. (a) The fee for issuing a certificate of
5 reservation of limited liability company name is ten
6 dollars (\$10).

7 (b) The fee for filing articles of organization of a
8 limited liability company is eighty dollars (\$80).

9 (c) The fee for filing an application for registration as
10 a foreign limited liability company is eighty dollars (\$80).

11 (d) The fee for filing a certificate of amendment to the
12 articles of organization of a limited liability company is
13 thirty dollars (\$30).

14 (e) The fee for filing restated articles of organization
15 of a limited liability company is thirty dollars (\$30).

16 (f) The fee for filing an amendment to the application
17 for registration as a foreign limited liability company is
18 thirty dollars (\$30).

19 (g) The fee for filing a certificate of correction for a
20 limited liability company pursuant to Section 17055 is
21 thirty dollars (\$30).

22 (h) The fee for filing a certificate of continuation for
23 a limited liability company after a certificate of
24 dissolution has been filed is thirty dollars (\$30).

25 (i) For purposes of the merger of a limited liability
26 company solely with one or more other limited liability
27 companies (not including the merger of one or more
28 limited liability companies with one or more other
29 business entities), the fee for filing a certificate of merger
30 pursuant to Section 17552 is eighty dollars (\$80) for each
31 merger transaction, regardless of the number of
32 constituent limited liability companies.

33 (j) For purposes of the merger of one or more limited
34 liability companies with one or more other business
35 entities, the fee for filing all merger documents required
36 by the Corporations Code is one hundred fifty dollars
37 (\$150) for any or all of the filings for each merger
38 transaction, regardless of the number of constituent
39 limited liability companies and constituent other business
40 entities.



1 (k) The fee for filing the annual or current statement
2 of information of a limited liability company or of a
3 foreign limited liability company pursuant to Section
4 17060 is five dollars (\$5).

5 (l) There is no fee for filing a certificate of dissolution
6 or a certificate of cancellation of articles of organization
7 for purposes of the dissolution of a limited liability
8 company.

9 (m) There is no fee for filing a certificate of
10 cancellation for purposes of the cancellation of
11 registration of a foreign limited liability company.

12 (n) Unless another fee is specified by law or the law
13 specifies that no fee is to be charged, the fee for filing any
14 instrument by or on behalf of a limited liability company
15 is thirty dollars (\$30).

16 (o) The fee for issuing any certificate of the Secretary
17 of State's office, including a certificate of good standing,
18 is six dollars (\$6).

19 ~~SEC. 29.—~~

20 *SEC. 26.* Section 25102 of the Corporations Code is
21 amended to read:

22 25102. The following transactions are exempt from
23 the provisions of Section 25110:

24 (a) Any offer (but not a sale) not involving any public
25 offering and the execution and delivery of any agreement
26 for the sale of securities pursuant to the offer if (1) the
27 agreement contains substantially the following provision:
28 "The sale of the securities which are the subject of this
29 agreement has not been qualified with the Commissioner
30 of Corporations of the State of California and the issuance
31 of the securities or the payment or receipt of any part of
32 the consideration therefor prior to the qualification is
33 unlawful, unless the sale of securities is exempt from the
34 qualification by Section 25100, 25102, or 25105 of the
35 California Corporations Code. The rights of all parties to
36 this agreement are expressly conditioned upon the
37 qualification being obtained, unless the sale is so exempt";
38 and (2) no part of the purchase price is paid or received
39 and none of the securities are issued until the sale of the
40 securities is qualified under this law unless the sale of



1 securities is exempt from the qualification by this section,
2 Section 25100 or 25105.

3 (b) Any offer (but not a sale) of a security for which
4 a registration statement has been filed under the
5 Securities Act of 1933 but has not yet become effective,
6 or for which an offering statement under Regulation A
7 has been filed but has not yet been qualified, if no stop
8 order or refusal order is in effect and no public
9 proceeding or examination looking toward such an order
10 is pending under Section 8 of the act and no order under
11 Section 25140 or subdivision (a) of Section 25143 is in
12 effect under this law.

13 (c) Any offer (but not a sale) and the execution and
14 delivery of any agreement for the sale of securities
15 pursuant to the offer as may be permitted by the
16 commissioner upon application. Any negotiating permit
17 under this subdivision shall be conditioned to the effect
18 that none of the securities may be issued and none of the
19 consideration therefor may be received or accepted until
20 the sale of the securities is qualified under this law.

21 (d) Any transaction or agreement between the issuer
22 and an underwriter or among underwriters if the sale of
23 the securities is qualified, or exempt from qualification, at
24 the time of distribution thereof in this state, if any.

25 (e) Any offer or sale of any evidence of indebtedness,
26 whether secured or unsecured, and any guarantee
27 thereof, in a transaction not involving any public offering.

28 (f) Any offer or sale of any security in a transaction
29 (other than an offer or sale to a pension or profit-sharing
30 trust of the issuer) which meets each of the following
31 criteria:

32 (1) Sales of the security are not made to more than 35
33 persons, including persons not in this state.

34 (2) All purchasers either have a preexisting personal
35 or business relationship with the offeror or any of its
36 partners, officers, directors or controlling persons, or
37 managers if the offeror is a limited liability company, or
38 by reason of their business or financial experience or the
39 business or financial experience of their professional
40 advisors who are unaffiliated with and who are not



1 compensated by the issuer or any affiliate or selling agent
2 of the issuer, directly or indirectly, could be reasonably
3 assumed to have the capacity to protect their own
4 interests in connection with the transaction.

5 (3) Each purchaser represents that the purchaser is
6 purchasing for the purchaser's own account (or a trust
7 account if the purchaser is a trustee) and not with a view
8 to or for sale in connection with any distribution of the
9 security.

10 (4) The offer and sale of the security is not
11 accomplished by the publication of any advertisement.
12 The number of purchasers referred to above is exclusive
13 of any described in subdivision (i), any officer, director or
14 affiliate of the issuer, or manager if the issuer is a
15 manager-managed limited liability company, and any
16 other purchaser who the commissioner designates by
17 rule. For purposes of this section, a husband and wife
18 (together with any custodian or trustee acting for the
19 account of their minor children) are counted as one
20 person and a partnership, corporation or other
21 organization which was not specifically formed for the
22 purpose of purchasing the security offered in reliance
23 upon this exemption, is counted as one person. The
24 commissioner may by rule require the issuer to file a
25 notice of transactions under this subdivision; provided,
26 however, that the failure to file the notice or the failure
27 to file the notice within the time specified by the rule of
28 the commissioner shall not affect the availability of this
29 exemption. An issuer who fails to file the notice as
30 provided by rule of the commissioner shall, within 15
31 business days after demand by the commissioner, file the
32 notice and pay to the commissioner a fee equal to the fee
33 payable had the transaction been qualified under Section
34 25110.

35 (g) Any offer or sale of conditional sale agreements,
36 equipment trust certificates, or certificates of interest or
37 participation therein or partial assignments thereof,
38 covering the purchase of railroad rolling stock or
39 equipment or the purchase of motor vehicles, aircraft, or



1 parts thereof, in a transaction not involving any public
2 offering.

3 (h) Any offer or sale of voting common stock by a
4 corporation incorporated in any state if, immediately
5 after the proposed sale and issuance, there will be only
6 one class of stock of the corporation outstanding which is
7 owned beneficially by no more than 35 persons, provided
8 all of the following requirements have been met:

9 (1) All of the stock shall be evidenced by certificates
10 which shall have stamped or printed prominently on
11 their face a legend in a form to be prescribed by rule of
12 the commissioner restricting transfer of the stock in the
13 manner that the rule provides.

14 (2) The offer and sale of the stock is not accompanied
15 by the publication of any advertisement, and no selling
16 expenses have been given, paid, or incurred in
17 connection therewith.

18 (3) The consideration to be received by the issuer for
19 the stock to be issued shall consist of (i) only assets (which
20 may include cash) of an existing business enterprise
21 transferred to the issuer upon its initial organization, of
22 which all of the persons who are to receive the stock to be
23 issued pursuant to this exemption were owners during,
24 and the enterprise was operated for, a period of not less
25 than one year immediately preceding the proposed
26 issuance, and the ownership of the enterprise
27 immediately prior to the proposed issuance was in the
28 same proportions as the shares of stock are to be issued,
29 or (ii) only cash or cancellation of indebtedness for
30 money borrowed or both upon the initial organization of
31 the issuer, provided all of the stock is issued for the same
32 price per share, or (iii) only cash, provided the sale is
33 approved in writing by each of the existing shareholders
34 and the purchaser or purchasers are existing
35 shareholders, or (iv), in a case where after the proposed
36 issuance there will be only one owner of the stock of the
37 issuer, any legal consideration.

38 (4) No promotional consideration has been given,
39 paid, or incurred in connection with the issuance.
40 Promotional consideration means any consideration paid



1 directly or indirectly to a person who, acting alone or in
2 conjunction with one or more other persons, takes the
3 initiative in founding and organizing the business or
4 enterprise of an issuer, for services rendered in
5 connection with the founding or organizing.

6 (5) A notice in a form prescribed by rule of the
7 commissioner, signed by an active member of the State
8 Bar of California, shall be filed with or mailed for filing to
9 the commissioner not later than 10 business days after
10 receipt of consideration for the securities by the issuer,
11 which notice shall contain an opinion of the member of
12 the State Bar of California that the exemption provided
13 by this subdivision is available for the offer and sale of the
14 securities; provided, however, that the failure to file the
15 notice as required by this subdivision and the rules of the
16 commissioner shall not affect the availability of this
17 exemption. An issuer who fails to file the notice within the
18 time specified by this subdivision shall, within 15 business
19 days after demand by the commissioner, file the notice
20 and pay to the commissioner a fee equal to the fee payable
21 had the transaction been qualified under Section 25110.
22 The notice, except when filed on behalf of a California
23 corporation, shall be accompanied by an irrevocable
24 consent, in the form that the commissioner by rule
25 prescribes, appointing the commissioner or his or her
26 successor in office to be the issuer's attorney to receive
27 service of any lawful process in any noncriminal suit,
28 action, or proceeding against it or its successor which
29 arises under this law or any rule or order hereunder after
30 the consent has been filed, with the same force and
31 validity as if served personally on the issuer. An issuer on
32 whose behalf a consent has been filed in connection with
33 a previous qualification or exemption from qualification
34 under this law (or application for a permit under any
35 prior law if the application or notice under this law states
36 that the consent is still effective) need not file another.
37 Service may be made by leaving a copy of the process in
38 the office of the commissioner but it is not effective unless
39 (1) the plaintiff, who may be the commissioner in a suit,
40 action or proceeding instituted by him or her, forthwith



1 sends notice of the service and a copy of the process by
2 registered or certified mail to the defendant or
3 respondent at its last address on file with the
4 commissioner, and (2) the plaintiff's affidavit of
5 compliance with this section is filed in the case on or
6 before the return day of the process, if any, or within the
7 further time as the court allows.

8 For the purposes of this subdivision, all securities held
9 by a husband and wife, whether or not jointly, shall be
10 considered to be owned by one person, and all securities
11 held by a corporation which has issued stock pursuant to
12 this exemption shall be considered to be held by the
13 shareholders to whom it has issued the stock.

14 (i) Any offer or sale (1) to a bank, savings and loan
15 association, trust company, insurance company,
16 investment company registered under the Investment
17 Company Act of 1940, pension or profit-sharing trust
18 (other than a pension or profit-sharing trust of the issuer,
19 a self-employed individual retirement plan, or individual
20 retirement account), or other institutional investor or
21 governmental agency or instrumentality that the
22 commissioner may designate by rule, whether the
23 purchaser is acting for itself or as trustee, or (2) to any
24 corporation with outstanding securities registered under
25 Section 12 of the Securities Exchange Act of 1934 or any
26 wholly owned subsidiary of such a corporation which
27 after the offer and sale will own directly or indirectly 100
28 percent of the outstanding capital stock of the issuer;
29 provided the purchaser represents that it is purchasing
30 for its own account (or for the trust account) for
31 investment and not with a view to or for sale in
32 connection with any distribution of the security.

33 (j) Any offer or sale of any certificate of interest or
34 participation in an oil or gas title or lease (including
35 subsurface gas storage and payments out of production)
36 if (1) all of the purchasers: (i) are and have been during
37 the preceding two years engaged primarily in the
38 business of drilling for, producing, or refining oil or gas
39 (or whose corporate predecessor, in the case of a
40 corporation, has been so engaged), or (ii) are persons



1 described in clause (1) of subdivision (i) of this section,
2 or (iii) have been found by the commissioner upon
3 written application to be substantially engaged in the
4 business of drilling for, producing or refining oil or gas so
5 as not to require the protection provided by this law
6 (which finding shall be effective until rescinded), or (2)
7 the security is concurrently hypothecated to a bank in the
8 ordinary course of business to secure a loan made by the
9 bank; provided each purchaser represents that it is
10 purchasing for its own account for investment and not
11 with a view to or for sale in connection with any
12 distribution of the security.

13 (k) Any offer or sale of any security under, or pursuant
14 to, a plan of reorganization under Chapter 11 of the
15 federal bankruptcy law which has been confirmed or is
16 subject to confirmation by the decree or order of a court
17 of competent jurisdiction.

18 (l) Any offer or sale of an option, warrant, put, call, or
19 straddle, and any guarantee of any of these securities, by
20 a person who is not the issuer of the security subject to the
21 right, if the transaction, had it involved an offer or sale of
22 the security subject to the right by the person, would not
23 have violated Section 25110 or 25130.

24 (m) Any offer or sale of a stock to a pension,
25 profit-sharing, stock bonus or employee stock ownership
26 plan provided that (1) the plan meets the requirements
27 for qualification under Section 401 of the Internal
28 Revenue Code, and (2) the employees are not required
29 or permitted individually to make any contributions to
30 the plan. The exemption provided by this subdivision
31 shall not be affected by whether the stock is contributed
32 to the plan, purchased from the issuer with contributions
33 by the issuer or an affiliate of the issuer, or purchased from
34 the issuer with funds borrowed from the issuer, an
35 affiliate of the issuer or any other lender.

36 (n) Any offer or sale of any security in a transaction,
37 other than an offer or sale of a security in a rollup
38 transaction, that meets all of the following criteria:

39 (1) The issuer is (A) a California corporation or
40 foreign corporation that, at the time of the filing of the



1 notice required under this subdivision, is subject to
2 Section 2115, without regard to the notice filing
3 requirement under Section 2108, or (B) any other form
4 of business entity, including without limitation a
5 partnership or trust organized under the laws of this state.
6 The exemption provided by this subdivision is not
7 available to a “blind pool” issuer, as that term is defined
8 by the commissioner, or to an investment company
9 subject to the Investment Company Act of 1940.

10 (2) Sales of securities are made only to qualified
11 purchasers or other persons the issuer reasonably
12 believes, after reasonable inquiry, to be qualified
13 purchasers. A corporation, partnership, or other
14 organization specifically formed for the purpose of
15 acquiring the securities offered by the issuer in reliance
16 upon this exemption may be a qualified purchaser if each
17 of the equity owners of the corporation, partnership, or
18 other organization is a qualified purchaser. Qualified
19 purchasers include the following:

20 (A) A person designated in Section 260.102.13 of Title
21 10 of the California Code of Regulations.

22 (B) A person designated in subdivision (i) or any rule
23 of the commissioner adopted thereunder.

24 (C) A pension or profit-sharing trust of the issuer, a
25 self-employed individual retirement plan, or an
26 individual retirement account, if the investment
27 decisions made on behalf of the trust, plan, or account are
28 made solely by persons who are qualified purchasers.

29 (D) An organization described in Section 501(c)(3) of
30 the Internal Revenue Code, corporation, Massachusetts
31 or similar business trust, or partnership, each with total
32 assets in excess of five million dollars (\$5,000,000)
33 according to its most recent audited financial statements.

34 (E) With respect to the offer and sale of one class of
35 voting common stock of an issuer or of preferred stock of
36 an issuer entitling the holder thereof to at least the same
37 voting rights as the issuer’s one class of voting common
38 stock, provided that the issuer has only one-class voting
39 common stock outstanding upon consummation of the
40 offer and sale, a natural person who, either individually



1 or jointly with the person's spouse, (i) has a minimum net
2 worth of two hundred fifty thousand dollars (\$250,000)
3 and had, during the immediately preceding tax year,
4 gross income in excess of one hundred thousand dollars
5 (\$100,000) and reasonably expects gross income in excess
6 of one hundred thousand dollars (\$100,000) during the
7 current tax year or (ii) has a minimum net worth of five
8 hundred thousand dollars (\$500,000). "Net worth" shall
9 be determined exclusive of home, home furnishings, and
10 automobiles. Other assets included in the computation of
11 net worth may be valued at fair market value.

12 Each such natural person, by reason of his or her
13 business or financial experience, or the business or
14 financial experience of his or her professional advisor,
15 who is unaffiliated with and who is not compensated,
16 directly or indirectly, by the issuer or any affiliate or
17 selling agent of the issuer, can be reasonably assumed to
18 have the capacity to protect his or her interests in
19 connection with the transaction. The amount of the
20 investment of each natural person shall not exceed 10
21 percent of the net worth, as determined by this
22 subparagraph, of that natural person.

23 (F) Any other purchaser designated as qualified by
24 rule of the commissioner.

25 (3) Each purchaser represents that the purchaser is
26 purchasing for the purchaser's own account (or trust
27 account, if the purchaser is a trustee) and not with a view
28 to or for sale in connection with a distribution of the
29 security.

30 (4) Each natural person purchaser, including a
31 corporation, partnership, or other organization
32 specifically formed by natural persons for the purpose of
33 acquiring the securities offered by the issuer, receives, at
34 least five business days before securities are sold to, or a
35 commitment to purchase is accepted from, the
36 purchaser, a written offering disclosure statement, which
37 shall meet the disclosure requirements of Regulation D
38 (17 C.F.R. 230.501 et seq.), and any other information as
39 may be prescribed by rule of the commissioner; provided
40 that the issuer shall not be obligated pursuant to the



1 provisions of this paragraph to provide this disclosure
2 statement to a natural person qualified under Section
3 260.102.13 of Title 10 of the California Code of
4 Regulations. The offer or sale of securities pursuant to a
5 disclosure statement required by this paragraph in
6 violation of Section 25401, or which fails to meet the
7 disclosure requirements of Regulation D (17 C.F.R.
8 230.501 et seq.), shall not render unavailable to the issuer
9 the claim of an exemption from the provisions of Section
10 25110 afforded by this subdivision. This paragraph does
11 not impose, directly or indirectly, any additional
12 disclosure obligation with respect to any other exemption
13 from qualification available under any other provision of
14 this section.

15 (5) (A) A general announcement of proposed
16 offering may be published by written document only,
17 provided that the general announcement of proposed
18 offering sets forth the following required information:

19 (i) The name of the issuer of the securities.

20 (ii) The full title of the security to be issued.

21 (iii) The anticipated suitability standards for
22 prospective purchasers.

23 (iv) A statement that (I) no money or other
24 consideration is being solicited or will be accepted, (II)
25 an indication of interest made by a prospective purchaser
26 involves no obligation or commitment of any kind, and,
27 if the issuer is required by paragraph (4) to deliver a
28 disclosure statement to prospective purchasers, (III) no
29 sales will be made or commitment to purchase accepted
30 until five business days after delivery of a disclosure
31 statement and subscription information to the
32 prospective purchaser in accordance with the
33 requirements of this subdivision.

34 (v) Any other information required by rule of the
35 commissioner.

36 (vi) The following legend: “For more complete
37 information about (Name of Issuer) and (Full Title of
38 Security), send for additional information from (Name
39 and Address) by sending this coupon or calling
40 (Telephone Number).”



1 (B) The general announcement of proposed offering
2 referred to in subparagraph (A) may also set forth the
3 following information:

4 (i) A brief description of the business of the issuer.

5 (ii) The geographic location of the issuer and its
6 business.

7 (iii) The price of the security to be issued, or, if the
8 price is not known, the method of its determination or the
9 probable price range as specified by the issuer, and the
10 aggregate offering price.

11 (C) The general announcement of proposed offering
12 shall contain only the information that is set forth in this
13 paragraph.

14 (D) Dissemination of the general announcement of
15 proposed offering to persons who are not qualified
16 purchasers, without more, shall not disqualify the issuer
17 from claiming the exemption under this subdivision.

18 (6) No telephone solicitation shall be permitted until
19 the issuer has determined that the prospective purchaser
20 to be solicited is a qualified purchaser.

21 (7) The issuer files a notice of transaction under this
22 subdivision both (A) concurrent with the publication of
23 a general announcement of proposed offering or at the
24 time of the initial offer of the securities, whichever occurs
25 first, accompanied by a filing fee, and (B) within 10
26 business days following the close or abandonment of the
27 offering, but in no case more than 210 days from the date
28 of filing the first notice. The first notice of transaction
29 under subparagraph (A) shall contain an undertaking, in
30 a form acceptable to the commissioner, to deliver any
31 disclosure statement required by paragraph (4) to be
32 delivered to prospective purchasers, and any supplement
33 thereto, to the commissioner within 10 days of the
34 commissioner's request for the information. The
35 exemption from qualification afforded by this subdivision
36 is unavailable if an issuer fails to file the first notice
37 required under subparagraph (A) or to pay the filing fee.
38 The commissioner has the authority to assess an
39 administrative penalty of up to one thousand dollars
40 (\$1,000) against an issuer that fails to deliver the



1 disclosure statement required to be delivered to the
2 commissioner upon the commissioner's request within
3 the time period set forth above. Neither the filing of the
4 disclosure statement nor the failure by the commissioner
5 to comment thereon precludes the commissioner from
6 taking any action deemed necessary or appropriate
7 under this division with respect to the offer and sale of the
8 securities.

9 ~~SEC. 30.~~

10 *SEC. 27.* Section 25103 of the Corporations Code is
11 amended to read:

12 25103. The following transactions are exempted from
13 the provisions of Section 25110 and Section 25120:

14 (a) Any negotiations or agreements prior to general
15 solicitation of approval by the holders of securities, and
16 subject to such approval, of a change in the rights,
17 preferences, privileges, or restrictions of or on
18 outstanding securities or a merger, consolidation, or sale
19 of corporate assets in consideration of the issuance of
20 securities.

21 (b) Any change in the rights, preferences, privileges,
22 or restrictions of or on outstanding securities, unless the
23 holders of at least 25 percent of the outstanding shares or
24 units of any class of securities which will be directly or
25 indirectly affected substantially and adversely by such
26 change have addresses in this state according to the
27 records of the issuer.

28 (c) Any exchange incident to a merger, consolidation,
29 or sale of assets in consideration of the issuance of
30 securities of another issuer, unless at least 25 percent of
31 the outstanding securities of any class, any holders of
32 which are to receive securities in the exchange, are held
33 by persons who have addresses in this state, according to
34 the records of the issuer of which they are holders. This
35 exemption is not available for a rollup transaction as
36 defined by Section 25014.6. The exemption is also not
37 available for a transaction excluded from the definition of
38 rollup transaction by virtue of paragraph (5) or (6) of
39 subdivision (b) of Section 25014.6 if the transaction is one
40 of a series of transactions that directly or indirectly



1 through acquisition or otherwise involves the
2 combination or reorganization of one or more rollup
3 participants.

4 (d) For the purposes of subdivision (b) and
5 subdivision (c) of this section, (1) any securities held to
6 the knowledge of the issuer in the names of
7 broker-dealers or nominees of broker-dealers and (2) any
8 securities controlled by any one person who controls
9 directly or indirectly 50 percent or more of the
10 outstanding securities of that class shall not be considered
11 outstanding. The determination of whether 25 percent of
12 the outstanding securities are held by persons having
13 addresses in this state, for the purposes of subdivision (b)
14 and subdivision (c) of this section, shall be made as of the
15 record date for the determination of the security holders
16 entitled to vote on or consent to the action, if approval of
17 those holders is required, or if not as of the date of
18 directors' approval of that action.

19 (e) Any change (other than a stock split or reverse
20 stock split) in the rights, preferences, privileges, or
21 restrictions of or on outstanding securities, except the
22 following if they materially and adversely affect any class
23 of securities: (1) to add, change, or delete assessment
24 provisions; (2) to change the rights to dividends thereon;
25 (3) to change the redemption provisions; (4) to make
26 them redeemable; (5) to change the amount payable on
27 liquidation; (6) to change, add, or delete conversion
28 rights; (7) to change, add, or delete voting rights; (8) to
29 change, add, or delete preemptive rights; (9) to change,
30 add, or delete sinking fund provisions; (10) to rearrange
31 the relative priorities of outstanding securities; (11) to
32 impose, change, or delete restrictions upon the transfer
33 of securities in the organizational documents for the
34 entity; (12) to change the right of holders of securities
35 with respect to the calling of special meetings of holders
36 of securities; and (13) to change, add, or delete any rights,
37 preferences, privileges, or restrictions of, or on, the
38 outstanding shares or memberships of a mutual water
39 company or other corporation or entity organized
40 primarily to provide services or facilities to its



1 ~~shareholders~~ *holders of securities* or members. Changes
2 in the rights, preferences, privileges, or restrictions of or
3 on outstanding securities do not materially and adversely
4 affect any class of holders of securities within the meaning
5 of this subdivision if they arise from (i) the addition to
6 articles of incorporation of the provisions described or
7 referred to in subdivision (a) of Section 158 upon the
8 conversion of an existing corporation to a close
9 corporation pursuant to subdivision (b) of Section 158,
10 (ii) the deletion from the articles of incorporation of the
11 provisions described or referred to in subdivision (a) of
12 Section 158 upon the voluntary termination of close
13 corporation status pursuant to subdivisions (c) and (e) of
14 Section 158, (iii) the involuntary cessation of close
15 corporation status pursuant to subdivision (e) of Section
16 158, or (iv) the termination of a shareholders' agreement
17 pursuant to subdivision (b) of Section 300.

18 (f) Any stock split or reverse stock split, except the
19 following: (1) any stock split or reverse stock split if the
20 corporation has more than one class of shares outstanding
21 and the split would have a material effect on the
22 proportionate interests of the respective classes as to
23 voting, dividends, or distributions; (2) any stock split of
24 a stock which is traded in the market and its market price
25 as of the date of directors' approval of the stock split
26 adjusted to give effect to the split was less than two dollars
27 (\$2) per shares; and (3) any reverse stock split if the
28 corporation has the option of paying cash for any
29 fractional shares created by such reverse split and as a
30 result of such action the proportionate interests of the
31 shareholders would be substantially altered. Any shares
32 issued upon a stock split or reverse stock split exempted
33 by this subdivision shall be subject to any conditions
34 previously imposed by the commissioner applicable to
35 the shares with respect to which they are issued.

36 (g) Any change in the rights of outstanding debt
37 securities, except the following if they substantially and
38 adversely affect any class of securities: (1) to change the
39 rights to interest thereon; (2) to change their redemption
40 provisions; (3) to make them redeemable; (4) to extend



1 the maturity thereof or to change the amount payable
2 thereon at maturity; (5) to change their voting rights; (6)
3 to change their conversion rights; (7) to change sinking
4 fund provisions; and (8) to make them subordinate to
5 other indebtedness.

6 (h) An exchange incident to a merger or sale of assets
7 in consideration of the issuance of voting securities of
8 another entity, which exchange meets each of the
9 following conditions:

10 (1) The acquiring entity (or the parent entity if its
11 wholly owned subsidiary is the acquiring entity) has
12 earned a majority of its revenue from its operations rather
13 than investments during each of the last four fiscal
14 quarters prior to the date of the offer of the acquiring
15 entity's securities.

16 (2) The entity to be acquired has 20 or fewer security
17 holders, all of which are equity security holders, including
18 equity security holders not in this state.

19 (3) All equity security holders of the entity to be
20 acquired have either (A) preexisting personal or business
21 relationship with the acquiring entity or any of its officers,
22 directors, or if the acquiring entity is a limited liability
23 company or a limited partnership, its managers or
24 general partners, respectively, or controlling persons or
25 (B) by reason of their business or financial experience, or
26 the business or financial experience of their professional
27 advisors who are unaffiliated with and who are not
28 compensated by the acquiring entity or any affiliate or
29 selling agent of the acquiring entity, directly or
30 indirectly, could be reasonably assumed to have the
31 capacity to protect their own interest in connection with
32 the transaction.

33 (4) All equity security holders of the entity to be
34 acquired have consented in writing to the transaction,
35 and each equity security holder of the entity to be
36 acquired has represented that the acquisition of the
37 voting equity security in the transaction is for the equity
38 security holder's own account (or a trust account if the
39 equity security holder is a trustee) and not with a view to



1 or for sale in connection with any distribution of the
2 voting equity security.

3 (5) The offer and sale of the acquiring entity's voting
4 securities is not accomplished by the publication of any
5 advertisement. The distribution of information necessary
6 to solicit approval of the transaction from the equity
7 security holders of the entity to be acquired shall not be
8 deemed to be the publication of any advertisement to the
9 extent that the distribution of information is required by
10 the laws of this state or the applicable laws of any other
11 jurisdiction.

12 (6) All equity security holders of the entity to be
13 acquired, other than the acquiring entity, shall receive as
14 a result of the merger or sale of assets (A) only voting
15 securities of the acquiring entity (or parent or subsidiary
16 if the securities of that entity is the consideration
17 offered), (B) only cash, or (C) a combination as
18 determined by the equity security holder as set forth in
19 subparagraph (A) and cash; each choice at the option of
20 the equity security holder of the entity to be acquired.

21 For purposes of this section, a husband and wife
22 (together with any custodian or trustee acting for the
23 account of their minor children) are counted as one
24 equity security holder of the entity to be acquired and a
25 partnership, corporation, or other organization which
26 was not specifically formed for the purpose of receiving
27 the security exchanged in reliance upon this exemption,
28 is counted as one equity security holder of the entity to
29 be acquired.

30 The commissioner may, by rule, require the acquiring
31 entity to file a notice of transaction under this section.
32 However, the failure to file the notice or the failure to file
33 the notice within the time specified by the rule of the
34 commissioner shall not affect the availability of this
35 exemption. An acquiring entity which fails to file the
36 notice as provided by rule of the commissioner shall,
37 within 15 business days after demand by the
38 commissioner, file the notice and pay to the
39 commissioner a fee equal to the fee payable had the
40 transaction been qualified under Section 25110 or 25120.



1 ~~SEC. 31. Section 1628 of the Insurance Code is~~
2 ~~amended to read:~~

3 ~~1628. As used in this chapter, an organization is a~~
4 ~~partnership, limited liability company, association, or~~
5 ~~corporation. Where reference is made to a natural person~~
6 ~~named on an organization license, the reference shall be~~
7 ~~to a person who is named to exercise the power and~~
8 ~~perform the duties under an organization license.~~

9 ~~SEC. 32. Section 1647 of the Insurance Code is~~
10 ~~amended to read:~~

11 ~~1647. Only the following natural persons are eligible~~
12 ~~to be named to exercise the agency or brokerage powers~~
13 ~~under an organization license:~~

14 ~~(a) Any general partner or employee of a partnership.~~

15 ~~(b) Any manager, member, officer, or employee of a~~
16 ~~limited liability company.~~

17 ~~(c) Any member, officer, or employee of an~~
18 ~~association.~~

19 ~~(d) Any officer or employee of a corporation.~~

20 ~~SEC. 33. Section 1656.2 is added to the Insurance~~
21 ~~Code, to read:~~

22 ~~1656.2. (a) Every license application filed by a~~
23 ~~limited liability company shall contain the names and~~
24 ~~addresses of any managers and officers and of all~~
25 ~~members owning 10 percent or more of the company.~~

26 ~~(b) Every licensed limited liability company shall file~~
27 ~~a written notice with the commissioner of all changes in~~
28 ~~ownership for members owning 10 percent or more of the~~
29 ~~company and of all changes in the managers and officers~~
30 ~~of the company.~~

31 ~~(c) The commissioner may require the application or~~
32 ~~notice to disclose any additional information necessary to~~
33 ~~determine if the license should be denied, suspended, or~~
34 ~~revoked under Section 1668, 1668.5, or 1669.~~

35 ~~SEC. 34.—~~

36 ~~SEC. 28. This act is an urgency statute necessary for~~
37 ~~the immediate preservation of the public peace, health,~~
38 ~~or safety within the meaning of Article IV of the~~
39 ~~Constitution and shall go into immediate effect. The facts~~
40 ~~constituting the necessity are:~~



1 In order to make necessary clarifications to the
2 Beverly-Killea Limited Liability *Company* Act,
3 consistent with rulings of the Internal Revenue Service,
4 and in order that the Beverly-Killea Limited Liability
5 *Company* Act is fully effective, it is necessary that this act
6 take effect immediately.

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